

**AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL
BETWEEN THE SKOKOMISH INDIAN TRIBE AND THE STATE OF WASHINGTON**

I. RECITALS

1.1. The Skokomish Indian Tribe is a federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934 by Constitution and By-laws first adopted on April 2, 1938 and approved by the Secretary of the Interior on May 3, 1938. The Skokomish Indian Tribe will be referred to in this Agreement as the “Tribe”.

1.2 The State of Washington (“State”) is a state within the United States of America, possessed of full powers of a state government. The Department of Licensing is an agency of the State of Washington. The State of Washington and the Department of Licensing are referred to collectively in this Agreement as the “State”. Senate Bill 5272, chapter 515, laws of 2007, effective May 15, 2007, amended certain sections of chapters 82.36 and 82.38 RCW to allow the Governor to enter into an agreement with any federally recognized Indian tribe located on a reservation within the State regarding motor vehicle and special fuel taxes. The legislation also authorized the Governor to delegate the power to negotiate such agreements to the Department of Licensing. The Governor has delegated this authority to the director of the Department of Licensing.

1.3 The Tribe and the State (collectively “the parties”) have conferred and engaged in government-to-government negotiations in a mutual, good faith effort to reach an arrangement in regard to state fuel taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Skokomish Indian Reservation. Each party to this Agreement respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.4. The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes state fuel taxes on motor vehicle fuel suppliers and importers and special fuel suppliers and importers, the revenue from which is used exclusively for highway purposes. The Tribe expends Tribal funds each year for public highways and traffic law enforcement within the Reservation, as

well as for other essential governmental purposes. The parties mutually acknowledge the need to maintain the integrity and quality of public roads within the Reservation.

1.5 This Agreement addresses only the taxation and regulation of motor vehicle fuel and special fuel and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

1.6 The Tribe and the State shall confer regarding regulation of filling stations operating within the jurisdiction of the Tribe to ensure such regulation is consistent with the intent and spirit of this Agreement.

1.7 By entering into this Agreement, the State does not concede that the Tribe has any immunity from the State's tax and tax collection provisions.

1.8. This Agreement is not intended, and will not be construed to confer a benefit or create any right on a third party, or the power or right of any third party to bring an action to enforce any terms of this Agreement.

II. PURPOSE AND OBJECTIVES

2.1. This Agreement addresses the establishment of a cooperative framework for taxation and regulation, by the Tribe and by the State, respecting the distribution, sale, transfer, use or possession of motor vehicle fuel and special fuel when such fuel is distributed, sold, used, or possessed within the Reservation.

2.2. The parties intend that this Agreement completely resolve, as between them, all issues related to motor vehicle fuel taxes and special fuel taxes within the Reservation, and that this Agreement be binding upon the parties and upon persons subject to regulation by the parties.

2.3. In general, the parties intend that the State of Washington's statutory and regulatory law for taxation with respect to such fuel remain in full force and effect under this Agreement.

III. DEFINITIONS

3.1. "Department" means the Washington State Department of Licensing, or any successor agency, and its officials, employees, and agents acting in their official capacity.

3.2. “Distributor” shall be used in this Agreement to refer to either a Motor Vehicle Fuel Distributor or a Special Fuel Distributor. “Motor Vehicle Fuel Distributor” has the meaning given in RCW 82.36.010(15), as it now exists or as amended in the future. “Special Fuel Distributor” has the meaning given in RCW 82.38.101(24), as now or as amended in the future.

3.3. “Essential governmental function” has the meaning given in 26 C.F.R. § 305.7871-1(d) (2000).

3.4. “Filling station” means a place of business operated for the purpose of delivering to the general public motor vehicle fuel or special fuel into the fuel tanks of motor vehicles.

3.5. “Motor vehicle” means every self-propelled vehicle designed for operation upon land and utilizing motor vehicle fuel or special fuel as the means of propulsion.

3.6. “Motor vehicle fuel” has the meaning given in RCW 82.36.010(20), as it now exists or as it may hereafter be amended.

