



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

December 4, 2015

Colonel John G. Buck, Commander
Seattle District, U.S. Army Corps of Engineers
Post Office Box 3755
Seattle, Washington 98124-3755

RE: Proposed Boat Launch at Point No Point

Dear Commander Buck:

We are writing to ask that the U.S. Army Corps of Engineers (USACE) proceed with its decision-making process on the Washington Department of Fish and Wildlife's (WDFW) 2013 permit application to construct a boat launch at Point No Point.

WDFW acquired the property in 1996 and has been working since then to redevelop the site to benefit the public. WDFW has been engaged with the local Tribes throughout the process, and WDFW has updated its design proposal more than once to respond to concerns. For example, WDFW received input from the Tribes in 2010 during WDFW's environmental analysis under the State Environmental Policy Act (SEPA). In response to tribal concerns, WDFW withdrew its initial environmental analysis, added additional on-site mitigation, changed the ramp design, and added off-site mitigation, monitoring and conservation measures. Believing we had responded to the tribal concerns during the local permitting process, WDFW proceeded with its USACE permit application in November 2013.

In January 2014, WDFW received a response from Mr. Jerald Gregory forwarding correspondence that he received from the Suquamish Tribe and Point No Point Treaty Council expressing concerns about potential effects of the proposed boat launch. Specifically, the Tribes noted concerns about potential impacts to habitat, particularly eelgrass, and the Suquamish Tribe raised an additional concern relative to potential impacts on their treaty fishing rights. Mr. Gregory indicated that USACE would like WDFW to contact these tribes in an attempt to resolve our differences. As described above, WDFW had already been engaged with the Tribes in an effort to address their concerns, but WDFW committed to renew those discussions.

WDFW reviewed the habitat concerns the Tribes submitted to the USACE, and discovered that the concerns were based on an older design covered by the 2010 environmental analysis. As mentioned above, WDFW significantly modified the design to address these habitat concerns—

that modified design is what was permitted by Kitsap County in 2011 and the basis for our USACE permit application. WDFW's modified design was developed after extensive engagement with the Tribes. We met with the Suquamish Tribe and the Point No Point Treaty Council on separate occasions, shared our modified design with them, explained the differences, and asked their habitat biologists to work with WDFW staff to identify an appropriate amount of property for acquisition and habitat restoration to satisfy the outstanding mitigation needs for the boat launch. The Tribes agreed with this approach, and collectively, we found two parcels within Kitsap County, which WDFW acquired earlier this year. In combination, these properties would restore over 515 linear feet of forage fish habitat, which exceeds the amount required for mitigation.

Additionally, WDFW worked with the state Department of Natural Resources to remove over 90 creosote pilings from our Point No Point property, which has significantly improved the habitat at the site. Given these habitat improvement and restoration efforts, it is our understanding that the Suquamish Tribe and the Point No Point Treaty Council have agreed that the habitat mitigation needs for this project have been satisfied.

Regarding the Suquamish Tribe's assertion that the proposed boat launch will have a negative impact on their treaty fishing rights, WDFW has met with the Suquamish Tribal Chair, fisheries policy staff, and their habitat biologist to discuss this issue a few times, most recently this fall. The Tribe's claim is based on a belief that the boat launch will cause additional public fishing pressure within their usual and accustomed fishing grounds and stations (U & A), which in turn will displace tribal fisheries and/or result in damage to their fishing gear—either intentional or accidental. We respectfully disagree both factually and legally with this hypothetical scenario. Factually, while we believe that the boat launch will make it more convenient for some anglers to access marine waters, we do not expect there to be more fishing pressure specifically in this small portion of the Tribe's expansive U & A beyond what already occurs when anglers access the area using other launch sites. Legally, we dispute the Tribe's claim about fishing interference because that claim implies that the Tribe has exclusive rights to the surface waters in their U & A. WDFW believes the Tribe's off-reservation treaty fishing rights must be exercised in common with all other state citizens. The public has the right to recreate and fish over the state's navigable waters. We also disagree with the assumption that their fishing gear will be damaged, but in the event that it is, we believe the individual who caused the damage should be held responsible for his/her actions.

In our discussions with the Suquamish Tribe, we have pointed out that WDFW meets with Suquamish fisheries policy staff annually to develop fishing seasons and throughout the year to address any fisheries issues that may arise. WDFW oftentimes imposes gear, geographic, and temporal restrictions on citizens to accommodate tribal requests that arise out of those State-tribal fishery management negotiations. Therefore, in the event that the Suquamish Tribe's concerns about negative impacts to their fisheries resulting from this boat launch actually come to pass, then we have a process in place by which to address it, and we have communicated our

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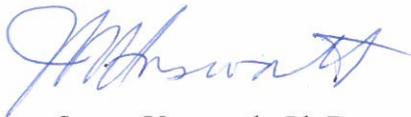
commitment to do so. Based on our last discussion with the Suquamish Tribal Chair, we believe that we reached an understanding in this regard. So, while our respective predictions for the future differ, we appear to be aligned in our commitment to continue to address such situations as co-managers.

We sincerely hope the most recent work that WDFW has done over the past two with these Tribes satisfies the USACE's request to respond to the tribal concerns. These most recent efforts by WDFW with the Tribes follow upon several prior years of outreach and cooperation between WDFW and these Tribes over this project. WDFW believes that its project modifications and mitigation efforts thoroughly address the tribal concerns. WDFW has requested the Tribes to indicate to the USACE that the Tribes' concerns have been addressed, but WDFW obviously cannot force the Tribes to take that additional step. The Tribes have no legal authority to delay the USACE's processing of WDFW's permit application, and WDFW asks the USACE to review the materials in the record, determine that any unresolved tribal concerns are not factually or legally warranted, and grant WDFW's permit.

WDFW has secured the funding necessary to construct the boat ramp through a combination of State Capital funds and a grant from the Recreation and Conservation Office. These funds expire on June 30, 2017, and cannot be extended. Therefore, it is critical that WDFW receive a permit from USACE by February 2016, at the latest, in order to put the project out for bid in the spring and commence construction next summer.

If you have any questions about this project, please contact Michele Culver, Regional Director, at (360) 249-1211 or Michele.Culver@dfw.wa.gov.

Sincerely,



James Unsworth, Ph.D.
Director

cc: Jerald Gregory, USACE
Joe Panesko, Attorney General's Office
Tim Burns, WDFW
Michele Culver, WDFW
Kristen Kuykendall, WDFW