



**AGENDA FOR
PORT OF ILLAHEE COMMISSION
Wednesday, March 8, 2023 - 6:30PM
ZOOM MEETING #715 0997 5823 / Password: Illahee**

1. CALL TO ORDER

2. CONSENT AGENDA

1. Agenda
- *2. The February 8th, 2023 Regular Meeting minutes
- *3. The January 30th 2023 Kitsap All Ports Meeting Minutes
- *4. Pay Bills with check numbers 4998 through 5010 totaling \$13,395.63

3. SIGNING OF DOCUMENTS

Determine when/how to have at least 2 Commissioners sign the documents

4. PUBLIC COMMENT

5. REPORTS/UNFINISHED BUSINESS

Aho/ 1. Grants/Waterfront Access Improvements

- Piccone
- Status of project permits and design
 - Any response from the Tribe?
 - Status of the new BFP Grant application for piling replacement/other funding
 - Any update on the County's filtration project
- *Daniel Krenz response to Port of Illahee Request for Permit Decision
Link to Feb 14th RCO Presentation, Illahee starts at 1:14:15
<https://www.youtube.com/watch?v=n9XbqUAMVcE&t=33s>
- *John Piccone Project Status Summary attached at end of attachments

Aho/ 2. Illahee Store Project

- Piccone
- Status of the topographical survey
 - Discuss use and general anticipated improvements
 - Septic design status
 - Vapor testing conducted

3. Treasurer's Report as of February 28th, 2023 General Fund \$108,537.57; Investments \$ 281,026.00;
Good Property Management (GPM) Account \$199.00 (total: \$389,762.57)

Aho *4. Resolution 2023-2
Policy for Public Records Act (PRA) Requests

Reese 5. Port currently under State Audit for January 2019 through December 2021



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5. REPORTS/UNFINISHED BUSINESS CONTINUED

6. Reports

- Aho a. Website
 – Anything to report?
- Buesch b. Properties
 *5560 Ocean View Boulevard/Rental
 --Mr.FixitNW Estimate of repairs?
 5500 Illahee Road/Rental
 – Anything to report?
 5507 Illahee Road/Illahee Store Property
 – Anything to report?
 Illahee Road Lot
 – Anything to report?
- Rupert c. Dock/Pier
 – Anything to report

Tabled 7. Surveillance cameras

6. PUBLIC COMMENT

- 7. ADJOURN** – Regular Meeting – April 12, 2023 @ 6:30PM – via ZOOM
 Kitsap All Ports—April 24, 2023 @ 6:30PM at Port of Brownsville



Port of Illahee – Minutes of Regular Meeting on February 8th, 2023

Port of Illahee
Minutes of Regular Meeting
February 8th, 2023

The Regular Port of Illahee meeting was held virtually through the ZOOM app (meeting id# 71509975823 / Password: Illahee). Notice of the virtual meeting was posted near the kiosk at the head of the pier and on the Port's website – portofillahee.com.

CALL TO ORDER

Commission Chairman James Aho called the meeting to order at 6:30 PM. Also, in attendance were Commissioner Jonathan Buesch; Commissioner Jeffrey Rupert; Administrator Caleb Reese; John Piccone; Roy Barton; Janet Soderberg and Debbie Smith

CONSENT AGENDA

The following consent agenda items were approved: February Meeting Agenda; January 11, 2023 Meeting Minutes; February 8, 2023 checks numbering 4984 through 4997 totaling \$6,332.96 as outlined in the attached Voucher Approval (motion by Buesch; second by Rupert; unanimous).

SIGNING OF DOCUMENTS – Commissioners plan to stop by the Port of Silverdale office to sign documents tomorrow.

PUBLIC COMMENT – Roy Barton commented about the amount of money that the Port is paying CSD for writing the letter to the Corps, concerned that the Port will run out of money.

REPORTS/UNFINISHED BUSINESS

Grants/Waterfront Access Improvements – John Piccone gave an update on the project status as follows:

Corps Permitting for Waterfront Improvements (Docks and Pier only);

- Following another period of unresponsiveness from the Tribe the Port's attorney received an email stating that the project was going to be sent to the Tribes biologist, who would provide technical comments. This was completely different than the former correspondence suggesting a meeting could be scheduled; the attorney, Jim, and I all agreed that this was significant backtracking as we have already received biologist comments. As a courtesy, the Port's attorney forwarded the previously drafted letter to the Corps to the Tribe's attorney last week, letting them know it would be sent to the Corps within the next week. No additional replies came from the Tribe and the Port's attorney sent the letter to the Corps today asking the Corps to make a treaty rights determination. The letter is attached to this summary. I am continuing to stay in a "holding pattern" on any further design related to the docks until this issue is resolved to prevent the possibility of having to re-engineer something if Tribal concessions on design must be made.

Upland Waterfront Improvements;

Based on feedback at January's Commission meeting, we've completed the 95% plans for the upland portion of the waterfront improvement project. The plans have been submitted to Kitsap County for an SDAP permit to proceed with the upland work (outside of



Port of Illahee – Minutes of Regular Meeting on February 8th, 2023

Corps jurisdiction). As we saw during the County shoreline permitting process, Kitsap County has been taking a very long time to review some permits; it may become important once again for Commissioners to reach out at the political level to move the SDAP permit along at a reasonable pace to allow us to proceed to building permits and construction in 2023. I will of course continue to keep Jim informed on progress and if/when political pressure might make sense. Once we have all SDAP comments from the County resolved, we can finalize all details and prepare 100% bid plans and specs.

Pier Piling Repair;

The final RCO grant presentation will be on February 14th as previously emailed to all Commissioners. I did make a few minor revisions to the preliminary presentation based on RCO comments and the final presentation was uploaded to RCO today.

We have also received notice of decision from Kitsap County that the piling replacement project is shoreline permit exempt. We expect to have all permits for the piling replacement project by mid-February once the County finalizes the process. In addition to continuing to work on the grant, I am also in a “holding pattern” on final design and specifications for the piling replacement as I understood during the January meeting that the Port would like to proceed with piling replacement and dock improvement portions of the waterfront project at the same time.

We should have a good indication of grant funding success for the piling replacement grant application sometime in March.

Store Site Renovation:

In March I will work closely with Jim to prepare a preliminary basis of design for renovations as previously discussed. The intent of renovations is to develop the current building as a “mercantile”. The renovations will be primary infrastructure with the intent that tenant improvements would address secondary improvements once a tenant is identified. Jim and I will schedule a meeting with Kitsap County to confirm requirements and discuss the basis of design with County officials.

Following confirmation of County requirements and completion of Permit work, we can proceed with any final design items necessary however, for this type of project the Port may wish to select a contractor to work with on a design/build type of basis. I can provide some suggested guidelines to how public agencies typically go about this when we are ready to decide how a contractor will be hired.

Upcoming Milestones and Action Items

Wait for the Corps to make a treaty rights determination. Theoretically, this should occur within 60 days (although I’ve never heard of any determination even close to that quickly). We will continue to check in and I will keep you all informed on status.

Inquire with Kitsap County on SDAP comment status if we have not had any word back by April.

Present final grant presentation on February 14, and obtain scoring as soon as available to determine likelihood of funding for pile replacement project.



Port of Illahee – Minutes of Regular Meeting on February 8th, 2023

The surveyor will begin work within the next month conducting a bathymetric and legal survey so he can prepare the necessary survey exhibit for DNR submittal. The current DNR lease is past term and we will need to renew the aquatic lease with expanded boundary to include the new docks. This will be required by RCO and I'd like to proceed with that in January.

Future meeting discussion regarding how to implement store renovations; options may include hiring a design/build contractor rather than an architect to prepare formal bidding documents. This may ultimately prove more efficient and cost effective.

Comments on John Piccone's report

Commissioner Aho had information on the PLIA cleanup at the store, they have done 4 wells need to do one more, need a driller. When they turn in invoices, he approves them. If the contamination goes under the road there are alternatives to digging up the road, PLIA is picking up the tab.

There were questions about the RCO presentation, it will be Tuesday the 14th at 11:25 AM link is available on the RCO website.

Commissioner Rupert questioned if a meeting with the county was a requirement, has never had to do that for any projects he's been involved with. John Piccone responded that the county doesn't require it but that if it is done early it helps to vet out the last-minute problems early in the process.

Janet Soderberg asked about the lease, John Piccone responded that the DNR Lease has expired, need a new official survey and to

reapply for the Lease. It has been expired for a couple years.

Treasurer's Report

As of January 31, 2023 the General Fund totaled \$98,802.56, Investments totaled \$280,076.24 and the balance of the Good Property Management (GPM) account totaled \$199.00 for a total of \$379,077.80.

Reports

Administrator Reese addressed the State Audit and will be working on this.

Properties-

5560 Oceanview Blvd- Tenants paying new rent rate

5500 Illahee Road— up to date with rent.

5507 Illahee Road—Downspout was torn loose, Commissioner Buesch reattached downspout and removed Ivy that was growing onto the west side of the building and on the bank, will need to keep pulling it off the wall.

Illahee Road Lot—nothing at this time.

Dock/Pier

Commissioner Rupert reported all lights are working, the light closest to shore is on 24/7 all the rest are working on the timers. Still has one light to swing back over the water.

There is a piece of railing that has disappeared and some decking that needs replaced.



Port of Illahee – Minutes of Regular Meeting on February 8th, 2023

Commissioner Rupert would like a couple stipends for all the extra work he has done on the lights. Commissioner Buesch said that it wasn't in the original motion but had given Commissioner Rupert direction to purchase so the they did need installed. Commissioner Aho stated that Commissioners aren't paid by the hour, but a stipend per resolution, for extra stipends it is supposed to be approved ahead of time by the commission, but that commissioner Rupert could ask at a meeting and it would have to be voted on by the commission.

North Perry Water – Administrator Reese has prepared a check, it's in the voucher approval and will be sent to North Perry Water to Abandon the meter that feeds irrigation by the dock.

