



Frequently Asked Questions – Shelter Bay Lease

The community of Shelter Bay is situated on about 420 acres of land, located within the Swinomish Indian Reservation at the south end of Fidalgo Island. The Shelter Bay subdivision includes 914 residential lots, a marina, a golf course, other recreational facilities and open greenbelts. Of this area, about 20 acres (44 residential lots in Division 1) are owned by members in fee simple. The remaining 400 acres (870 residential lots in Divisions 2 through 5) are owned by the Swinomish Indian Tribal Community and are under a 75-year lease, through June 30, 2044, to the Shelter Bay Company. This long-term lease is referred to as the Master Lease. Shelter Bay Company is a wholly owned subsidiary of Shelter Bay Community, Inc.

Shelter Bay Company holds individual leases with the 870 residential lots in Divisions 2 through 5. These individual leases are referred to as Subleases. The terms of the subleases mirror the Master Lease and extend through June 30, 2044.

1. How does the Lease affect my home?

The homes located on lots in Shelter Bay Divisions 2 through 5 are situated on leased land and are subleased from Shelter Bay Company. The subleases extend through June 30, 2044, as does the Master Lease. There is an annual leasehold fee, which amount is provided in the disclosure statement at purchase. The leasehold fees are adjusted every 10 years based on the change in the Seattle CPI. They were last adjusted on July 1, 2013 and will adjust again in 2023 and 2033.

Sublease funds are used by Shelter Bay Company to pay the Master Lease rent to the Tribe. The Master Lease rent is adjusted on the same 10-year schedule as the subleases. The rent, however, is calculated differently than the subleases. The Master Lease rent is determined as 7% of the market value of the unimproved land, rather than being indexed to the Seattle CPI.

2. What if the new Master Lease rent is more than is collected by sublease fees?

The sublease rents are locked in by the individual sublease agreements and will most likely not be renegotiated to a higher fee. Since the Shelter Bay Company is owned by the Community, the community homeowner's association can decide to assess its members for the deficit balance.

For the rent period of July 1, 2013 through June 30, 2023, the sublease rents collected by Shelter Bay Company are less than the total rent amount due to the Tribe/BIA under the Master Lease. Each year members of the Shelter Bay Community, Inc. have ratified an assessment for "Supplemental Rent", which works to supplement the annual leasehold income (collected from sublease fees) for Shelter Bay Company. The supplemental rent amount for each lot is calculated based on its assessed value as a percentage of the total assessed value for all 870 subleased lots. It is highly likely that similar assessments will be approved and ratified for future years. Information on this assessment can be obtained from the Shelter Bay office: (360) 466-3805.

3. Will there be an extension on the lease?

Since as far back as 2003, Shelter Bay Company has expressed the desire to have the Tribe/Indian Owners extend the terms of the Master Lease beyond June 30, 2044. An extension would help to maintain property values and facilitate buyers in securing mortgage financing. Most mortgage loan underwriters look for at least 30 years + 5 years remaining under the lease as criteria to underwrite a 30-year loan. As we have passed the 35-year underwriting countdown, the ability to get loans on the property has been somewhat diminished. Both the Tribe and Shelter Bay Company acknowledge this dilemma.

In 2013 the Shelter Bay Company Board of Directors and the Swinomish Indian Tribal Community began negotiations with the goal of developing a new long-term Master Lease, replacing the existing lease. Representatives of the Department of Interior/Bureau of Indian Affairs have also participated in the discussions.

In 2015 the Board of Directors presented the Swinomish Tribe's Master Lease Renewal Proposal document and forecasted rents to the membership. On July 15, 2015 an Advisory Vote of the membership was held asking *"Do you support Shelter Bay Company moving forward with the drafting of the full language for a new Master Lease with the Swinomish Tribe and Indian Landowners under the terms provided by the Swinomish Tribal Senate on April 22, 2015?"*

The outcome of that Advisory Vote was 436 'yes' votes and 197 'no' votes – a 68.9% margin of approval. The Board of Directors has asked the Swinomish Tribe to provide that full language of the Master Lease for Shelter Bay's consideration.

4. If the lease is not extended, what will happen to our house in 2044?

Both the Master Lease and the subleases provide for the homeowner's option to remove any improvements upon the leased land within 60 days after the June 30, 2044 termination of the lease. The decision to leave or remove improvements is to be made by the homeowner.

Shelter Bay Master Lease and Sublease Overview

This overview is provided only to inform members on the relationship between the Shelter Bay Company, Shelter Bay Community, Inc., Master Leases, and Subleases. Shelter Bay cannot guarantee its timeliness or accuracy. This overview was last updated in January 2020.

What is Shelter Bay Community, Inc., and What is Shelter Bay Company?

Shelter Bay Community, Inc. is a Washington State non-profit corporation, and is the homeowners association. This corporation purchased the stock of Shelter Bay Company in November 2004. The holdings of Shelter Bay Company consists of the Master Leases and subleases. Sublessees pay their land rent to the Company, which in turn makes the required payment to the Tribe. The Company approves and processes the sublease assignments and mortgage consents at the time of a refinancing or sale.

Master Lease Rent Determination

When we talk about the “Master Lease”, we are actually talking about two separate lease contracts. Lease Contract No. 5020 covers the leased land in Divisions 2, 3 and 5. Lease Contract No. 5086 covers the leased land in Division 4. Both leases expire on June 30, 2044. (For simplification, we often use the singular term “Master Lease” to refer to both contracts.) The two leases contain identical provisions for establishing the rent due to the Tribe/Indian Owners. They specify the rent due to the Tribe/Indian Owners as 7% of the value of the raw land and call for the parties to recalculate the raw land value every ten years between 1993 and 2044. From 1993 to 2003, the determined raw land value was \$3 million, resulting in an annual rent payment of \$210,000 each year for that 10-year period.

In cases where the parties are unable to agree on the raw land value, the Master Lease provides that the parties may determine the raw land value through arbitration. Both the Tribe and Shelter Bay Company agreed to use the arbitration process to determine the land value for the 2003 rental adjustment. In January 2008 the arbitration judge determined the land value to be \$19.4 million, resulting in an annual rent due of \$1,358,000 annually until the next ten-year adjustment in 2013.

Shelter Bay and the Swinomish Indian Tribal Community worked together on determining the land value for the 2013 rent adjustment, avoiding costly arbitration. The value was determined by an index of fee simple properties in other residential subdivisions. This resulted in an increase of 50% and a land value of \$29.2 million resulting in an annual rent due of \$2,044,000 annually until the next ten-year rent adjustment in 2023.

Master Lease – Sublease Relationship

The subleases between Shelter Bay Company and Sub-Lessees also include a 10-year rent adjustment, with an adjustment date that aligns with the master Leases. The annual sublease fees for the period 1993-2003 totaled \$303,128. In July of 2003 the annual sublease fees were increased to \$409,910. In July of 2013 the annual sublease fees increased to \$527,026. According to the subleases, the ten-year rent adjustment is determined by the Seattle Consumer Price Index (CPI), which is very different from the method of adjustment for the rent for the master Leases, which is 7% of the raw land value.