



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 05-97

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island 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 State of Washington (State) has initiated a lawsuit against Jeffrey Albulet, Julian Ng, and Clear Bay Fisheries Inc. (Clear Bay), in Thurston County Superior Court, Cause No. 05-2-00254-6 (Litigation), which lawsuit raises claims regarding theft of geoduck from state-owned lands; and

**WHEREAS**, in this Litigation the Squaxin Island Tribe, the Puyallup Tribe of Indians, and the Nisqually Indian Tribe (the Tribes) filed motions to intervene in the Litigation in which they argue that their treaty rights entitle them to share in any recovery against Clear Bay; and

**WHEREAS**, the State and the Tribes (the Parties) reached an agreement whereby the Tribes would not pursue their motions for intervention if the State abides by terms of a separate agreement between the State and Tribes, which separate agreement obligates the State to consult with the Tribes regarding the progress of the State's lawsuit against Clear Bay; and

**WHEREAS**, the Parties and their attorneys have agreed that although from time to time they may hold different interests with respect to various specific issues connected with the Litigation, they share common interests with respect to significant issues in the Litigation; and

**WHEREAS**, the Parties and their attorneys need to ensure the protection of the mental impressions, conclusions, opinions, legal theories, and other work product of counsel and of agents of counsel, including consultants, as well as client confidences and other privileged information (“Confidential Materials”), while at the same time they need to be able to exchange certain information and to cooperate in the Litigation with respect to matters of common interest; and

**WHEREAS**, the Squaxin Island Tribal Council has determined that it is in the best interests of the Squaxin Island Tribe to enter into the Common Interests Privilege Agreement (copy attached) with the Parties;

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby approves the Common Interests Privilege Agreement;

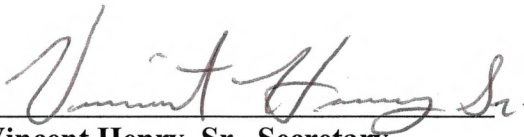
**NOW THEREFORE BE IT FINALLY RESOLVED** that Mark E. Allen, Staff Attorney, is hereby authorized to execute the Agreement on behalf of the Squaxin Island Tribe and is further authorized to do any and all acts necessary to implement and/or perform the Agreement.

#### CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 20<sup>th</sup> day of October, 2005, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.

  
James L. Peters, Chairman

Attested by:

  
Vincent Henry, Sr., Secretary

  
Andrew D. Whitener, Vice Chairman

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**COMMON INTERESTS PRIVILEGE AGREEMENT**

This Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005 by and among Washington State (the “State”), and the Squaxin Island Tribe, the Puyallup Tribe of Indians, and the Nisqually Indian Tribe, (collectively the “Tribes”) (all collectively referred to as the “Parties”).

WHEREAS, the State has initiated a lawsuit against Mr. Jeffrey Albulet, Mr. Julian Ng, and Clear Bay Fisheries Inc. (collectively referred to as “Clear Bay”), in Thurston County Superior Court, Cause No. 05-2-00254-6 (the “Litigation”), which lawsuit raises claims regarding theft of geoduck from state-owned aquatic lands;

WHEREAS, the Tribes filed motions to intervene in the Litigation in which they argue that their treaty rights entitle them to share in any recovery against Clear Bay;

WHEREAS, the State and the Tribes reached an agreement whereby the Tribes would not pursue their motions for intervention if the State abides by terms of a separate agreement between the State and Tribes, which separate agreement obligates the State to consult with the Tribes regarding the progress of the State’s lawsuit against Clear Bay;

WHEREAS, the Parties and their attorneys have agreed that although from time to time they may hold different interests with respect to various specific issues connected with the Litigation, they share common interests with respect to significant issues in the Litigation; and

WHEREAS, the Parties and their attorneys need to ensure the protection of the mental impressions, conclusions, opinions, legal theories, and other work product of counsel and of agents of counsel, including consultants, as well as client confidences and other privileged information (collectively “Confidential Materials”), while at the same time they need to be able to exchange certain information and to cooperate in the Litigation with respect to matters of common interest; and