Commissioner Rupert reported that Mr. Gifford from VFW Post 239 had replaced the tattered flag and that he has a spare for when this one needs replaced. Commissioner Aho said there are 2 more flags in the garage if needed.

New Business

Resolution 2023-2- Policy for Public Records Act (PRA) Requests

Commissioner Aho explained that there was a 2016 or 2017 interim policy but that a permanent policy needs to be put in place, he read the draft policy that he had started. Commissioner Buesch responded that it sounds good as it put the onus on the requester, but does it meet the PRA?

Roy Barton thought it looked good but questioned that if everything is on the website is there a backup? Commissioner Aho will look into that and check with Word press. Roy then

asked that since the Port is agency of the county could there be a .gov website so it would be backed up on their servers?

Commissioner Aho said the Port could if we pay the money for .gov.

Roy Barton also asked if all of John Piccone's emails are on the website, Commissioner Aho responded that yes, you can see his report in the agenda packet. Will see the letter to the tribe in the future.

Public Comment

Roy Barton- prior to Jeff Rupert John was commissioner, used contractors is Malmberg or Tikar in the System. Are they not doing it at all? Commissioner Rupert mentioned doing things above and beyond.

ADJOURN

At 7:55 PM the meeting adjourned (motion Buesch; second Rupert; all in favor).

Approved:

Commissioner

Commissioner

Commissioner

**Kitsap All Ports Association
January 30, 2023
Meeting Minutes**

The meeting was called to order with the flag salute at 6:30 By Caleb Reese from the Port of Silverdale.

In attendance were Ken McEwen, Greg Englin, Jim Strode, Lary Coppola, Jon Buesch, John Sheridan, James Weaver, Ed Scofield, Shaun Nye, Caleb Reese, Doug Kitchens, Steve Heacock, Jim Aho, Eugene Medayag, and Joseph DaBell. Also in attendance was former Port of Brownsville Commissioner Jack Bailey

In attendance on Zoom were LeAnn Dennis, Judy Scott, Ted Jackson, Jeff Rupert, and Sally Hass.

After introductions of the people at the table and then on Zoom, Mr. Reese introduced Tim Schermetzler of the Chmelik Sitkin Davis law firm, who gave a presentation on the Public Records Act (PRA), including what constitutes a Public Record and procedural requirements to comply with the act. He emphasized the importance of having a written Public Records Policy in place.

Mr. Schermetzler also discussed the need for having a written policy in place about how to specifically document searches for Public Records, including having an Exemption Log with explanations for documents that were exempted.

He also spent some time explaining the financial penalties for not complying with the PRA, and the fact that violations are not insurable. He also added mitigating factors that can reduce penalties. He then went into aggravating factors as well that could result in additional financial penalties.

At that point he opened the floor for questions and answered all that were asked. Among other topics discussed during the question-and-answer period were several surrounding Social Media posts as they relate to the PRA.

At that point Mr. Schermetzler went into the Open Public Meetings Act (OPMA). He began by discussing the basic tenants of the OPMA and what constitutes a Public Meeting. He also spoke about what doesn't constitute a Public Meeting even when a quorum of an agency is present.

What constitutes a "public body" such as a Port Commission was explained as well and the requirements about why and when their meetings are open to the public. However, he then explained what the law says about meetings that are not "in person" meetings such as email, and phone conversations and what is and isn't a serial meeting.

What constitutes "action" such as motions, resolutions, and more was then discussed and clarified, as well as public notification requirements. Mr. Schermetzler also covered the difference between Regular and Special Meetings and the public notice requirements for them.

The next item covered had to do with public comment and when it is and isn't required and/or allowed. The question of written comment being read into the record or not came up. The law says written comments only need to be provided to the Commissioners and don't have to be read out loud at meeting under Public Comment.

From there the presentation moved to reasonable rules of conduct for public commenters. Roberts Rules of Order are strongly recommended for conduct of all meetings.

This led to Mr. Schermetzler's comments on interruptions of disruptions during a meeting and what is defined as "disorderly conduct" and what is allowed.

From there the presentation moved to Executive Sessions and the rules and best practices for them. Executive Sessions are not open to the public, and no decisions can be made or action taken. Confidentiality is required and Executive Sessions can only be held for very specific reasons. He stressed discussing what can be said in public and doing so in advance of the Executive Session. He also touched on Non-Disclosure Agreements (NDA) and what is permitted and what is not in an NDA. Executive Sessions to discuss actual or potential litigation require an attorney to be present.

From there the penalties for violating the OPMA were outlined, and then the requirements for Meeting Minutes and when they are mandated.

Finally, Mr. Schermetzler brought up Governance and Ethics. He went into Port Powers and Delegation of Authority. He explained the state statues covering Ports and went into the Delegation of Authority for Port Executive Directors.

Other topics quickly covered Gifting of Public Funds and the use of Port facilities, property, equipment of staff for political purposes. However, there are exceptions to this that were explained as well. Ethical issues were explained where contracts are concerned, and when recusal of decision makers is necessary. Also using the office of Commissioner for personal gain be it directly or via information obtained by being a public official. He also outlined the exceptions as well as what constitutes "Remote Interests" and the rules governing those situations. From there the penalties for violations were explained.

Mr. Schermetzler then explained Judicial Doctrine and what a conflict of interest consists of and then covered specific ethical violations. He then opened the floor to questions and answered them, as well as responding to comments from the floor.

The meeting then went around the table and individual Ports gave brief reports on their activities.

The meeting was adjourned at 8:44 p.m.

Lary Coppola, Port of Allyn – Recorder

Commissioner

Commissioner

Commissioner



Port of Illahee <portofillahee@gmail.com>

Fwd: Application No. NWS-2021-861 | Port of Illahee Request for Permit Decision

1 message

Jim Aho <illaheeporthree@gmail.com>
To: Theresa Haaland <portofillahee@gmail.com>

Sat, Feb 11, 2023 at 9:47 PM

fyi

----- Forwarded message -----

From: Krenz, Daniel A CIV USARMY CENWS (USA) <Daniel.A.Krenz@usace.army.mil>
Date: Fri, Feb 10, 2023 at 8:25 AM
Subject: RE: Application No. NWS-2021-861 | Port of Illahee Request for Permit Decision
To: CSD - Shannon L. Duhon <SDuhon@chmelik.com>
Cc: CSD - Tim Schermetzler <TSchermetzler@chmelik.com>, jpiccone@soundwesteng.com <jpiccone@soundwesteng.com>, illaheeporthree@gmail.com <illaheeporthree@gmail.com>

Greetings,

The letter dated 8 February 2023 has been provided to the Tribe. Any further written response from the Tribe that is provide to the Corps will be forwarded to you and the applicant accordingly.

Although we will not be able to render a permit decision on this matter within 60 days, I have move this project up in the queue of pending treaty right effect determinations. The treaty right effect analysis is inherently complex and this particular application raises additional complexities. I intend to prioritize this application ahead of private and residential applications with objections, however I expect that significant time and resources will be needed to address the objections (if it cannot addressed directly between the applicant and the Tribe).

If you have questions or concerns, please reach out and we can set up a time to discuss in the near future.

v/r

Daniel Krenz
Section Chief
Regulatory, Seattle District

(206) 316-3153

Resolution 2023-2

Policy for Public Records Act (PRA) Requests

Whereas the Washington State Revised Code of Washington (RCW Chapter 42.56) provides Public Records Act (PRA) regulations for all public agencies, including Port Districts, and

Whereas the Port of Illahee, a small public port with limited funds and without an office or staff, is unable to comply with the specific PRA requirements regarding the collection and copying of requested records and documents, and

Whereas the Port of Illahee ensures that all documents and records are professionally prepared and completed by contracting out for the preparation of the Meeting Agenda, Meeting Agenda Package, Meeting Minutes, and Warrants (in conjunction with the Kitsap County Treasurer), and

Whereas all such records and documents are collected monthly for inclusion in the monthly Meeting Agenda Packet and are uploaded to the Port's website prior to each monthly meeting, and

Whereas all approved and signed records and documents are further uploaded to the Port's website following each monthly meeting,

Therefore, the Port of Illahee hereby establishes the following policy for public records requests:

- 1. The Port of Illahee's website, portofillahee.com, is the repository of all Port of Illahee's public records and documents.**
- 2. With the Port's public records and documents collected monthly and available on the Port of Illahee's website, records and documents are publicly available for viewing or copying 24/7.**
- 3. Port records and documents can be accessed, and copies can be made by a copy service of the requester's choice with the requester responsible for all fees.**
- 4. Written public records requests sent to the Port's mailbox, Port of Illahee, P.O. Box 2357, Bremerton, WA 98310, are advised that Port of Illahee mail is retrieved from the Post Office weekly.**
- 5. Once a written request has been received by the Port of Illahee, the Port will respond in five business days, as required by statute, with a copy of this resolution which notes the Port's website address where electronic records can be accessed and copied per Policy Item #3.**

Commissioner Buesch

Commissioner Aho

Commissioner Rupert

RECEIVED
MAR 07 2023



BY: **ESTIMATE**

EST-000113

Estimate Date: Feb 16, 2023

Expiry Date: Mar 16, 2023

FROM:

Mr. Fix It NW

Email: Contact@MrFixItNW.com

Phone: (360) 277-7030

TO:

Good Property Management

Attn: Good Property Management

3100 Northwest Bucklin Hill Road

Silverdale, WA, 98383

Phone: (360) 620-6819

JOB LOCATION:

5560 Oceanview Boulevard Northeast

Bremerton, WA, 98311

JOB:

#	Services	Price	Tax (%)	Total
1	Punch List	\$3,716.00	\$334.44 (9%)	\$4,050.44
	1.) Sink Drain replacement (\$175)			
	2.) Faucet Replacement (\$350)			
	3.) Toilet Flush Valve Replacement (\$201)			
	4.) Toilet Seat Replacement (\$115)			
	5.) Sheetrock Replacement (with mold treatments). (\$1375)			
	6.) Washer Area flooding downstairs and walls/floor need cut to fix the leak. Were going to cut the floor under the washer so we do not have to replace all the flooring. (\$1500)			

Subtotal (without tax) \$3,716.00

Taxes \$334.44

Grand Total (\$) \$4,050.44

Deposit Due \$2,025.22

Accepted payment methods

Credit Card, Check, Direct Deposit

Message

I would be happy to have an opportunity to work with you.

