



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 11-81

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe (Tribe), its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Washington Department of Fish & Wildlife (WDFW) issues permits known as Hydraulic Project Approvals (HPA) for projects proposed in and near fresh and salt waters, and these projects can harm fish life; and

WHEREAS, WDFW usually issues one HPA per project, after its biologists review detailed project plans; and

WHEREAS, in 2010, WDFW issued Kitsap County Public Works Department a 5-year HPA without plans, covering eight kinds of projects (e.g., culvert work, removing sediment, removing large woody debris) and conditions that the Tribe believes will harm fish life;

WHEREAS, WDFW will in the future be issuing this new kind of permit, called a "General HPA," to other entities that likely include Mason and Thurston Counties; and

WHEREAS, the Tribe challenged the Kitsap County HPA before the Pollution Control Hearings Board (PCHB) in *Squaxin Island Tribe v. WDFW & Kitsap County*, PCHB No. 11-088, and then began settlement discussions with the parties as well as with the Suquamish Tribe, Port Gamble S'Klallam Tribe and Jamestown S'Klallam Tribe; and

WHEREAS, the PCHB ruled against the Tribe on the issue of whether WDFW has authority to issue general HPAs; and

WHEREAS, that the parties have resolved certain issues in the attached Settlement Agreement such that the parties intend to inform the PCHB that a hearing on these issues is no longer desirable; and

WHEREAS, the Settlement Agreement establishes a process whereby tribal and county governments work together to address projects that could threaten fisheries before projects and project designs are set in stone and appeal deadlines are running; and

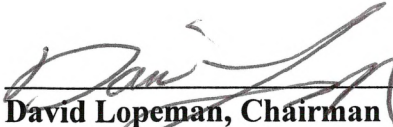
WHEREAS, the settlement, among other things, preserves the Tribe's and other tribes' rights to challenge specific Kitsap County projects as well as other general HPAs.

NOW THEREFORE BE IT RESOLVED, that the Settlement Agreement is hereby approved; and


BE IT FURTHER RESOLVED, that the Tribe may continue challenging the PCHB's adverse ruling on WDFW's authority to issue general HPAs.

CERTIFICATION

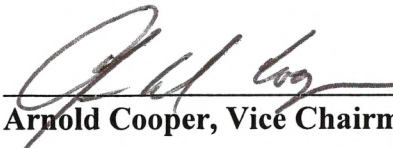
The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at a special meeting of the Squaxin Island Tribal Council, held on this 11th day of December 2011, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Pete Kruger, Secretary



Arnold Cooper, Vice Chairman

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on this ___ day of December, 2011, among the Squaxin Island Tribe, Port Gamble S'Klallam Tribe, Jamestown S'Klallam Tribe, and Suquamish Tribe, all of which are federally recognized Indian tribes (collectively, "Tribes"); Kitsap County ("County"), a Washington municipal corporation; and Washington Department of Fish & Wildlife ("WDFW"), an agency of the State of Washington (individually, "Party"; collectively, the "Parties").

RECITALS

A. On May 17, 2011, WDFW issued a general hydraulic project approval ("GHPA") to Kitsap County for eight categories of activities related to maintenance of roadways, culverts, bridges, fishways and tide gates (infrastructure) (GHPA # 123199-1). WDFW intended the GHPA to cover infrastructure maintenance that has a low likelihood of environmental impact and is likely to recur on a regular basis, and that the GHPA would be a template that other jurisdictions may follow for obtaining hydraulic permit approval for such infrastructure maintenance.

B. On June 11, 2011, the Squaxin Island Tribe appealed the GHPA to the Pollution Control Hearings Board (PCHB No. 11-088). The Squaxin Island Tribe's appeal claimed that WDFW does not have legal authority to issue a general HPA, should not have accepted the County's application, and should have denied the GHPA application ("legal authority issues"); and also claimed that the GHPA did not provide adequate protection for fish and fish habitat, or adequate mitigating conditions, among other things ("non-legal authority issues").

