



PHONE (360) 598-3311
Fax (360) 598-6295
<http://www.suquamish.nsn.us>

THE SUQUAMISH TRIBE

PO Box 498 Suquamish, WA 98392-0498

November 23, 2015

James Unsworth, Director
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501

Re: Point No Point Boat Launch

Dear Mr. Unsworth:

The proposed project consists of installation of a new 30' wide and 120' foot long elevated concrete deck self-service boat ramp, supported by 12 steel piles. The ramp is designed for a single lane due to the length of backing up required at lower tides.

As you are aware, the site location for the proposed boat launch project is within the treaty-reserved usual and accustomed fishing area of the Suquamish Tribe. The Tribe seeks protection of all treaty-reserved natural resources and cultural resources. Any potential for impacts to occur to fish life is of concern to the Tribe as these resources are important to the cultural and economic welfare of the Tribe. Consultation with the Tribe throughout the scoping and development of this project was lacking for the most part. Primary concerns remain regarding the proposed project is impacts to tribal treaty fishing activities and fishing access.

The use of the new boat launch will interfere with the Tribe's reserved right to harvest fishery resources. Additional boats in the area will affect Tribal fishing by impeding Tribal fishers' ability to maneuver and safely manage fishing gear. In addition, the current county code as well as project specific permit conditions prohibits commercial activities at the site. These are significant outstanding issues that have not been addressed or resolved to date.

The Suquamish Tribe and other tribes' ability to access and harvest treaty-reserved resources is part and parcel of the treaty right to fish. Neither states, counties nor private property owners may bar tribal access to areas subject to treaty fishing rights. *United States v. Winans*, 198 U.S. 371, 394 (1905). In *United States v. Washington*, 384 F. Supp. 312, 418 (W.D. Wash. 1974), the federal court decision is explicit:

21. Defendants shall in no manner limit, restrict or inhibit the time, place, manner, volume or purpose of the disposition by a member of a plaintiff tribe of fish harvested according to his rights and the rights and powers of his tribe, as declared and adjudged in Final Decision #I, or interfere with any person purchasing, attempting to purchase, transporting, receiving for

Mr. Unsworth
November 23, 2015
Page 2

shipment, processing or reselling, fish taken pursuant to the exercise of such rights.
(emphasis added)

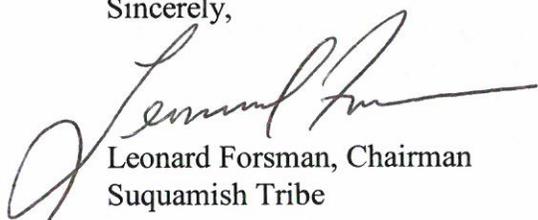
In other words, the county ordinance and permit conditions banning commercial activities may be applied to non-treaty activities, but it clearly cannot be applied to ban treaty fisheries from selling their treaty catch to commercial buyers at the Point no Point Boat Ramp. Such a ban would violate the 1855 Treaty of Point Elliott and federal court rulings enforcing the Treaty. Under the Supremacy Clause of the Constitution (U.S. Const. art. 6, cl. 2), federal law such as the 1855 Treaty and federal court rulings interpreting the Treaty, preempt and override conflicting state and county laws. Federal preemption applies regardless of whether the conflicting state and county laws come from legislatures, courts, administrative agencies, or constitutions.

For these issues to be resolved the Tribe requests agreement to the following:

1. Either reduce the scope of the project to allow for the hand launch of small vessels (max 14'-16') only or provide compensatory mitigation package to address impacts to tribal fishermen resulting from the proposed project.
2. Ensure that the Tribe has unrestricted 24 hour access to the launch and ability to conduct subsistence and commercial fishery activities, including sales, that are considered state and county compliant.
3. Include a sunset clause of 40 years after which the structure will either be removed or requires the Tribe and the State to revisit the status, including any unforeseen impacts, of the boat ramp.

Until these issues have been resolved we cannot support the proposed project.

Sincerely,



Leonard Forsman, Chairman
Suquamish Tribe