Business powered by Markate.com

Date: February 8, 2023
To: Port of Illahee Board of Commissioners
From: John Piccone, P.E., Soundwest Engineering Assoc.
Subject: Projects Status Summary

Corps Permitting for Waterfront Improvement Project (Docks and Pier only);

- Following another period of unresponsiveness from the Tribe the Port's attorney received and email stating that the project was going to be sent to the Tribes biologist, who would provide technical comments. This was completely different that the former correspondence suggesting a meeting could be scheduled; the attorney, Jim, and I all agreed that this was significant backtracking as we have already received biologist comments. As a courtesy, the Port's attorney forwarded the previously drafted letter to the Corps to the Tribe's attorney last week, letting them know it would be sent to the Corps within the next week. No additional replies came from the Tribe and the Port's attorney sent the letter to the Corps today asking the Corps to make a treaty rights determination. The letter is attached to this summary. I am continuing to stay in a "holding pattern" on any further design related to the docks until this issue is resolved to prevent the possibility of having to re-engineer something if Tribal concessions on design must be made.

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- Based on feedback at January's Commission meeting, we've completed the 95% plans for the upland portion of the waterfront improvement project. The plans have been submitted to Kitsap County for an SDAP permit to proceed with the upland work (outside of Corps jurisdiction). As we saw during the County shoreline permitting process, Kitsap County has been taking a very long time to review some permits; it may become important once again for Commissioners to reach out at the political level to move the SDAP permit along at a reasonable pace to allow us to proceed to building permits and construction in 2023. I will of course continue to keep Jim informed on progress and if/when political pressure might make sense. Once we have all SDAP comments from the County resolved, we can finalize all details and prepare 100% bid plans and specs.

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- Future meeting discussion regarding how to implement store renovations; options may include hiring a design/build contractor rather than an architect to prepare formal bidding documents. This may ultimately prove more efficient and cost effective.

Permit Status Summary – All Projects

Waterfront Access Project

Permit	Submittal Date	Permit Issued	Permit Status	Design Status
SSDP	8-19-21	8-4-22	Complete. SSDP staff report notice of decision received.	60% Design Complete and submitted for permit.
HPA	Delayed	---	Submittal of permit application pending resolution with Suquamish Tribe.	Pending resolution with Suquamish Tribe.
NWP	8-17-21	Delayed	Finalization of permit review pending resolution with Suquamish Tribe.	Pending resolution with Suquamish Tribe.
SDAP	2-7-23	---	Submittal of permit application complete, waiting for review comments	95% Design Complete for upland elements only to submit SDAP.
BP	Anticipated Mar. - July 2023	---	Submittal to follow SDAP after preliminary comments.	
ROW	Anticipated Mar. - July 2023	---	Submittal to follow SDAP after preliminary comments.	
FIRE	Anticipated Mar. - July 2023	---	Submittal to follow SDAP after preliminary comments.	

SSDP – Substantial Shoreline Development Permit (Kitsap County)
 HPA – Hydraulic Project Approval (WDFW)
 NWP – Nationwide Permit 3 (USACE)
 BP – Building Permit (Kitsap County)
 ROW – Right of Way (Kitsap County)
 Fire – Fire Code Permit (Kitsap County)

Pile Replacement Project

Permit	Submittal Date	Permit Issued	Permit Status	Design Status
Shoreline Exemption	9-22-22	Anticipated 2/15/23	Staff Report Issue, Pending 14 day appeal period ending 2/15/23	30% Design Completed for Permit submittal.
NWP3	9-22-22	11-21-22	Complete. Permit issued by USACE.	30% Design Completed for Permit submittal.
HPA	2020	2/14/20	Maintenance permit, expires 2/12/25	----

Store Renovation Project

Permit	Submittal Date		Permit Status	Design Status
BP, others TBD	TBD	TBD	Project currently in conceptual design phase - pending pre-app meeting with County.	Conceptual Phase

February 8, 2023

**VIA REGULAR U.S. MAIL AND
ELECTRONIC MAIL**

daniel.a.krenz@usace.army.mil

Daniel Krenz, Section Chief
Regulatory Branch
U.S. Army Corps of Engineers
PO BOX 3755
Seattle, WA 98124

Re: Port of Illahee Request for Permit Decision
Project: Port of Illahee Public Pier & Float Rehabilitation (the "Project")
Application
Number: NWS-2021-861 (the "Application")
Engineering
Consultant: John Piccone, P.E. | Soundwest Engineering Associates

Dear Mr. Krenz:

This firm represents the Port of Illahee (the "Port"). The Port requests the Army Corps of Engineers ("ACOE") to proceed with permit review, make a public interest determination, and issue a decision on the Application within 60 days of this letter pursuant to 33 C.F.R. § 325.2.

I. PROJECT OVERVIEW

The Port has provided public access to Port Orchard Bay and the Puget sound since its inception in 1922. Since that time, the Port has maintained the pier and related facilities. The Port's pier and related facilities are important community assets that provide public access to the shorelines and recreational opportunities, including transient moorage, fishing, scuba-diving and swimming. The Project, among other things, improves on the Port's existing facilities by replacing the outdated floats and piles that have deteriorated beyond the point of repair, improving public ADA access, and improving the configuration of the floats to better facilitate fishing, swimming, and similar water-based recreation.

The Port's existing facilities include an approximately 275-foot pier with two gangways leading to two floats that currently support transient moorage and recreational opportunities. The gangways and floats consist of solid decking and are nearing the end of their useful life and will be replaced with a new gangway leading to four finger piers for transient moorage and a separate gangway leading to a fishing float. The Project is largely grant-funded and includes a proposed reduction in overwater structures, removal of in-water debris currently impacting navigation, and other upland and in-water shoreline restorations. As a result of the Project's improvements to the existing conditions, the Port's consultants anticipate a net benefit to the marine environment. Additional detailed information about the existing condition and the Project can be found in the Application materials and the Biological Evaluation dated June 30, 2021, prepared by Marine Surveys & Assessments (the "BE").

II. SUQUAMISH TRIBE COMMENT

The Port acknowledges that the Port is in the territory of the Suquamish people and that these waterways and shorelines are their traditional homelands from time immemorial. The Port takes its responsibility of stewardship of these waterways and shorelines to protect these valuable resources seriously, including preservation and enhancement of fish life and habitat and respect of the Suquamish people's treaty-reserved fishing rights. To this end, the Port considers the Tribe an important partner in this Project, which, as discussed in this letter, aims to create a net benefit to fish life and habitat.

In regard to the respect and maintenance of the relationship the Port has with the Tribe and Suquamish people, the Port invited representatives from the Tribe to a pre-application, on-site meeting to discuss the Port's proposed Project. This meeting was originally scheduled for August 31, 2020 and the Port sent an invitation to a representative from the Tribe. The Tribal representative did not attend the original scheduled meeting. However, the Port and its consultant continued to communicate with the Tribe to solicit input early in the design and permitting process in fall 2021.¹

The next communication the Port received from the Suquamish Tribe on this Project was a comment letter on the Project dated May 13, 2022 (the "Comment Letter"). This Comment Letter objected to the Port's Project based on the Tribe's belief that the Project would cause more than a de minimis impact to the Tribe's right as a signatory to the Treaty of Point Elliott, to take fish at usual and accustomed fishing grounds. The Port took the Tribe's comments seriously and sought to meet and consult with the Tribe to better understand the comments, explicitly indicating the Port was open to modify aspects of the Project to address Tribal concerns.

Specifically, the Port's response to the Tribe's comments, including its efforts to consult with the Tribe, were as follows:

- **June 10, 2022** – The Port sent the ACOE responses to the Comment Letter also copying the Suquamish Tribe on that response. The responses specifically highlighted apparent misunderstandings by the Tribe of certain key elements of the Port's Project, including overwater coverage calculations and impact of navigation.²
- **July 14, 2022** – the Port sent a follow-up communication to Alison O'Sullivan, the Suquamish Tribe's senior biologist, requesting an opportunity to meet with the Tribe to discuss the Tribe's concerns and clear-up apparent misunderstandings about the Project.³
- **July 27, 2022** – After not receiving a response from the Tribe following the Port's July 14th invitation, the Port requested the ACOE grant an extension to allow additional time for tribal coordination so the Port can better understand the nature of the objection. Ms. O'Sullivan was copied on this correspondence.
- **July 27, 2022** – Ms. O'Sullivan responded to the Port's request for an extension indicating that the Tribe's objection stands, without providing further reasoning. In response, the Port requested more information and a meeting to discuss the Suquamish Tribe's objection.⁴

¹ A copy of the email correspondence with the Tribal representative concerning the pre-application, on-site meetings is attached to this letter as **Exhibit A**.

² A copy of this letter is enclosed as **Exhibit B**.

³ A copy of this correspondence is enclosed as **Exhibit C**.

⁴ A copy of this correspondence is enclosed as **Exhibit D**.

- **September 15, 2022** – The Port sent a letter to Chairman Forsman of the Suquamish Tribe, again inviting the Tribe to engage with the Port in a discussion concerning their objection. The letter from the Port also reiterated that the Port's Project will not increase overwater coverage or result in new in-water navigation impacts, contrary to the specific objections raised by the Tribe in the Comment Letter. In this letter, the Port invited the Tribe to provide suggestions on how the Project may be improved upon or modified to best ensure protection of fish and habitat.⁵
- **January 4, 2023** – The Port's legal counsel contacted the Tribe's legal counsel to request a consultation meeting. While communication between legal counsel is ongoing, to date, no meeting has been scheduled.