3.7. “Reservation” means the Skokomish Indian Reservation together with Tribal trust lands located outside the boundaries of the Reservation over which the Skokomish Indian Tribe exercises governmental authority.

3.8. “Special fuel” has the meaning given in RCW 82.38.020 (23), as it now exists or as it may hereafter be amended.

3.9. “State” means the State of Washington and the Washington State Department of Licensing.

3.10. “Tribe” means the Skokomish Indian Tribe.

3.11. “Tribal business” means a business that is owned and operated by the Tribe or by an enrolled Tribal member, so long as the business operated by an enrolled Tribal member is licensed or permitted by the Tribe to do business on the Reservation.

3.12. “Tribal Fuel Facilities” means a retail filling station that is owned and operated by the Tribe or by a Tribal business, and any facilities owned and operated by the Tribe or a Tribal business for bulk storage of Motor vehicle fuel or Special fuel.

3.13. “Tribal member” means a person who is an enrolled member of the Skokomish Indian Tribe.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State of Washington and the Tribe shall cooperate to the extent legally permitted to ensure the enforcement of:

- A. the Tribe's laws with respect to the taxation and regulation of Tribal members, non-tribal filling stations, tribal filling stations and businesses that sell or deliver motor vehicle or special fuel within the Reservation, and Tribal trust lands where the Tribe exercises governmental authority;
- B. The State's laws and rules respecting the imposition and collection of its fuel taxes from all persons except as provided under this Agreement; and
- C. The terms of this Agreement.

Framework for Taxation and Regulation

4.2. The Department shall collect Washington State motor vehicle and special fuel taxes in accordance with chapters 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended. The Tribe agrees to purchase only fuel on which applicable state taxes have been paid.

- A. The Tribe shall by ordinance require non-tribal filling stations, tribal filling stations, tribal businesses, and tribal members to purchase only fuel on which state fuel tax has been paid, and to purchase fuel only from persons or companies operating lawfully in accordance with RCW 82.36 and RCW 82.38. Such ordinances shall become effective within 6 months of the execution of this Agreement, or unless otherwise agreed.
- B. The Tribe agrees to pass on to the retail customer the state tax included in the price of fuel and to not use the amounts of tax remitted or refunded to the Tribe to reduce the price at which fuel is sold from its retail outlets or any retail outlet operated by the Tribe or a tribal member.

4.3. Upon compliance with the record and audit procedures described in section 4.8 and 4.9, the Tribe shall be entitled to a refund equal to 75% of the tax paid on each gallon of motor vehicle fuel or special fuel purchased by the Tribe.

4.4 Tax paid on fuel purchased that is claimed for refund for Tribal government vehicles for Federal fuel tax purposes on Internal Revenue Service (IRS) claim form 4136 shall be entitled to a refund of 100% of the tax. A copy of the IRS form 4136 shall accompany the refund request. Such fuel must be used by the Tribe for its essential governmental functions and Tribal businesses.

4.5. The Tribe, Tribal filling stations, Tribal businesses, and Tribal members may also be eligible for refunds under the provisions of RCW 82.36.280, RCW 82.36.285, RCW 82.36.290, RCW 82.36.300, RCW 82.38.080, RCW 82.38.180, and similar state fuel tax exemption statutes that may be later adopted, but only (1) to the extent such statutes apply to the Tribes, the Tribal filling station, the Tribal business, and the Tribal member, and to the particular use by them of motor vehicle and special fuels and (2) to the extent a refund was not made to the Tribe under section 4.3 of this Agreement.

4.6. No refund of motor vehicle or special fuel taxes need be made by the State except as specifically set out in this Agreement.

4.7. The Tribe agrees to expend fuel tax proceeds retained by the Tribe or amounts equivalent thereto on: Planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes.

Records and Audit Provisions

4.8. The Tribe shall:

- A. maintain invoices showing the number of gallons of motor vehicle fuel and special fuel purchased by the tribe for resale at tribal retail stations; and
- B. maintain records to document the use of fuel tax proceeds or their equivalent for the purposes identified in section 4.7 of this Agreement, and
- C. maintain Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for refund for Federal fuel tax purposes.