C. On August 22, 2011, the Squaxin Island Tribe filed a motion for summary judgment requesting a dispositive order that WDFW does not have legal authority to issue a general HPA. WDFW and the County responded and asked for a summary judgment order holding that there is such legal authority. On October 17, 2011, the PCHB issued its order on summary judgment ("PCHB Order") finding for WDFW and the County that WDFW has legal authority to issue general hydraulic permit approvals such as the one at issue in this case.

D. On November 2, 2011, the Squaxin Island Tribe filed an interlocutory appeal and declaratory judgment action in Thurston County Superior Court (Case No. 11-2-02373-4) seeking to have the PCHB Order reversed. The Squaxin Island Tribe may withdraw that petition and refile a petition following the PCHB's Board's issuance of a final Order in this case.

E. The Parties desire to avoid the delay, expense, and uncertainty of litigating the remaining issues pending before the PCHB. While the Parties continue to dispute the legal authority issues, and the Squaxin Island Tribe desires to preserve its appeal rights concerning the PCHB Order, the Parties have determined to settle the remaining issues pending before the PCHB, according to the terms of this Agreement. This Agreement settles only the non-legal authority issues in the instant case.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Parties agree as follows:

1. At least 30 days prior to the annual meeting required under the GHPA, the County shall provide WDFW, the Tribes, and any other affected Tribes a list of the projects the County plans to undertake in the upcoming year pursuant to the GHPA.
2. The County's list shall include a description of the work, starting date, duration, waterbody name, longitude and latitude, and specific location (including road number and milepost if applicable).
3. The following are the criteria that the Parties have developed to characterize whether a specific project should be modified to fit within the GHPA or should require an application for an individual HPA:
 - a. The project poses a risk to high priority fish habitats;
 - b. The project is not covered by a category in the GHPA;
 - c. There will be potential impacts to fish habitat that have not been eliminated by modifying the project and/or through mitigation.
4. At the annual meeting, the affected Tribes shall have the opportunity: to provide input to the County and WDFW, based on the agreed to criteria described above, as to whether the Tribe(s) believe that the planned projects qualify for coverage under the GHPA; to provide suggestions for clarifying the GHPA so as to make it more effective for use by Kitsap County to achieve the proper protection of fish life; and to address the issues in paragraphs 6a-e and 7a-e of the GHPA.

The Tribes shall make every effort to attend the annual meeting, but if a Tribe(s) cannot attend the annual meeting, that Tribe(s) shall also have the opportunity to provide input in writing prior to the meeting, with the level of detail that depends upon the information provided beforehand and the time available to respond. If a Tribe does not attend the meeting or provide written comments by the time the annual meeting is held, the Tribe may not later utilize the process set forth in this Agreement. Provided however, if the reason for the Tribe having not attended the meeting was due to an exceptional circumstance such as a family emergency or funeral, then the Tribe may provide written comments within 5 business days after the meeting. The Parties will discuss the written comments by phone conference.

5. If a Tribe or WDFW identifies a project that may warrant additional measures for the protection of fish life based on the above criteria, the Parties shall discuss options and attempt to modify the project to fall within the GHPA's coverage.
6. If a Tribe believes that modifying the project would not make the project eligible for coverage under the GHPA but WDFW staff disagrees, the Tribe may request that WDFW's Assistant Director for the Habitat Program decide whether the County should apply for an individual HPA for the project. After the Parties engage in dispute resolution, the WDFW Assistant Director's decision shall constitute final agency action.
7. If the County adds a project to the list or there are substantial changes to a project (including changing the date by more than 10 working days), the County shall provide a copy of the revised project list to WDFW and the Tribes at least 10 business days prior to planned implementation. A Tribe may inform the County in writing at least 5 business days before implementation that the project triggers one or more criteria in paragraph 3. If requested by a Tribe or WDFW, the Parties shall convene a meeting to discuss the amended project list pursuant to the process identified in paragraphs 5 and 6 above.
8. The County shall allow Tribal representatives to be on site for any work conducted within the right-of-way pursuant to the GHPA or individual HPA issued as a result of the process outlined in this Agreement, so long as proper safety equipment is worn.
9. The Parties acknowledge that the County may begin operating under the GHPA upon the effective date of this Agreement, subject to the terms of this Agreement (including by holding the equivalent of an annual meeting under paragraphs 1 and 2), until the earlier of such time that the GHPA is judicially found to be unauthorized or May 16, 2016 (Project expiration date).
11. Any notice required shall be made as follows unless and until any Party notifies each other Party in writing of a different name and/or address for such notice:

To Tribes: Squaxin Island Tribe
Natural Resources Department
2952 S.E. Old Olympic Highway
Shelton, WA 98584

Port Gamble S'Klallam Tribe
Natural Resources Department
31912 Little Boston Road NE
Kingston, WA 98346

Jamestown S'Klallam Tribe
Natural Resources Department
1033 Old Blyn Highway
Sequim, WA 98382

The Suquamish Tribe
Fisheries Department
18490 Suquamish Way
Suquamish, WA 98392

To WDFW: Washington Department of Fish and Wildlife
Habitat Program - Assistant Director
600 Capitol Way N.
Olympia, WA 98501-1091

Washington Department of Fish and Wildlife
Habitat Program - Protection Division Manager
600 Capitol Way N.
Olympia, WA 98501-1091

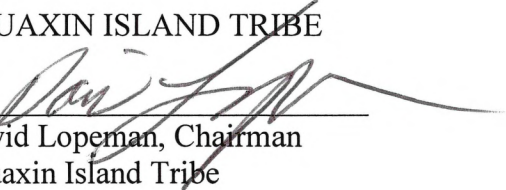
To County: County Engineer
Kitsap County Public Works Department
614 Division Street, MS 26
Port Orchard, WA 98366

12. This Agreement shall be governed and construed in accordance with the law of the state of Washington. Each Party consents to the personal jurisdiction of the Superior Court of the State of Washington solely as related to enforcement of this Agreement. Each Party hereby expressly grants a limited waiver of sovereign immunity to suit solely for the purposes of this provision.
13. The Parties executing this Agreement have done so with the full understanding of its legal consequences and with the advice of legal counsel. The Parties acknowledge that the form of this Agreement is the result of negotiation and cooperative drafting. As such, this Agreement shall not be strictly construed against any particular Party.
14. This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, among the Parties with respect to the subject matter hereof. Notwithstanding the foregoing, however, the Parties agree that this Agreement does not supersede, amend or modify GHPA # 123199-1, but rather supplements GHPA # 123199-1 with additional processes in the case of disputes over projects sought to be covered by or covered by the GHPA.
15. No amendment of or modification to this Agreement shall be deemed valid unless in writing and signed by all Parties to this Agreement.
16. The Parties enter into this Agreement in good faith and promise to perform their respective obligations. In the event of a breach of any of the provisions of this

Agreement, each Party is entitled to pursue any and all remedies available at law and in equity in a court of competent jurisdiction.

17. This Agreement is binding upon and shall inure to the benefit of the Parties, their respective successors and assigns, as may be the case.
18. This Agreement may be signed in counterparts, and a facsimile signature may be treated as an original. The effective date of this Agreement shall be the date on which it is signed by the last Party to sign the Agreement.
19. This Agreement shall be attached to the Stipulation and Agreed Order that is filed with the PCHB.

SQUAXIN ISLAND TRIBE

By: 
David Lopeman, Chairman
Squaxin Island Tribe

PORT GAMBLE S'KLALLAM TRIBE

By: _____
Jeromy Sullivan, Chairman
Port Gamble S'Klallam Tribe

JAMESTOWN S'KLALLAM TRIBE

By: _____
W. Ron Allen, Chairman
Jamestown S'Klallam Tribe

SUQUAMISH TRIBE

By: _____
Leonard Forsman, Chairman
Suquamish Tribe

WASHINGTON DEPARTMENT OF FISH & WILDLIFE

By: _____
Joe Stohr, Deputy Director
Washington Department of Fish & Wildlife

BOARD OF COUNTY COMMISSIONERS

CHARLOTTE GARRIDO, Chair

ROBERT GELDER, Commissioner

JOSH BROWN, Commissioner