In the six plus months since the Port first reached out to the Tribe seeking to consult further on this Project and address issues raised in the Comment Letter, the Tribe has not agreed to meet with the Port, nor has the Tribe changed their comments based on the incorrect assumptions regarding impacts of the Project to the aquatic habitat and navigation.

III. DE MINIMIS IMPACT DETERMINATION

As a general matter, the Port fully acknowledges the Tribe's treaty-reserved rights and supports such rights. However, the record before the ACOE does not support a finding that the Project causes more than a de minimis impact to treaty-reserved rights of the Tribe. The reason the record does not support a finding that the Project causes more than a de minimis impact is twofold: (1) the Tribe's Comment Letter and objection is based on incorrect assumptions; and (2) the record before the ACOE, including the declarations submitted with the Comment Letter, does not establish that the Project will cause more than a de minimis impact.

1. Tribe's concerns in the Comment Letter are based on incorrect assumptions about the Project.

The Comment Letter includes the following statement:

The proposed Port of Illahee PRF and floats will increase over-water coverage in the area and create in-water navigational and physical obstacles for tribal fisherman that will force them to avoid the area, and therefore limit access to this treaty-reserved fishing area.⁶

First, the claim of increased overwater coverage is factually inaccurate. According to the BE submitted with the Port's Application, the Project will result in a net increase of aquatic habitat of 137 square feet through the removal of overwater coverage, removal of 24 creosote-treated piles, and removal of anthropogenic debris along the shore and substrate debris waterward of the existing pier. These actions, coupled with the other ecological restoration proposed as part of this Project, will serve to increase fish habitat.

The Tribe's second incorrect assumption in the Comment Letter is that the Project will cause physical obstacles for tribal fisherman and force them to avoid the area. The footprint of the Project will be entirely contained within the area of the existing facilities and pre-existing navigational hazards/obstacles. As part of the Project, the Port will remove several manmade derelict materials

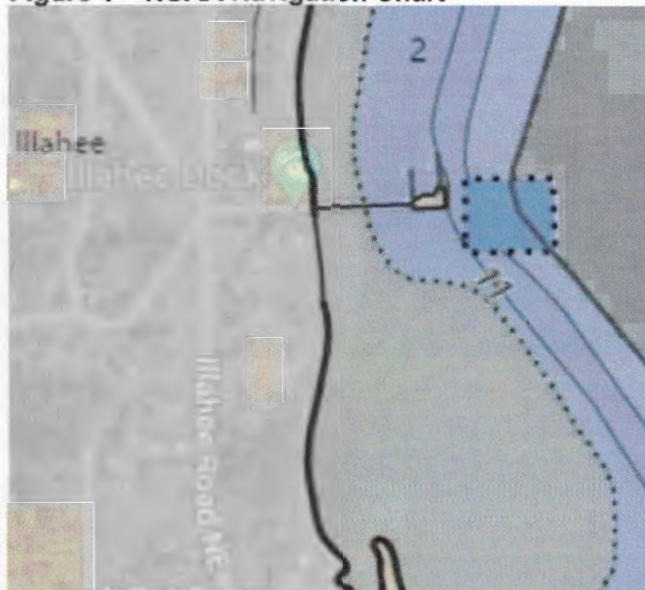
⁵ A copy of this letter is enclosed as **Exhibit E**.

⁶ Comment Letter, pg. 5, Section C.

which are currently submerged waterward of the end of the existing pier, thereby removing an obstacle to navigation. Indeed, the Port's Project may result in improved navigation through this area for Tribal fishing activities, which the Port believes will increase tribal member access to fishing.

Please also note that the dive survey in the BE identified 21 artificial reefs made of old tires tied together with ropes between 50-100 feet waterward of the existing pier.⁷ These artificial reefs are not owned or maintained by the Port. The artificial reefs are believed to have been installed sometime in the 1970s and are existing conditions that create navigational and physical obstacles that interfere with the methods of fishing described in the Tribe's Comment Letter. Indeed, this obstruction waterward of the Port's facilities is even noted on the NOAA navigation charts and identified as "Fish Haven" as shown below in Figure 1 as the rectangle of in dotted lines waterward of the Illahee Dock.

Figure 1 – NOAA Navigation Chart



Accordingly, the Project cannot be said to create navigational or physical obstacles to fishing, as claimed in the Comment Letter, because the Port's Project will be landward of these artificial reefs that already limit the Tribe's access to the Project area. Again, the Project will increase, not decrease, navigation and fishing access.

The Port had hoped to clear up these apparent misunderstandings with the Tribe; however, as indicated above, to date have been unable to establish a meeting date to discuss Project specifics. The Port remains willing to meet with and discuss the Project further with the Tribe to facilitate a full understanding of the Project, and where disagreement may remain, discuss alternatives. The Port believes such a meeting will alleviate concerns and provide an opportunity to fully explore mutual interests.

⁷ See BE, Appendix A.

2. The Project does not cause more than a de minimis impact.

The right to take fish at all usual and accustomed fishing places under Article V of the Treaty of Point Elliott has a “geographic” and a “fair share” component.⁸ The “geographic” component is a right to access an area for fishing.⁹ The ACOE can deny a project where the record supports a conclusion that a project would affect a tribe’s right to access.¹⁰

This geographic component is what is at issue here. The record before the ACOE does not establish that the Project would decrease or otherwise negatively impact the Tribe’s right to access the area around the Port’s facilities for fishing.

In each of the declarations submitted by the Suquamish Tribe, the declarant acknowledges that interference with access is a result of existing conditions, not the Project:

Declaration of David Sigo, Sr., pg. 2, lines 6-10 (underline emphasis added):

The existing Port of Illahee dock has and continues to create a navigational and physical obstacle because I cannot access fishing areas where the pier is located and the area around the pier. The proposed replacement port of Illahee PRF will cause continued interference with fishing access a long time into the future.

Declaration of Robert Purser, Jr., pg. 2 (underline emphasis added):

The existing Port of Illahee pier and the proposed Port of Illahee PRF replacement creates a navigational and physical obstacle. Currently, I can’t access fishing area where the pier is located and the area around the pier. A replacement pier with a float will continue to cause interferences with my fishing access in the area and will occur long into the future. The current and proposed Port of Illahee PRF replacement interferes with the fluid motion of my net and forces me to avoid it.

Declaration of Henry T. Jackson, pg. 2, lines 1-3, 8-11, and 15-16 (underline emphasis added):

The existing dock has and continues to create a navigational and physical obstacle because I cannot access fishing areas where the pier is located and the area around the pier. The exiting dock already interferes with the fluid motion of my net and forces me to avoid it, otherwise it will cause damage or will ruin my fishing gear and nets.

The proposed replacement Port of Illahee PRF will cause continued interference with fishing access a long time into the future and takes away my ability to fish in this area.

The continued presence of PRF at this location and well into the future will interfere with my ability to access and harvest treaty resources.

Declaration of James F. Anderson, pg. 2, lines 12-13 and 20-21, and pg. 3 lines 1-2 (underline emphasis added).

⁸ *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504, 1511 (W.D. Wash. 1988); *Northwest Sea Farms, Inc. v. Army Corps of Engineers*, 931 F.Supp. 1515, 1521 (W.D. Wash. 1996).

⁹ *Id.*

¹⁰ *Northwest Sea Farms, Inc. v. U.S. Army Corps of Engineers*, 931 F.Supp. 1515, 1522 (W.D. Wash. 1996).

The Port of Illahee PRF displaces this portion of the Tribe's U&A and its replacement will continue to interfere and eliminate access to crab harvesting locations, and interference with my treaty-right to fish.

The existing Port of Illahee dock has and continues to create a navigational and physical obstacle because I cannot access fishing areas where the dock is located and the area around the dock. The proposed replacement of the Port of Illahee PRF will cause continued interference with fishing access a long time into the future.

All of the declarations acknowledge that the current conditions currently create a navigational and physical obstacle that already prevents access to fishing, and that the interference will continue as a result of the Project.

The existing Port facilities have been in place for over 80 years. It is not clear, and there is no indication on the record, that the Tribe lodged an objection to the Port's existing pier and facilities prior to the submission of the Comment Letter on the current application. The ACOE should not countenance a retroactive claim for impacts to treaty-reserved fishing rights based on existing Port facilities. Moreover, existing physical obstacles, which are not owned or maintained by the Port, create navigational obstacles surrounding the existing Port facilities and Project area. As part of the Project, the Port will actually remove some of these navigational obstacles, likely improving access to fishing.¹¹ The record simply does not establish that any new navigational or physical obstacles will result from the Project and prevent access to areas that the Tribe currently accesses for fishing. Accordingly, there are no new impacts, and therefore, the Project does not cause impact to treaty-reserved fishing rights. To the extent there are impacts, they are de minimis at most.

The lack of any new navigational or physical obstacles here is in contrast to the cases cited in the Tribe's Comment Letter where new obstructions created more than a de minimis impact on the tribes' right to access an area for fishing. In the *Northwest Sea Farms* case, the record showed impacts from new net pens proposed to be anchored over 11 acres within the Lummi Nation's usual and accustomed fishing waters.¹² In *Hall*, the record established that the proposed new 1,200 slip marina "will cause the loss of part of the [Muckleshoot] Tribe's usual and accustomed fishing places" specifically, a range of harm from 27% to over 40% in the area the marina was to be constructed.¹³ In both of these cases, the ACOE had a record establishing how the new navigational or physical obstacles affect the tribes' right to access. In the instant Application before the ACOE, however, the Tribe's Comment Letter plainly does not establish an impact to their right to access as a result of the Project. Rather, the Comment Letter ignores the record before the ACOE that shows the positive impacts the Project will have on fish habitat and removal of existing in-water obstructions, which likely serves to advance the Tribe's access to fish.