The Tribe shall maintain such records for a minimum of three years.

4.9 The Tribe shall cause an audit to be performed annually or at such other interval as shall be agreed by the parties, by an independent third party auditor who shall be a certified public accountant in good standing, to review such records as are necessary to certify the number of gallons of motor vehicle and special fuel purchased by the Tribe for re-sale at Tribal filling stations, the amount of State tax included in the price of the fuel purchased by the Tribe, and the use of Fuel Tax proceeds or their equivalent for the purposes identified in section 4.7 above. The Tribe shall deliver a copy of the final written report of such audit to the Director of the State Department of Licensing.

4.10 The State agrees to treat as personal information under RCW 42.56.230(3)(b) any information received by the State or otherwise made available to the State by the Tribe, Tribal filling stations, Tribal businesses, and Tribal members, for review pursuant to this Agreement and to exempt such information from public inspection and copying.

V. DISPUTE RESOLUTION, TERM AND RENEWAL

5.1. Neither the Tribe, nor the State, nor officers acting on either government's behalf, may petition any court to enforce this Agreement unless (a) the dispute resolution process described in sections 5.1.A. and 5.1.B. has been followed in good faith to completion without successful resolution, or unless (b) the other party fails to enter into the dispute resolution process or terminates the process before its completion. Should a dispute arise between the Tribe and the State upon an issue of compliance with the Agreement by either government, or by their officers, employees or agents, the Tribe and State shall attempt to resolve the dispute through the following dispute resolution process:

- A. Either party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice shall set out the issues in dispute and the notifying party's position on each issue.
- B. The first stage of the process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within 30 days of the date of the written

notice described in section 5.1.a. The representatives of each government shall come to the meeting with the authority to settle the dispute.

- C. After completion of the process in sections 5.1.A. and 5.1.B., either party may terminate this Agreement with sixty (60) days written notice served upon the Chairperson of the Tribe and Director of the Department of Licensing.

5.2 This Agreement shall remain in effect for a five year (5) term, unless the parties mutually agree in writing that the decree should be vacated or terminated and superseded by a new agreement between the parties within that time frame. The Agreement shall automatically renew for an additional five year (5) period unless either party provides written notice to the other, no later than 90 days before the expiration of the five year (5) period, that they wish to modify the terms of the Agreement.

5.3 In any action filed by a third party challenging either the Tribe's or the State's authority to enter into or enforce this Agreement, the Tribe and the State each agree to support the Agreement and defend their authority to enter into and implement this Agreement.

VI. IMPLEMENTATION AND AMENDMENT

6.1 The following provisions for tax remittance shall apply:

6.1.1 For any motor vehicle or special fuel on which the State tax already has been collected prior to delivery to the Tribal Fuel Facilities and Tribal businesses, the State shall remit monthly to the Tribe an amount equal to 75% of the state motor vehicle and diesel fuels tax actually paid on all such fuel delivered to the Tribal Fuel Facilities and Tribal businesses in the preceding month.

6.1.2 The Tribe shall submit copies monthly of invoices for fuel delivered to Tribal Fuel Facilities and Tribal businesses, which invoices shall include the invoice date, name

of the seller, and the amount of State motor vehicle fuel and special fuels taxes paid or included in the price of the fuel.

6.1.3 Within 30 days of receiving an invoice, the State shall remit to the Tribe 75% of the state motor vehicle fuel and special fuels tax actually paid or included in the price of the fuel delivered to the Tribal Fuel Facilities and Tribal businesses.

6.1.4 If the accuracy or authenticity of any invoice submitted by the Tribe is questioned, the State and the Tribe shall use their best efforts to resolve the issue informally.

6.1.5 If informal dispute resolution efforts are unsuccessful, the dispute resolution provisions of this Agreement shall apply.

