

When recorded return ORIGINAL to:
Idaho Department of Lands
Attn: Real Estate Services Bureau
P.O. Box 83720
Boise, Idaho 83720-0050

Instrument # 865288
BONNER COUNTY, SANDPOINT, IDAHO
10-10-2014 10:57:31 AM No. of Pages: 9
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R. ANN DUTSON-SATER Fee: \$0.00
Ex-Officio Recorder Deputy
Index to: MISC *CB*

STATE OF IDAHO

DECLARATION OF ACCESS EASEMENT

**STATE SUBDIVISIONS – KOKANEE POINT AND KOKANEE POINT FIRST
ADDITION**

NO. ES100016

ELECTRONICALLY RECORDED - DO NOT
REMOVE THE COUNTY STAMPED FIRST
PAGE AS IT IS NOW INCORPORATED AS
PART OF THE ORIGINAL DOCUMENT.

THIS DECLARATION is made this 9th day of October, 2014, by the STATE BOARD OF LAND COMMISSIONERS, acting by and through the IDAHO DEPARTMENT OF LANDS (the "State"), whose mailing address is 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050.

WHEREAS, the State desires to establish an easement for ingress and egress over and across Endowment Land for the purpose of providing access to STATE SUBDIVISIONS – KOKANEE POINT AND KOKANEE POINT FIRST ADDITION and the State does hereby grant in favor of the said subdivision and all Lots therein an easement for ingress and egress to and from said subdivision to and from East Shore Road, over Bayview Drive and Sherwood Beach Road; and to set forth the maintenance responsibilities of Owners of Lots within said subdivision for the Sherwood Beach Road segment on Endowment Land, specifically granting herein the right of access for ingress and egress over and across all State lands described in that certain "Amended State of Idaho Easement No. 4744", recorded in the records of Bonner County as Instrument No. 861624.

NOW, THEREFORE, the State hereby declares that all Lots within STATE SUBDIVISIONS – KOKANEE POINT AND KOKANEE POINT FIRST ADDITION shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the access and easement rights ("easement rights") described in this Declaration, which are hereby created for the benefit of the Lots. Such easement rights shall constitute encumbrances running with the land and shall be perpetually binding upon and inure to the benefit of the State and its successors-in-interest and assigns with respect to the Lots, and all parties having or acquiring any right, title or interest in or to any part of any of the Lots.

A. Definitions:

1. "Declaration" shall mean this Declaration of Access Easement.
2. "Sherwood Beach Road" or "Easement Area" or "road" shall mean the sixty foot (60') wide road easement benefitting Lots within STATE SUBDIVISIONS – STATE SUBDIVISIONS – KOKANEE POINT AND KOKANEE POINT FIRST ADDITION as described in Exhibit "1", attached hereto and incorporated herein by reference.
3. "Easement" shall mean the perpetual, nonexclusive easement for access created by this Declaration.

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3. "Easement" shall mean the perpetual, nonexclusive easement for access created by this Declaration.

4. "Emergency" shall mean a situation that demands unusual or immediate action for the protection or preservation of life or property.
5. "State Subdivision – KOKANEE POINT" shall mean State Subdivision – KOKANEE POINT, according to the official plat thereof, filed in Book 10 of Plats, at Page(s) 177, Official Records of Bonner County, Idaho.
6. "State Subdivision – KOKANEE POINT FIRST ADDITION" shall mean State Subdivision – KOKANEE POINT FIRST ADDITION, according to the official plat thereof, filed in Book 11 of Plats, at Page(s) 26, Official Records of Bonner County, Idaho.
7. "Lots" shall include all lots located within the official plat of STATE SUBDIVISIONS – KOKANEE POINT AND KOKANEE POINT FIRST ADDITION, collectively.
8. "Map" shall mean any map included within any Exhibit attached hereto and incorporated herein by this reference showing the location of the Easement Area or any road or portion thereof the subject of this Declaration.
9. "Owner" or "Owners" shall mean and include all lessees of any of the Lots owned by the State and all fee simple owners of the Lots. The State is not a member of Owners for purposes of imposing any liability, duty or obligation related to the Easement, Easement Area or its maintenance.

B. Purpose:

1. This Easement is only for ingress and egress to the STATE SUBDIVISIONS – KOKANEE POINT AND KOKANEE POINT FIRST ADDITION for access associated with the Lots by the Owners. The location of the Easement is more particularly set forth in Exhibit "1".
2. The rights herein conveyed specifically do not include the right to use the road for access for commercial, industrial or recreational developments.