For the same reasons, the Tribe's comments do not establish that the Project would amount to a taking of the treaty-reserved fishing rights. Treaty-reserved fishing rights are vested property rights and the taking of fishing grounds in usual and accustomed fishing places is impermissible absent an act of Congress.¹⁴ A taking, however, only occurs when the tribes can establish from the evidence that an actual taking of usual and accustomed fishing grounds occurred.¹⁵ In articulating the limitations of a claimed taking, the *Hall* Court quoted the Muckleshoot Tribe's memorandum as follows:

¹¹ BE Section 2.5, and Appendix A: Habitat Survey Report, Figure 7.

¹² *Northwest Sea Farms*, at 1518, 1522.

¹³ *Hall*, at 1510, and 1516.

¹⁴ *Hall*, at 1510-1511.

¹⁵ *Hall*, at 1511.

The tribes do not claim the right to prevent construction of all development located within the boundaries of all their adjudicated usual and accustomed fishing grounds and stations...It is only where a development would actually interfere with fishing that the tribe believes their treaty rights prevent construction.¹⁶

The declarations do not show an actual interference with fishing that results from the Project itself. According to the declarations of tribal fishermen in the Comment Letter, the Port's current facilities and other navigational obstacles in the water, which are not owned or maintained by the Port, already restrict access to usual and accustomed fishing grounds and the Project will only "cause continued interference."¹⁷ Accordingly, there can be no fifth amendment claim.

3. The Project will improve fish habitat and water quality.

It is also important to note that the BE makes explicit that the Project will in fact have a positive effect on the water quality, which consequently will benefit the existing fish population. The existing creosote-treated piles pose a risk to the water quality due to the presence, leaching, and outgassing of polycyclic aromatic hydrocarbons ("PAHs").¹⁸ Moreover, the compounds in the creosote degrade slowly and can aggregate in sediments near the creosote piles, where organisms may then consume them.

Furthermore, the Project will benefit the underwater habitat by reducing the impacts of shading caused by the current overwater structure. The Project proposes replacing 1,956 square feet of solid decked floats and walkways with 60% open grated surfaces and "[t]he fishing float and gangway will be replaced in deeper waters than the current float footprints, further reducing potential impacts of shading on macroalgae and benthic habitat."¹⁹

Altogether, the Project is expected to "result in a net increase in aquatic habitat of 137 ft²."²⁰ This increase in habitat for species, which the Tribe historically fishes, is directly contrary to claims made by the Tribe in the Comment Letter. While the Tribe reiterates that the actual existence of the overwater structure has, and will continue to, impede upon their ability to fish, the Tribe neglects to take note of the actual benefits the Project will have on the environment which directly intend to benefit the various fish species that depend upon this particular habitat for survival.

REQUEST FOR THE ACOE TO MAKE A DETERMINATION ON THE PROJECT

The Port has, and continues to, consider the Tribe an indispensable partner in improving the Illahee community and desires to make every effort to partner with the Tribe to accomplish the shared goals of preserving and enhancing the waterways and shorelines serving our community. The Port has sought for six months to engage the Tribe to clear up confusion and address any other concerns held by the Tribe. While the Port remains willing to consult with the Tribe, given the Tribe's refusal to engage with the Port to date, the Port is left with no other option but to request the ACOE to proceed with the Permit review and seek a public interest determination on the Project. As outlined in this letter, the Project does not impair or infringe on any treaty-reserved fishing rights, and in fact, likely will have a positive impact on fish life and access to fishing in and around the Port's facilities. Nothing

¹⁶ *Hall*, at 1511 (underline emphasis added).

¹⁷ See Comment Letter: Declaration of James F. Anderson, pg. 2, lines 12-13, and 20-21, and pg. 3 lines 1-2; Declaration of Henry T. Jackson, pg. 2, lines 1-3, 8-11, and 15-16; Declaration of Robert Purser, Jr., pg. 2; and Declaration of David Sigo, Sr., pg. 2, lines 6-10.

¹⁸ BE at 26.

¹⁹ BE.

²⁰ BE at 28.

in the Tribal Comment Letters demonstrate any new impacts to treaty-reserved fishing rights. Accordingly, the ACOE is within its authority to proceed with permit review and approval.

Please contact me or the Port's Engineering Consultant with any questions. Thank you for your time and attention to this important public project.

Sincerely,

CHMELIK SITKIN & DAVIS, P.S.

A handwritten signature in blue ink, appearing to read 'T. Schermetzler', is written over a light blue rectangular background.

Timothy D. Schermetzler

TDS/sld
Encls.

EXHIBIT A

From: [Alison Osullivan](#)
To: [John Piccone](#)
Subject: RE: Port of Illahee Water Access Improvements Proj.
Date: Friday, August 21, 2020 2:36:56 PM

Ok. Thanks. See you then.
Alison

From: John Piccone <jpiccone@soundwesteng.com>
Sent: Friday, August 21, 2020 9:21 AM
To: Alison Osullivan <aosullivan@suquamish.nsn.us>
Subject: Re: Port of Illahee Water Access Improvements Proj.

Hi Alison -

On my end the invite appears to be correct. In any case we are planning for 11am on Aug. 31 to meet at the Illahee dock.

Thanks and see you then!

John Piccone, P.E.
SOUNDWEST
ENGINEERING ASSOCIATES
Cell: 360.337.0029

On Thu, Aug 20, 2020 at 7:47 PM Alison Osullivan <aosullivan@suquamish.nsn.us> wrote:

Please update the invite to reflect correct day/time.
Alison

Sent from my Verizon, Samsung Galaxy smartphone
**Please excuse any errors as this message is being sent from a mobile device.

From: Jim Aho <jimaho@gmail.com>
Sent: Tuesday, September 7, 2021 9:49 AM
To: Alison Osullivan
Cc: John Piccone
Subject: Re: Illahee 9/4/21 Illahee Day, Port Plans, Fire Station Plans, Film Plans, Preserve Plans, Food Plans, Garden Tour Report, Wed Port Meeting

Alison,

We got a response from the Corps acknowledging they received our request and I'm sure the other requests are going out, and have copied John Piccone on this email.

Jim

On Tue, Sep 7, 2021 at 8:23 AM Alison Osullivan <aosullivan@suquamish.nsn.us> wrote:

Jim it would be wise to provide the plans for the in water work to the Tribe (and WDFW) so that there can be early dialogue and resolution of any issues prior to the permitting process.

Thanks,

Alison

From: Jim Aho <jimaho@gmail.com>
Sent: Saturday, September 4, 2021 9:56 PM
To: Alison Osullivan <aosullivan@suquamish.nsn.us>
Subject: Illahee 9/4/21 illahee Day, Port Plans, Fire Station Plans, Film Plans, Preserve Plans, Food Plans, Garden Tour Report, Wed Port Meeting

Illahee Day. The Port of Illahee continues to sponsor Illahee Day and put up a banner at the Illahee Store a few days ago.





Port Plans. See what is being planned by the Port for dock and the floats and the former Dietch property this next year as two of the three submitted grants (worth \$1.3M) were successful. The initial plans are being updated and the latest version will be available.

LEGEND
 1. EXISTING
 2. PROPOSED
 3. REMOVED
 4. CONSTRUCTION
 5. UTILITIES



PORT OF ILLAHEE WATERFRONT ACCESS IMPROVEMENTS

TOTAL WATER LEVELS

MEAN HIGH WATER	418.2
MEAN LOW WATER	416.8
MEAN TIDE RANGE	1.4



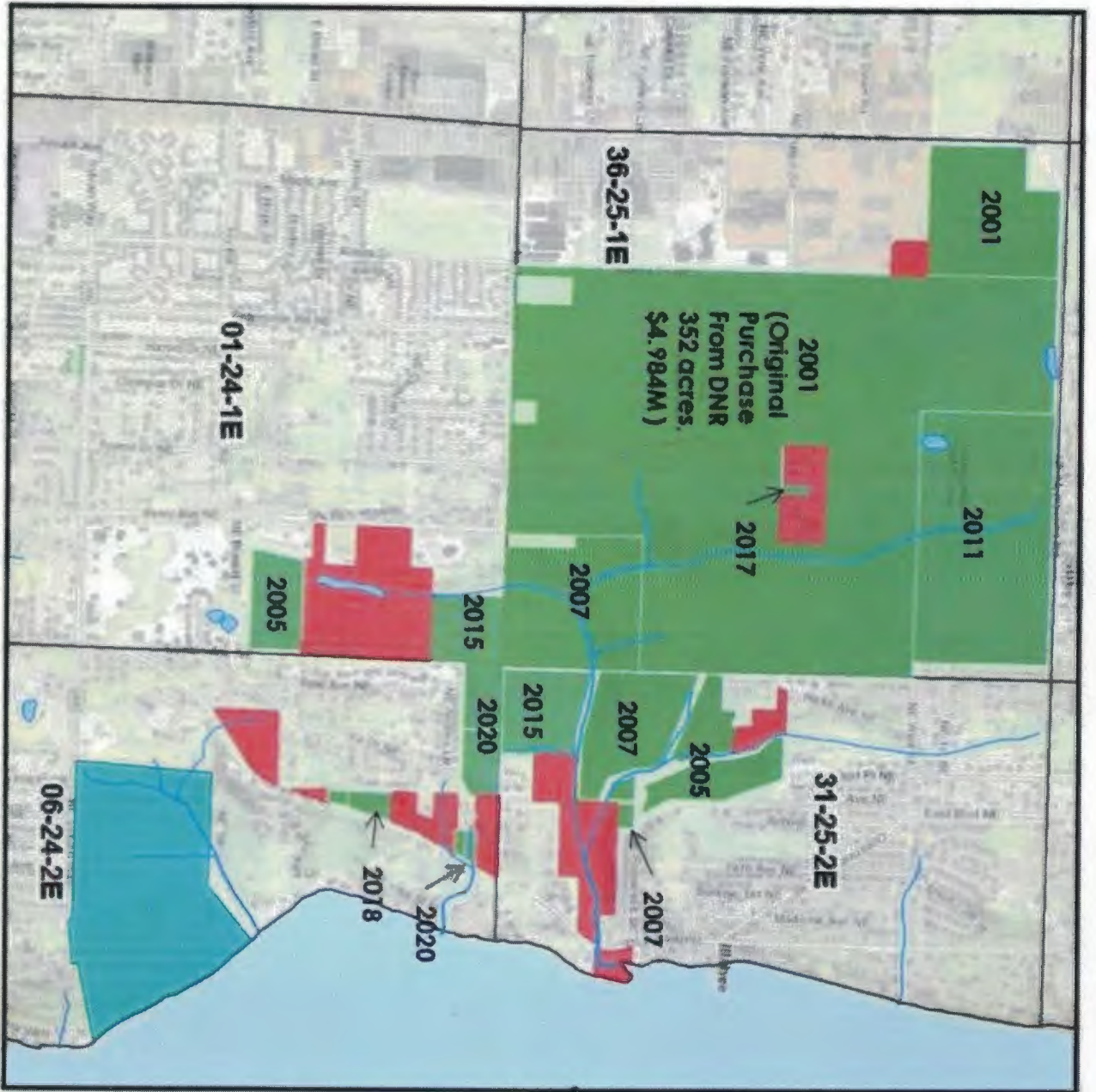
Fire Station Plans. Also, we have requested information about the plans for the new Fire Station at the top of Illahee hill.