6.2 This Agreement may be amended only by a written instrument duly signed and executed by the Parties.

6.3 The contact person for the Tribe, for any changes or concerns about this Agreement, shall be: William "Bill" Smith, Council Member, 360-877-2024, bsmith@skokomish.org. The contact person for the State, for any changes or concerns about this Agreement, shall be: Sharon Whitehead, Deputy Director, 360-902-3600, swhitehead@dol.wa.gov, or her successor in the position of Deputy Director.

6.4 The Tribe shall provide the State with a list of the name and physical location (address) of each retail outlet operated by the tribe and covered by this Agreement. No later than 30 days after any new retail outlet is opened, the same information will be provided to the State.

6.5 If the Tribe proposes to purchase fuel for bulk storage for use in Tribally owned vehicles or for resale, before such activities begin, the Tribe shall notify the State, and the parties shall confer on any changes necessary to this Agreement.

6.6 In the event the Tribe proposes to blend fuel, the Tribe agrees to abide by all applicable Federal laws related to the blending and sale of motor vehicle and diesel fuel. The parties agree to meet and discuss the application of this Agreement to fuel blended by the tribe, before any

such blending begins. If the tribe begins blending fuel without compliance with this section, the State may terminate this Agreement on 30 day's notice.

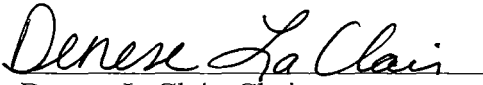
6.7 The term of this Agreement shall commence November 1, 2007 and extend to November 1, 2012 as described in section 5.2.

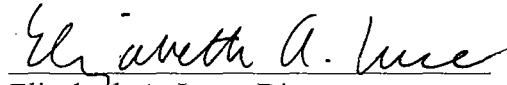
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October, 2007.

DATED this 29th day of
October, 2007

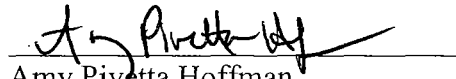
SKOKOMISH INDIAN TRIBE

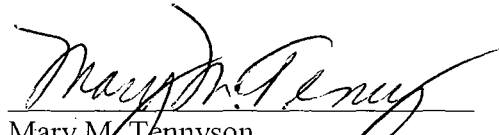
DEPARTMENT OF LICENSING


Denese LaClair, Chairperson
Skokomish Indian Tribe


Elizabeth A. Luce, Director
Washington State Dept. of Licensing

Approved as to Form


Amy Pivetta Hoffman
Tribal Attorney


Mary M. Tennyson
Sr. Assistant Attorney General

RECEIVED

SKOKOMISH FUEL SALES AND TAX ORDINANCE

APR 21 2008

Adopted by Resolution No. 08-046 (April 16, 2008)

ATTORNEY GENERAL'S OFFICE
LICENSING & ADMINISTRATIVE LAW DIVISION

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General Provisions

5.06.001 Title

This Ordinance shall be known as the Skokomish Fuel Sales and Tax Ordinance.

5.06.002 Authority

This Ordinance is enacted by the Skokomish Tribal Council, the governing body of the Skokomish Indian Tribe, which has the authority to enact laws and ordinances governing the conduct of individuals and defining offenses against the Tribe; to impose taxes on all persons and property within the Tribe's jurisdiction; to negotiate and contract with agencies and officers of federal, state, local and tribal governments; to establish business enterprises as branches of the Skokomish tribal government and to engage in business

activities which promote the economic well being of the Skokomish Tribe and its members.

5.06.003 Findings

The Skokomish Tribal Council finds that regulation of the sale of motor vehicle and special fuels is essential to the health and welfare of the Skokomish Indian Tribe and its members. The Tribal Council further finds that tax revenues are essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development for the safety, health and welfare of the Skokomish Indian Tribe, its members and members of the community.

The Skokomish Tribal Council finds that there are substantial unmet needs in funding for road construction and maintenance, transportation services, public safety, infrastructure, and governmental programs that serve Tribal members, employees, customers and other community members.