C. Insurance

1. Owners shall maintain insurance coverage for all vehicles in the type and amounts required by the licensing state with an insurance company having an AM Best's Key Rating Guide of B+ VI (financial class) or better rating. Proof of insurance coverage, the type and amounts required shall be made available to the State upon demand. All liability coverages must be on an "occurrence" basis as opposed to "claims made."
2. If any of the Owners retains the services of any contractor, such Owners shall cause each such contractor to maintain insurance commercial general liability insurance in the amount of at least \$1,000,000, per occurrence, with an insurance company authorized to do business in Idaho and having an AM Best's Key Rating Guide of B+ VI (financial class) or better rating.

D. Owners' Covenants:

1. Owners shall comply with all applicable federal, state, and local laws, rules and regulations.
2. Owners shall take measures to control noxious weeds within the Easement Area in accordance with Title 22, Chapter 24, Idaho Code. Owners shall cooperate with any state or other agency authorized to undertake programs for the control or eradication of noxious weeds.
3. Owners shall take all reasonable measures to mitigate fire hazards and to control storm water and erosion within Easement Area.
4. Owners shall not install any gates or post any signage within, on or across, or fence any portion of the Easement Area without the prior written authorization from all other Owners, and the State so long as the State owns any of the Lots or any portion of the Easement Area.
5. Each of the Owners shall indemnify and hold harmless each of the other Owners and the State (so long as the State owns any of the Lots or any portion of the Easement Area) against and from any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the State's use or each such Owner's use of the road or Easement Area, except to the extent such demands, claims, or liabilities result from any of the other Owner's negligence or breach of obligations under this Declaration.

E. Road Construction, Reconstruction and Maintenance:

1. Prior to the disturbance of the road or within the Easement Area, Owners shall be required to obtain written authorization from the State to perform road construction, reconstruction maintenance and repair work ("road maintenance"); and work to be performed shall comply with all applicable federal, state, and local laws, rules and regulations as they exist at the time work is being performed.
2. Costs associated with road maintenance shall be the sole responsibility of Owners unless the State agrees in writing to share the costs of any such road maintenance in advance of such road maintenance being made.
3. Owners shall submit, prior to any road construction or reconstruction, professional plans to the State and obtain the State's written approval prior to commencing any work within the Easement Area. Owners shall not rely on the State's approval as evidence of the adequacy or fitness of such plans for any purpose.
4. Owners shall maintain the road and Easement Area at its own expense, including, but not limited to, grading the road surface; removing any berm on the outside edge; cleaning culverts, ditches, and catch basins, sediment traps; and abating dust. Owners shall minimize side casting of material by spreading the material on the road surface. Owners shall replace or repair damaged culverts.

5. Maintenance work may include taking dust abatement measures if deemed necessary by the State. Dust abatement is keeping a road surface in such condition that dust is kept within the limits necessary to reduce loss of surface material. Water, bituminous products, and other materials may be used for dust abatement.

6. Owners shall provide and maintain sufficient drainage structures (i.e., culverts, ditches, etc.) for the entire length of the Easement in compliance with all applicable federal, state, and local laws, rules and regulations in effect at the time.

7. Road surfacing and drainage shall be required to minimize erosion and to protect the road sub-grade on any portions of the road used for all weather access. Owners shall perform road surfacing and provide and maintain sufficient drainage structures to minimize erosion while allowing for runoff to flow without buildup or ponding of water on the road. All costs for such road surfacing and drainage will be the sole responsibility of Owners.

8. If Owners wish to cut timber within the Easement Area, Owners shall first notify the State in writing of Owners' intent. Prior to cutting any timber, the State may, in its sole discretion, approve of and designate all merchantable timber. If designated by the State, Owners shall either pay fair market value for all merchantable timber cut, or shall cut timber into lengths specified by the State and decked along the nearest road for disposal by the State. Owners shall dispose of slash resulting from timber as designated by the State.

9. If Owners or any party other than the State cause damage to the road or within the Easement Area in excess of normal wear and tear, then it shall be Owners' sole cost to repair the Easement Area. Should the State cause inordinate damage to the road or within the Easement Area due to land management activity, the State shall repair the road and Easement Area to a similar condition prior to commencing activity.

10. Owners shall reimburse and indemnify the State for any and all costs and expenses incurred to repair, restore, or resurface any road and Easement Area to the same condition which existed prior to execution of this Easement or to the condition of such road and Easement Area as subsequently improved pursuant to the approval of the State as provided herein.