Film Plans. And with 75% of the funding raised already for an Update to the Illahee Film, there will be an opportunity to help pledge for the remaining \$5,000.



Preserve Plans. With the Illahee Preserve constituting nearly 40% of the Port's land area, see what the Preserve's latest expansion plans are.



Food Plans. And there are plans for food at Illahee Day if the Port can meet all the Health District requirements. Needed is someone with a current Food Handlers License along with other requirements. The Port has paid \$55 for the "Limited Menu, Low Risk, Single event" food serving application, which means an inspector will likely be checking to ensure the rules are being followed. After checking on serving pre-made sandwiches and wraps, they now have a request for pizza, which is another item for someone to check on with the Health District. They need volunteers to help with serving so please respond to this email if you can help, and/or know someone who wants to attend who has a current food handlers license. The following was in the last Illahee Update:

The following comment has been added to your application.

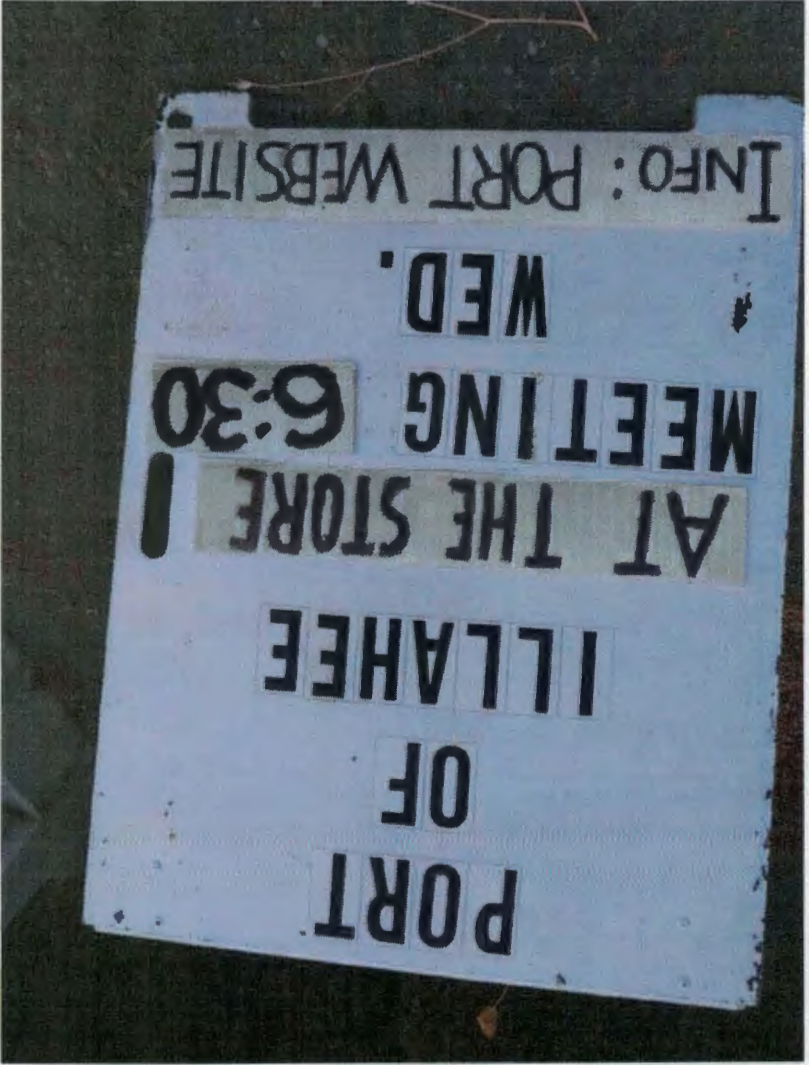
Your Conditionally Approved Temporary Event Permit is attached. The Conditionally Approved Temporary Event Permit will act as your Temporary Event Permit until you receive your inspection. You may begin operating as a Temporary Food Establishment prior to inspection. Once the inspection is complete and all of the food safety inspector's conditions (if any) are met, you will be given the Temporary Event Permit. The Temporary Event Permit must be posted at all times of operation.

Garden Tour Report. The second Illahee garden tour went well with an asprey landing on the power pole between the two gardens during the tour as it ate a fish which added an extra attraction to the day's event.





Port Meeting on Wednesday. The Port of Illahee's monthly meeting is this Wednesday (9/8/21) at the Illahee Store site in preparation for Illahee Day three days later.



Jim Aho

This email was sent to gosullivan@squamish.nsn.us
[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)
Illahee Community · 5940 Illahee Rd NE · Bremerton, WA 98311-9625 · USA



From: [Alison Osullivan](#)
To: [John Piccone](#); [Dennis Lewarch](#); [Kathlene Barnhart](#)
Cc: [Jim Aho](#); [Lauren Swanson](#); [Theresa Haaland](#); [Brittany Gordon](#); cpoff@co.kitsap.wa.us; [Gregory, Jerald J CIV USARMY CENWS \(US\)](#)
Subject: RE: Port of Illahee Project
Date: Wednesday, October 20, 2021 11:53:58 AM

Thank you for the update. I am cc'ing Kathlene Barnhart on this as we have discussed internally. Please note that Brittany is no longer with WDFW. Would you please email us the JARPA, the SSDP/SEPA documents as well as any other permit documentation or reports that have been submitted.

Thanks,
Alison

From: John Piccone <jpicone@soundwesteng.com>
Sent: Wednesday, October 20, 2021 11:49 AM
To: Dennis Lewarch <dlewarch@Suquamish.nsn.us>; Alison Osullivan <aosullivan@suquamish.nsn.us>
Cc: Jim Aho <jimaho@gmail.com>; Lauren Swanson <lswanson@soundwesteng.com>; Theresa Haaland <portofillahee@gmail.com>; Brittany Gordon <brittany.gordon@dfw.wa.gov>; cpoff@co.kitsap.wa.us; Gregory, Jerald J CIV USARMY CENWS (US) <Jerald.J.Gregory@usace.army.mil>
Subject: Port of Illahee Project

Alison, Dennis -

I received direction from the Port of Illahee recently that they would like to move forward with the final design of their waterfront access improvement project. The hope is that we will be ready for construction at some point next year. I've attached our preliminary plans and a project summary so you can get a better sense of what is planned both upland and below OHW.

We have submitted a JARPA to the Corps and an SSDP to Kitsap County. A final mitigation plan has not yet been submitted to either agency pending preliminary feedback. An HPA and site development activity permit have not yet been submitted, but are planned in the near future as part of the final design effort. I'd like to coordinate with you both as we move forward with this project so that any questions or concerns the Suquamish Tribe may have can be addressed prior to submitting the HPA and SDAP.

Please let me know any early questions or concerns you may have? Additionally, please let me know what additional information would be helpful to you (BE, SAV survey, Geotechnical Report, excavation cross sections, etc.) as you review the project. I anticipate you may want to discuss the project further on the phone or on site once you've had a chance to become familiar with the planned project; please let me know how you'd like to proceed in that regard as well and don't hesitate to call anytime if that's more convenient.

Kind Regards,

John Piccone, P.E.

SOUNDWEST

ENGINEERING ASSOCIATES

Cell: 360.337.0029

EXHIBIT B

Port of Illahee

TRANSMITTED VIA EMAIL

June 10, 2022

Daniel Krenz, Section Chief
Regulatory Branch
U.S. Army Corps of Engineers
PO BOX 3755
Seattle, WA 98124

RE: NWS-2021-861, Suquamish Tribe objection to Port of Illahee public pier & float rehabilitation.

Dear Mr. Krenz:

With regard to the Suquamish Tribe objection to the Port of Illahee public pier & float rehabilitation (project), the Port of Illahee (Port) is requesting an extension of 45 days to prepare a formal response to the May 13, 2022 Suquamish Tribe (Tribe) objection.

The Port recognizes and respects the Tribe's treaty rights; however, it is not clear to the Port based on the May 13 objection how the proposed project would cause "more than a *de minimis* impact" to Tribal fisherman. The Port would appreciate the time necessary to meet with the Tribe to better understand the specific nature of the potential impact prior to submitting a formal response for consideration by the USACE in your determination process.

The Tribe's objection states that the proposed PFR will increase overwater coverage however, as outlined in the project BE, overwater coverage is actually reduced as a result of the project. Additionally, the Tribe's objection states that the physical structure will create in-water navigational and physical obstacles forcing Tribal fisherman to avoid the area. The Port is confused by this general

PORT OF ILLAHEE
PO BOX 2357, BREMERTON, WA 98310

statement because the historic Illahee pier is not being extended and the new floats are in roughly the same footprint as the existing floats being removed. Furthermore, the project proposes to clean up and remove numerous manmade derelict materials which are currently submerged waterward of the end of the pier and pose an existing obstacle to many fishing activities not to mention the potential ongoing environmental impact to the waterbody and aquatic life.