5.06.004 Purpose

In the public interest and for the health and welfare of the Skokomish Indian Tribe, its members and community members, the Skokomish Tribal Council, in exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the sale of motor vehicle fuel and to impose, collect and administer taxes on the retail sale of motor vehicle fuel.

5.06.005 Scope and Jurisdiction

(a) This Ordinance shall apply to the full extent of the sovereign jurisdiction of the Skokomish Indian Tribe.

(b) Compliance with this Ordinance is hereby made a condition of the use of any land or premises under the sovereign jurisdiction of the Skokomish Indian Tribe.

(c) Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the lands under the jurisdiction of the Skokomish Indian Tribe, shall be deemed to have consented to the following:

(1) to be bound by the terms of this Ordinance; and

(2) to the exercise of civil jurisdiction by the Skokomish Tribal Court over said person in legal actions arising pursuant to this Ordinance; and

(3) to detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Ordinance.

5.06.006 Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity, rights, powers or privileges of the Skokomish Indian Tribe.

5.06.007 Definitions

- (a) "Court" means the Skokomish Tribal Court.
- (b) "Essential Governmental Services" means services that the Skokomish Indian Tribe provides to its members, community members and visitors in order to fulfill its governmental responsibilities.
- (c) "Indian Country," consistent with the meaning given in 18 U.S.C. §1151, means:
 - 1. All land within the limits of the Skokomish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; and
 - 2. All Indian allotments or other lands held in trust for a Skokomish Tribal Member or the Tribe, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (d) "Motor Vehicle Fuel" means and includes all fuels normally sold for use in a motor vehicle or motorboat, including gasoline and diesel products.
- (e) "Non-Indian" means an individual who is neither a Tribal Member nor a nonmember Indian.
- (f) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Skokomish Indian Tribe.
- (g) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (h) "Skokomish Indian Reservation" or "Reservation" means the area recognized as the Skokomish Indian Reservation by the United States Department of the Interior.
- (i) "State" means the State of Washington.
- (j) "State Motor Vehicle Fuel Tax" means the Washington State Motor Vehicle Fuel Tax.

(k) "Tribal Council" means the Skokomish Indian Tribal Council.

(l) "Tribal Member" means an enrolled member of the Skokomish Indian Tribe.

(m) "Tribal Retailer" means a fuel retailer wholly owned by the Skokomish Tribe and located in Indian Country.

(n) "Tribe" or "Tribal" means or refers to the Skokomish Indian Tribe.

Sales and Taxation

5.06.008 Tribal Sales Permitted

Only Tribal Retailers are authorized to make sales of Motor Vehicle Fuel to the ultimate consumer within the Reservation.

5.06.009 State Compliance Required

Tribal Retailers, businesses and Tribal Members are required to purchase only fuel on which the State fuel tax has been paid, and purchase fuel only from persons or companies operating lawfully in accordance with State law.

5.06.010 Fuel Tax Assessed

(a) The Tribe shall impose taxes on all sales by Tribal Retailers of Motor Vehicle Fuel within the Reservation commensurate with the rate imposed by the State. The Tribal tax shall be the amount of any credit or exemption the Tribe obtains from the State tax by agreement.

(b) Sales of Motor Vehicle Fuel shall not be subject to a general Tribal sales tax rate under other provision of Tribal law.

5.06.011 Sales to Skokomish Tribal Members

(a) Sales made to Skokomish Tribal Members may be made at a reduced price of ten (10) cents per gallon or such other rate to be made at the discretion of the Tribal Council.

(b) Sales made to Skokomish Tribal Members at a discount must be recorded as such by Tribal Retailers.

5.06.012 No Reduction of Price

Tribal Retailers may not pass on to the retail customer the State tax included in the price of fuel and use the amounts of tax remitted or refunded to the Tribe pursuant to an

agreement with the State to reduce the price at which fuel is sold from the Tribal Retailer's outlet.