11. Owners shall notify the State and any applicable local emergency response system of road construction, reconstruction or maintenance that will cause delays involving access over the road of 2 hours or longer.

12. Should Owners fail to comply with the road maintenance obligations set forth in this Easement, then, within ninety (90) days from the date notice is mailed to Owners, the State may, following notice to Owners and an opportunity to cure as may be set forth in said notice, if cure is reasonably feasible, effect any such cure and may charge Owners with the reasonable cost thereof, including, but not limited to, any and all costs associated with notice and enforcement whether or not a court action is filed.

13. Owners shall not use petroleum products or any known or unknown hazardous materials during any road maintenance, including, but not limited to, dust abatement.

F. The State's Reservations:

1. The State reserves unto itself, the right to construct and maintain such roads over, through, or across said Easement Area and any road thereon as it may deem necessary in the administration and use of its adjoining land.
2. The State reserves unto itself, the right and privilege to use said Easement Area for any and all purposes deemed necessary or desirable in connection with the control, management, administration and use of the State's lands.
3. The State reserves the right to cause temporary delays to Owners' use of the road due to road construction, maintenance or improvement work, or for the control, management and use of the State's adjacent land. The temporary delays shall not unduly interfere with the Owners' use and access over the road.
4. The State reserves the right to grant additional easements over, under, through or along the Easement Area. Any additional easement granted by the State shall not unduly interfere with the Owners' use and access over the road.
5. In the event of increased burden to the Easement Area, as determined by the State in its discretion, the State may transfer ownership of the road and Easement Area to the appropriate local government agency for a public road or for any other legal purpose, provided such transfer shall not unreasonably affect Owners' access over the road and within the Easement Area for the purposes set forth herein.
6. The State reserves unto itself, ownership of all timber, present and future, within the Easement Area and the right to harvest said timber when deemed necessary by the State.

G. Emergency Work:

1. Owners are hereby authorized to enter upon Endowment Lands and other State lands managed by the Department of Lands for the purpose of performing emergency repairs within the Easement Area for damage due to floods, high winds, and other acts of God, provided that Owners provide written notice to the State within forty-eight (48) hours of the time any such emergency work commences. Thereupon, the Department of Lands will assess and collect for any damage to the State lands outside the Easement Area caused by Owners, which shall be promptly paid by Owners.

H. Restrictions on Improvements:

1. Other than the road and drainage structures, no structures or other improvements may be constructed or placed on or within the Easement Area by Owners.

I. Perpetual Easement:

1. This Declaration, the Easement established herein, and the obligations, covenants and restrictions set forth herein shall be perpetual in duration.

J. No Merger:

1. Notwithstanding that the State currently owns all of the Lots, it is recognized that the interests in the Endowment Land and Lots are separate and distinct, and that the State intends that the provisions hereof shall be of full force and effect, and that the Easement provided herein shall not be deemed merged or extinguished.

K. Default:

1. If any of the Owners of any of the Lots shall fail to timely pay its share of the costs as provided herein or shall otherwise fail to perform any of its obligations under this Declaration, the State or the other Owner(s) shall have the right to pursue any right or remedy available at law or in equity to collect the sum due to it. THE STATE SHALL HAVE NO LIABILITY FOR A DEFAULT BY ANY OWNER AND UPON ACCEPTANCE OR USE OF THE EASEMENT THE OWNERS WAIVE ALL CLAIMS AGAINST THE STATE.

L. Governing Law:

1. The interpretation and enforcement of this Declaration shall be according to the laws of the State of Idaho.

M. Severability:

1. The invalidity or unenforceability of any provision hereof shall not limit or affect the validity or enforceability of any other provision.

N. Runs with Land; Amendment:

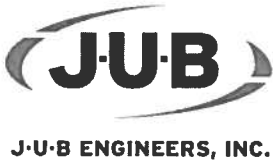
1. The obligations, covenants, easements and restrictions contained in this Declaration shall be binding upon and shall inure to the benefit of the Lots and the State, and to their respective heirs, personal representatives, successors and assigns; shall constitute covenants that run with the land; and shall be amended, modified, or terminated, if at all, only by the written agreement of the Owners and the State (as long as the State owns any of the Lots or any portion of the Easement Area).

O. Authority:

1. This easement is issued by the authority of the Idaho Const. Article IX, §§ 7 and 8, and Idaho Code Title 58 Chapter 6.