The Port of Illahee has an established history of supporting and protecting the ecology of Port Orchard Bay, and by extension the viability of the fishery. The Port views the proposed project as a benefit to the shoreline ecology and therefore, respectfully, is confused by the Tribe's objection. Likewise, the Port is entirely unclear as to how the proposed project will impede access to Tribal fishing activities. For these reasons the Port wishes to meet with the Tribe with the hope of better understanding the specific nature of the basis for objection.

The Port will make every effort to schedule a mutually convenient time for such a meeting within the next 30 days and keep the USACE apprised of any progress in this regard. Please advise if this 45-day time extension will be acceptable to the USACE?

Sincerely,

John Piccone

John Piccone, P.E.

Port's Project Manager

Jim Aho

Jim Aho

Port Commissioner

EXHIBIT C

From: [Jim Aho](mailto:Jim.Aho)
To: aosullivan@suquamish.nsn.us
Cc: daniel.a.krenz@usace.army.mil; Theresa Haaland; John Piccone; CSD - Tim Schermetzler
Subject: NWS-2021-861 - Suquamish Tribe objection to Port of Illahee public pier & float rehabilitation
Date: Thursday, July 14, 2022 9:51:35 PM
Attachments: [NWS-2021-861_Illahee Response 061022.pdf](#)

External (illaheeporthree@gmail.com)

[Report This Email](#) [FAQ](#) [Protection by INKY](#)

Alison -

As you know, the Suquamish Tribe has objected to the Port of Illahee's pier and float improvement project and on June 10 we requested a meeting with you to better understand the details of the objection.

The attached letter generally explained that we do not understand how the project interferes with Tribal fishing and it appears certain elements of the project may be misunderstood.

We'd very much appreciate a response and would like to coordinate a time when we can meet and discuss the details of the Tribe's concern.

Do you perhaps have an opening in your schedule the week of July 25th? If not, perhaps the week of August 1st?

Thank you Alison!

Jim Aho

EXHIBIT D

From: [Alison Osullivan](#)
To: [John Piccone](#); [Krenz, Daniel A CIV USARMY CENWS \(USA\)](#)
Cc: [Jim Aho](#); [CSD - Tim Schermetzler](#)
Subject: RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection
Date: Wednesday, July 27, 2022 7:14:01 PM

External (aosullivan@suquamish.nsn.us)

[Report This Email](#) [FAQ](#) [Protection by INKY](#)

You are correct, as I said I was mistaken on this one (I am covering several positions at the moment and reviewing a lot of permits). It has already been to the fish committee and council and I checked with our legal dept this afternoon and the Tribes objection stands.

Thanks,
Alison

From: John Piccone <jpiccone@soundwesteng.com>
Sent: Wednesday, July 27, 2022 3:08 PM
To: Alison Osullivan <aosullivan@suquamish.nsn.us>; Krenz, Daniel A CIV USARMY CENWS (USA) <Daniel.A.Krenz@usace.army.mil>
Cc: Jim Aho <illaheeporthree@gmail.com>; CSD - Tim Schermetzler <TSchermetzler@chmelik.com>
Subject: RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

Thank you for the response Alison, although, I have no record or recollection of you talking to me as stated in your email below.

Based on your second email of today stating that the Tribal objection stands, should the Port assume the Tribe is unwilling to meet and provide details clarifying the reason for the objection or is it still possible to better understand how the project interferes with fishing from the Tribes perspective? We are simply trying to understand why the objection was entered in the hopes that the Port can accommodate the Tribes specific concerns. Please let us know if this meeting is possible?

Thank you!

John Piccone, P.E.

SOUNDWEST
ENGINEERING ASSOCIATES
Cell: 360.337.0029
jpiccone@soundwesteng.com

From: [Alison Osullivan](#)
Sent: Wednesday, July 27, 2022 12:14 PM
To: [John Piccone](#); [Krenz, Daniel A CIV USARMY CENWS \(USA\)](#)
Cc: [Jim Aho](#); [CSD - Tim Schermetzler](#)
Subject: RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

Due to Tribal fishing activities we have not had a fish committee meeting. John I have talked to you regarding not having detailed information until that happens.

Alison

Sent from my Verizon, Samsung Galaxy smartphone

**Please excuse any errors as this message is being sent from a mobile device.

----- Original message -----

From: John Piccone <jpicone@soundwesteng.com>

Date: 7/27/22 11:58 AM (GMT-08:00)

To: "Krenz, Daniel A CIV USARMY CENWS (USA)" <Daniel.A.Krenz@usace.army.mil>

Cc: Alison Osullivan <aosullivan@suquamish.nsn.us>, Jim Aho <illaheeportthree@gmail.com>, CSD - Tim Schermetzler <TSchermetzler@chmelik.com>

Subject: RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

Daniel –

On May 13, 2022 the Corps provided notice that the Suquamish Tribe was objecting to the Port of Illahee's permit (NWS 2021-861) and requested a response within 30 days. Subsequent to that notice the Port provided a preliminary response and requested an additional 45 days to allow time for Tribal coordination so that we may better understand the nature of the objection. It has now been 75 days and unfortunately, despite multiple attempts by the Port to schedule a time to meet, the Tribe has been unable to respond to our requests.

The Port is requesting an additional extension through Sep. 2, 2022 to submit a formal response to the Corps. It is still our hope that we will be able to reach the Tribe and schedule a meeting with them prior to Aug. 15 however, if we are unable to do so we will simply proceed to provide a formal response to you by Sep. 2. Please confirm this schedule is acceptable to the Corps?

Kind Regards,

John Piccone, P.E.

SOUNDWEST

ENGINEERING ASSOCIATES

Cell: 360.337.0029

jpicone@soundwesteng.com

From: john.piccone

Sent: Friday, June 10, 2022 12:32 PM

To: [Krenz, Daniel A CIV USARMY CENWS \(USA\); illaheeportthree@gmail.com](mailto:Krenz, Daniel A CIV USARMY CENWS (USA); illaheeportthree@gmail.com)

Cc: [Alison Osullivan](#)

Subject: RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

Thank you Daniel!

Yes, Kathleen's email just bounced back and I was wondering why... that explains it!

Alison – Please let us know your thoughts on a meeting when you have a moment?

Thank you!

John Piccone, P.E.

SOUNDWEST

ENGINEERING ASSOCIATES

Cell: 360.337.0029

jpicone@soundwesteng.com

From: [Krenz, Daniel A CIV USARMY CENWS \(USA\)](#)

Sent: Friday, June 10, 2022 12:07 PM

To: [john.piccone](#); illaheeportthree@gmail.com

Cc: [Alison Osullivan](#)

Subject: RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

John,

Received. I am forwarding your email to Alison O'Sullivan, as Kathlene is no longer with the Suquamish Tribe.

Alison – please see the Port of Illahee's request below and their attached, initial response to the Tribe's objection.

v/r

Daniel Krenz
Section Chief, Regulatory

(206) 316-3153

From: John Piccone <jpicone@soundwesteng.com>

Sent: Friday, June 10, 2022 11:49 AM

To: Krenz, Daniel A CIV USARMY CENWS (USA) <Daniel.A.Krenz@usace.army.mil>;
illaheeportthree@gmail.com

Cc: Kathlene Barnhart <kbarnhart@suquamish.nsn.us>

Subject: [URL Verdct: Neutral][Non-DoD Source] RE: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

Hi Daniel!

Please find attached the Port of Illahee's preliminary response regarding the Suquamish Tribe objection for this project. Note that we are requesting a time extension so that we may meet with the Tribe to better understand the concern, and to that end I have copied Kathlene Barnhart on this email.

Kathlene – Jim Aho and I would like to work with you to schedule an informal meeting at a mutually convenient time to discuss this objection. Please advise us if the Tribe is willing to do this, and if so please provide a few available dates and we'll make one of them work on our end. We are happy to come up to your office if that's more convenient for the Tribe.

Kind Regards,

John Piccone, P.E.

SOUNDWEST

ENGINEERING ASSOCIATES

Cell: 360.337.0029

jp Piccone@soundwesteng.com

From: [Krenz, Daniel A CIV USARMY CENWS \(USA\)](#)

Sent: Friday, May 13, 2022 3:04 PM

To: jp Piccone@soundwesteng.com; illaheeportthree@gmail.com

Subject: NWS-2021-861-Illahee, Port of (Floats) - Suquamish Objection

As part of the application review process, we notify Native American tribes about proposed projects that may impact their treaty rights. The Suquamish Tribe, objected to the issuance of a Department of the Army permit for your proposed project. Enclosed is a copy of the affidavits received from Suquamish Tribe (Tribe).

We are providing you the opportunity to resolve or rebut the affidavits. You have the opportunity to respond to this information. Your response will be considered along with information provided by the Tribe in our determination.

Please provide any response you wish to provide within 30 calendar days. If we do not hear from you in 30 days, we will assume you do not wish you provide a response and we will move forward with our review and determination with the information we have in the administrative record.

v/r

Daniel Krenz
Section Chief, Regulatory
Seattle District
U.S. Army Corps of Engineers

(206) 316-3153

daniel.a.krenz@usace.army.mil

From: Kendra Martinez <KMartinez@suquamish.nsn.us>
Sent: Friday, May 13, 2022 2:40 PM
To: Krenz, Daniel A CIV USARMY CENWS (USA) <Daniel.A.Krenz@usace.army.mil>
Cc: Maryanne Mohan <mmohan@suquamish.nsn.us>; Melody Allen <mallen@Suquamish.nsn.us>; Alison Osullivan <aosullivan@suquamish.nsn.us>; Printz, Jacalen M CIV USARMY CENWS (USA) <Jacalen.M.Printz@usace.army.mil>
Subject: [URL Verdict: Neutral][Non-DoD Source] Suquamish Objection to Port of Illahee PRF NWS-2021-861

Hi Daniel, attached please find the Suquamish Tribe's objection to the Port of Illahee's PRF NWS-2021-861 in Illahee, Kitsap County WA.