NOW, THEREFORE, in order to accomplish the goals set forth above and to memorialize the understanding of the Parties regarding sharing Confidential Materials for their common interest, the Parties hereby agree as follows:

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1. The Parties hereby acknowledge that they and their counsel possess Confidential Materials that they are entitled, under applicable law, to keep confidential. Such Confidential Materials may include, but are not necessarily limited to, statements of or information from clients and potential witnesses, notes or memoranda of counsel, notes, drafts of agreements or plans, memoranda and reports of consultants, and conferences among counsel and employees or agents of the Parties regarding trial preparation, trial strategy and tactics. This Common Interests Privilege Agreement itself shall be considered to be written Confidential Materials.
2. Some or all of the Confidential Materials may be protected from disclosure to adverse or third parties as a result of the attorney/client privilege, the attorney work product doctrine, or other privilege or immunity. By disclosing Confidential Materials to each other under this Agreement, the Parties and their counsel do not intend to waive or diminish in any way the confidentiality of such information or any privilege attached thereto. Counsel and the Parties specifically intend to invoke to the fullest extent possible the protections of the common interest doctrine, which doctrine is also referred to as the common defense or joint defense privilege.
3. The Parties do not intend by this Agreement to compel the disclosure to one another of any information that any Party believes should be kept confidential.
4. When a Party determines that it wishes to share written Confidential Materials with the other and determines that such information may be useful in assisting the other Party in a common cause, it should mark the copy of the writing that is to be shown to the other Parties with the conspicuous legend: “**CONFIDENTIAL – COMMON INTERESTS PRIVILEGE**”. Any failure to have placed the legends on such documents shall not, by itself, constitute a waiver of any privilege.
5. A Party wishing to share oral Confidential Materials of common interest with the other Party, should do so only at times and places where a reasonable expectation of privacy prevails. All such oral communications at such times and places (and notes and memoranda thereof), including all meetings where representatives of the Parties and/or counsel for the Parties are present, and no third parties are present, are covered by this Agreement, unless the communication is preceded by the announcement of intention of the speaker to exclude the communication from the coverage of this Agreement.
6. Confidential Materials exchanged between the Parties and/or their attorneys pursuant to this Agreement may be disclosed by an attorney for a Party to his or her clients. In addition, nothing in this Agreement shall be construed to prevent an attorney from disclosing Confidential Materials to paralegals, support staff, or outside counsel or consultants retained for this litigation.
7. Except as stated above, each Party agrees that all oral or written Confidential Materials received from another Party (including without limitations notes of

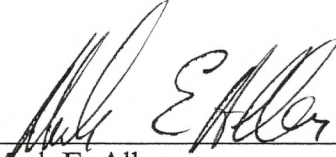
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conversations or meetings with other Parties) shall be held in strictest confidence and shall not be given, shown, made available, communicated or otherwise disclosed in any way to anyone without the express consent of the Party from whom the Confidential Materials were received, unless such disclosure is required by court order or by applicable law notwithstanding this Agreement. If a Party believes that disclosure is required by applicable law, the Party shall give the other Parties reasonable advance notice, as permitted by applicable law, prior to disclosing Confidential Materials.

8. In the event that a Party determines that it no longer wishes to share information under this Agreement, it shall announce its intentions in writing to the other Parties. Any documents furnished or statements made by the terminating Party to the other Parties after the termination announcement shall not be covered by this Agreement. However, the obligations with respect to confidentiality imposed, and the uses of information allowed, shall remain in full force and effect with respect to any and all Confidential Materials previously disclosed or developed.
9. This Agreement may be specifically enforced, but no Party shall be liable in damages for any breach of this Agreement.

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Joseph V. Panesko  
Assistant Attorney General



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Mark E. Allen  
Attorney for Squaxin Island Tribe

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Kathryn McLeod  
Senior Counsel

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Samuel J. Stiltner  
Attorney for Puyallup Tribe of Indians

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James N. Allen  
Assistant Attorney General  
Attorneys for Washington State

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Bill Tobin  
Attorney for Nisqually Indian Tribe