P. Acceptance:

1. Each of the Owners of any of the Lots by acceptance of a deed or lease therefor, whether or not it shall be so expressed in such deed or lease, is deemed to covenant and agree to the terms of this Declaration.



J-U-B COMPANIES



THE LANGDON GROUP



GATEWAY MAPPING INC.

EXHIBIT 1
LEGAL DESCRIPTION
of
ACCESS AND UTILITY EASEMENT
for
STATE SUBDIVISION-KOKANEE POINT
IDAHO DEPT. OF LANDS

A strip of land 60 feet in width, being situated in Section 3, Township 59 North, Range 4 West, B.M., Bonner County, Idaho, lying 30 feet on each side of the following described centerline:

COMMENCING at an aluminum cap, marking the Meander Corner on the north line of the SW 1/4 of said Section 3, as shown on Record of Survey, recorded June 24, 1987 as Instrument Number 336643, records of Bonner County, Idaho, (from which an aluminum cap marking the Center 1/4 of said Section 3 as shown on said Record of Survey bears South 87°27'06" East, 408.07 feet); thence South 70°37'17" East, 161.96 feet, more or less, to the POINT OF BEGINNING.

thence along said centerline the following nine (10) courses:

- 1. North 8°04'19" East, 47.11 feet to a point on said north line of the SW 1/4 of Section 3
2. thence leaving said north line and continuing North 8°04'19" East, 53.87 feet;
3. 105.02 feet along the arc of a curve to the left, having a radius of 800.00 feet, through a central angle of 7°31'16", said curve having a long chord which bears North 4°18'41" East a chord distance of 104.94 feet;
4. North 0°33'02" East, 81.00 feet;
5. 41.37 feet along the arc of a curve to the left, having a radius of 225.00 feet, through a central angle of 10°32'03", said curve having a long chord which bears North 4°42'59" West a chord distance of 41.31 feet;
6. North 9°59'01" West, 364.89 feet;
7. 42.98 feet along the arc of a curve to the left, having a radius of 600.00 feet, through a central angle of 4°06'14", said curve having a long chord which bears North 12°02'08" West a chord distance of 42.97 feet;
8. 266.04 feet along the arc of a reverse curve to the right, having a radius of 1,900.00 feet, through a central angle of 8°01'21", said curve having a long chord which bears North 10°04'34" West a chord distance of 265.82 feet;
9. 128.11 feet along the arc of a compound curve to the right, having a radius of 800.00 feet, through a central angle of 9°10'32", said curve having a long chord which bears North 1°28'37" West a chord distance of 127.98 feet;
10. 147.64 feet along the arc of a compound curve to the right, having a radius of 185.00, through a central angle of 45°43'33", said curve having a long chord which bears North 25°58'25" East a chord distance of 143.76 feet, more or less, to the POINT OF TERMINUS, lengthening and shortening the sidelines of said strip to terminate on a line perpendicular to the POINT OF BEGINNING and a line perpendicular to the POINT OF TERMINUS.

SUBJECT TO: Existing rights-of-way and easements of record on above described parcel.

Handwritten signature of Jeremy Russell

Digitally signed on: August 15, 2013



APPROXIMATE
ORDINARY HIGH
WATER MARK

PRIEST LAKE

SHERWOOD BEACH ROAD



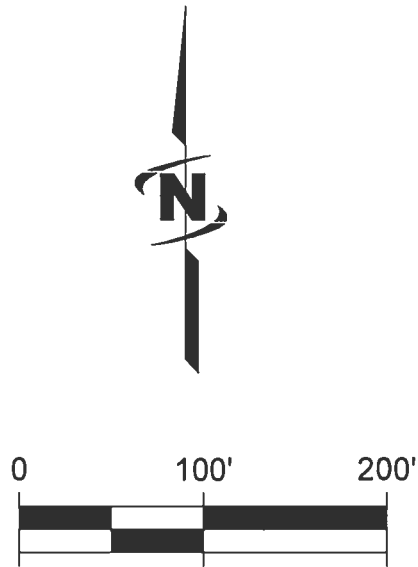
Digitally signed on:
August 15, 2013

NW1/4 OF S3

SMC

C1/4

SW1/4 OF S3



STATE OF IDAHO
TRUST LAND

LEGEND



ACCESS AND UTILITY EASEMENT

**EXHIBIT 1
ACCESS AND UTILITY EASEMENT**

STATE SUBDIVISION-KOKANEE POINT
NW 1/4 SEC. 3, T59 N, R4 W, B.M.