Thanks and have a good weekend.

Kendra Martinez, Attorney
Suquamish Tribe, Office of Tribal Attorney
(360) 394-8694 (direct)
(360) 900- 9147 (cell)
[https://link.zixcentral.com/u/b7feb2ed/2OMiKN4N7RGWnqg98Y9C_g?
u=http%3A%2F%2Fwww.suquamish.nsn.us](https://link.zixcentral.com/u/b7feb2ed/2OMiKN4N7RGWnqg98Y9C_g?u=http%3A%2F%2Fwww.suquamish.nsn.us)

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EXHIBIT E

Port of Illahee

TRANSMITTED VIA EMAIL

September 15, 2022

Suquamish Tribal Council
Attn: Leonard Forsman
PO Box 498
Suquamish, WA 98392-0498

RE: NWS-2021-861, Suquamish Tribe objection to Port of Illahee public pier & float rehabilitation.

Dear Mr. Forsman and members of the Tribal Council,

In response to the Suquamish Tribe objection to the Port of Illahee (the "Port") public pier & float rehabilitation (the "Project"), the Port would like to respond directly to the Suquamish Tribe and the ACOE.

The Port was surprised to receive the objection from the Suquamish Tribe for the Project given the collaborative efforts of the Suquamish and the Port over the years working to protect fish and preserve fish habitat and save and protect critical watershed lands in and around Illahee from development. The Port was even more surprised when we received the email correspondence at the end of July from Ms. O'Sullivan indicating unwillingness to consult with the Port about the Project to better understand the objection and seek an accommodation. The history of the Port's efforts over nearly 40 years to protect fish and fish habitat are summarized in this letter and show a general alignment of a mission of preservation and environmental protection between the Port and the Suquamish. It is the Port's sincere hope that the Suquamish Tribe will reconsider and agree to meet with the Port.

History of the Port's Commitment to Fish Life and Habitat Preservation

The Port of Illahee and the Illahee Community have been actively engaged in protecting and restoring the ecological functions of the Illahee area, from the uplands to the shoreline and beyond.

PORT OF ILLAHEE
PO BOX 2357, BREMERTON, WA 98310

Community's Efforts to Prevent Commercial Fish Farming:

In 1985 when fish farming was being introduced to Puget Sound, a commercial fish farm was approved by Kitsap County officials in Illahee (Permit #452). Community research with the University of Washington showed inadequate tidal flushing action at the site. The Illahee Community created a nonprofit to fund their efforts which eventually resulted in the County Commissioners' reversing their earlier approval and the County then joined the Illahee Community to fight the applicants appeal to the Shorelines Hearings Board (SHB). The Illahee Community hired noted Seattle attorney John Merkel and the appeal the SHB was rejected. The fish pen project failed in Illahee because of the actions and persistence of the Illahee Community.

Port and Suquamish Salmon Enhancement Project Collaboration:

In 1999 the Port partnered with the Suquamish Tribal fisheries personnel for a Salmon Enhancement Project at the Illahee Dock where the Illahee Community members and families helped with feeding the salmon in the pens provided by the Suquamish. Around that same time, this partnership also included a chum incubation project conducted along Illahee Creek that had to be abandoned because of the sedimentation problems caused by upstream slides due to high stormwater flows in the creek.

Acquisition and Preservation of School Trust Lands:

The Port and the Illahee Community were also instrumental in purchasing the remaining Illahee School Trust Lands from the Department of Natural Resources (DNR) to become the Illahee Preserve in 2001. At one time the 352 acres were being considered for a major development centered around a 25-story high-rise building, surrounded by apartments and housing units on the property. Local community groups successfully fought that plan and years later it was the effort of Illahee resident Audrey Boyer and Speaker of the House Frank Chopp, along with the approval of the County Commissioners, who brokered the nearly \$5M deal to purchase the Trust lands for the Illahee Preserve.

Port Securing \$268,000 Grant for Watershed Scale Study:

During that same time, upland residential construction in the watershed resulted in large sedimentation events that greatly expanded the Illahee Creek delta to nearly 700 feet from the shoreline, dwarfing the 280-foot length of the Illahee dock, and raising concerns that dredging would soon be necessary. To remedy those concerns the Port applied for a Department of Ecology Centennial Clean Water Grant in 2004 and again in 2005. In 2005, the Port was successful, and a \$268,000 grant was awarded for a watershed scale study of the area to determine how to begin the restoration of the watershed uplands and the stream that were adversely affecting the waters and shoreline.

The findings of the watershed study "Illahee Creek Watershed Surface Water Management Plan" by Parametrix, Keta Waters Consulting, and Stillwater Sciences, dated September 2008, covered not only the storm water problems but also aquifer issues related to Illahee Creek being able to support salmonids. The results of the study have provided the Port and the

community with an extensive list of recommended actions that have been, and are still being implemented by the Port, Kitsap County, and the Illahee Community.

Port Leading the Way on Protecting Wildlife Corridors:

From 2006 to 2008 Illahee residents and Port Commissioners helped develop the "Illahee Community Plan" that resulted in an "Illahee Green" zoning category to support wildlife corridors and building densities. The plan was comprehensive in scope and involved over 100 contributors and was dedicated to "those who have preceded us on this piece of earth known as Illahee: the Suquamish and other Native Americans; the early settlers; and those who respected the natural features of this land."

Other Noteworthy Successes:

1. The 104-acre Rolling Hills Golf Course was gifted to Kitsap County in 2011 largely as a result of the findings from the Port's watershed study. This gifting prevented a possible future 900+ unit subdivision (Zoned UL 4-9) and further prevented significant storm surges to the Sound.
2. The construction of upland detention ponds both on the golf course and north in the watershed.
3. The acquisition of two planned developments, Timbers Edge 1 and Timbers Edge 2, along the main stem of Illahee Creek at a cost of nearly \$1.5M, which was supported by the Port, the Illahee Community, and the Illahee Forest Preserve.
4. Continued acquisition of developable properties adjacent to the Illahee Preserve which have expanded the Illahee Preserve from an initial 352 acres to nearly 600 acres.
5. Publication of the film "Saving Puget Sound – One Watershed at a Time" to tell the initial story of the Port and Community efforts to save the waters of the Salish Sea.
6. More recently the Illahee Community raised the funds necessary to purchase a commercial property in 2021 next to the Illahee Preserve containing headwaters wetlands to Steele Creek, which was aided by Tribal biologist support with the Department of Ecology.
7. The Port of Illahee has also initiated the planned cleanup in 2022/2023 of the leaking underground gasoline storage tanks at the former Illahee Store which is upland from the Illahee dock.
8. The Port is also working with Kitsap County Public Works to have a filtration water unit installed during the renovation to clean up stormwater contaminants at the outfall at the base of the Illahee Dock.

All of the above-mentioned accomplishments show the Port's investment in preserving and restoring the ecological functions of the area and the waters of Puget Sound.

In the "Saving Puget Sound – One Watershed at a Time" film (Item #5 above), Suquamish Tribal Chairman Leonard Forsman and Tribal fisheries biologist Paul Dorn note the Illahee Community is one of the groups that is trying to do the right things. An update of the film is being planned for 2023 to document the successes of the Illahee Preserve moving to over 90% completion, along with the Port of Illahee's dock revitalization project.

The Port's Project

It would be contrary to the Port's nearly 40 years of commitment to fish and shoreline ecological preservation to pursue a project that would harm fish or fish habitat. Accordingly, the Port pursued a design for the pier and float restoration project that improves the existing ecological conditions. However, it appears based on the May 13th objection letter that the Suquamish do not have all of the correct information about the Project and the ecological improvements, including the following:

- **Project will result in an increase in aquatic habitat, not a loss.** The May 13th objection letter incorrectly assumes that the Project will result in a loss of aquatic habitat due to an increase in overwater coverage. In fact, the Project will result in a net increase in aquatic habitat of 137 sq ft just through the removal of overwater coverage, piles and anthropogenic debris along the shore. Other benefits that will result from the Project include the removal of 24 creosote-treated piles and significant substrate debris waterward of the pier, resulting in a positive effect on water quality and an even greater increase in restored aquatic habitat.
- **No Navigation or Physical Obstacles will be created.** Another perceived misconception about the Project stated in the May 13th objection letter is that the design will create in-water navigation and physical obstacles forcing tribal fisherman to avoid this area. The footprint of the proposed project will be entirely contained within the area of the existing pier and floats and a pre-existing navigational hazard/obstacle. As part of the Project, the Port proposes to clean up and remove numerous manmade derelict materials which are currently submerged waterward of the end of the pier and pose an existing hazard obstacle to many fishing activities (not to mention the potential ongoing environmental impact to the waterbody and aquatic life). Furthermore, the area already presents navigational obstacles because of the expanding delta as shown in the following photo:



The apparent misunderstanding of certain elements of the Port's proposed Project is one of the reasons the Port would like to meet with the Suquamish on this proposal. Additionally, as noted earlier in this letter, the Port is open to hear suggestions from the Tribe on how this Project may be improved upon and/or modified to best ensure protection of fish and habitat.

As noted in this letter, the Port and Tribe have a history of supporting responsible upland and near shore activities, and the Port is simply requesting an audience with the Suquamish to discuss how we can work together to continue that effort with the Port's public pier and float rehabilitation Project.

Please contact Commissioner Jim Aho via email at jllaheeporthree@gmail.com or via phone at 360-649-1049 if the Suquamish are willing to reconsider and meet with the Port to discuss a path forward on the Port's Project. We can look to schedule a time in September or October to allow the Port's consultants and tribal representatives to be present. Thank you for your consideration.

Sincerely,

Jim Aho

Jim Aho
Port Commissioner

Amber Bartz

Amber Bartz
Port Commissioner

John Burton

John Burton
Port Commissioner

Cc: Jacalen Printz, Melody Allen, Maryanne Mohan, Alison O'Sullivan, Kendra Martinez, Daniel Krenz, Theresa Haaland, John Piccone, Tim Schermetzler