5.06.013 Non-Compliance with Ordinance

Any person, including Tribal Retailers, who makes sales of fuel in violation of any provision of this Ordinance shall be subject to civil action pursuant to the Skokomish Rules of Civil Procedure.

Tax Collection and Use

5.06.014 Collection and Payment of Tax

Every Tribal Retailer is liable for collecting the Tribal Fuel Tax. The Tribal Retailer shall maintain accurate written records for the purchase and retail sales of Motor Vehicle Fuel, and shall make such records available for inspection by the Tribal Chief Financial Officer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate federal oversight agency.

5.06.015 Use of Fuel Tax by Tribe

Fuel tax proceeds retained by the Tribe or amounts equivalent thereto shall be expended upon planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes.

Severability

5.06.016 Severability

In the event that any section or provision of this Code is held invalid, it is the intent of the Tribal Council that the remaining sections or provisions of this Code shall continue in full force and effect.



Skokomish Indian Tribe

Tribal Center (360) 426-4232

N. 80 Tribal Center Road

FAX (360) 877-5943

Skokomish Nation, WA 98584

SKOKOMISH TRIBAL COUNCIL RESOLUTION NO. 08-046

A RESOLUTION TO ADOPT THE SKOKOMISH FUEL SALES AND TAX ORDINANCE

WHEREAS, the Skokomish Indian Tribe is a federally recognized Indian tribe organized under its Constitution and by-laws first adopted on April 2, 1938 and approved by the Secretary of the Interior May 3, 1938, amended January 15, 1980 as approved by the Secretary of the Interior March 17, 1980; and

WHEREAS, pursuant to Article IV, Section 1 and Article V, Sections (e), (j) and (m) of the Constitution, the Skokomish Tribal Council is the governing body of the Skokomish Indian tribe which has the authority to license and regulate the conduct of business activities within the tribe's jurisdiction and to enact laws and ordinances governing the conduct of individuals and defining offenses against the tribe; to maintain order and to protect the safety and welfare of all persons within the Skokomish Tribe's jurisdiction; and to provide for the enforcement of laws and ordinances of the Skokomish Tribe; and on behalf of the tribe to consult, negotiate and contract with agencies and officers of Federal, state, local, and tribal governments and with private persons and organizations; and

WHEREAS, the Skokomish Tribal Council authorized the negotiation and execution of an Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel ("Agreement") between the Skokomish Indian Tribe and the State of Washington by Resolution No. 07-139 on October 24, 2008 and executed by the State Department of Revenue and the Tribe on October 31, 2007; and

WHEREAS, the executed Agreement, Sections 4.2 (A) and (B) require the Tribe to adopt, within six months of execution, an Ordinance to govern the taxation and sales of fuel on the Reservation; require Tribal Retailers to purchase fuel from distributors who are compliant with State law; and to require that taxes passed on to the end consumer are not supplanted by the Tribal Retailer in an effort to reduce prices in an uncompetitive advantage; and

WHEREAS, a draft Skokomish Fuel Sales and Tax Ordinance has been drafted by the Tribal Attorney, and reviewed by the Tribal Council; and


WHEREAS, the Skokomish Tribal Council finds it is in the best interest of the Tribe to adopt the Skokomish Fuel Sales and Tax Ordinance.

NOW THEREFORE BE IT RESOLVED, that the Skokomish Tribal Council adopts the Skokomish Fuel Sales and Tax Ordinance and directs Tribal Staff to post notice of the new Ordinance as necessary.

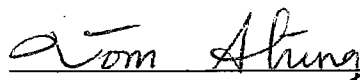
*** CERTIFICATION***

I, Denese LaClair, Chairperson of the Skokomish Tribal Council, hereby certify that the above foregoing Resolution No. 08-046 was adopted at a regular meeting of the Skokomish Tribal Council held on April 16th, 2008, at which a quorum was present by a vote of 4 FOR, 0 AGAINST, 0 ABSTAINING.

ATTEST:



Denese LaClair, Chairperson
Skokomish Tribal Council



Tom Strong, Secretary
Skokomish Tribal Council