

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**STAFF BRIEFING**

**Item No.** 6A  
**Date of Meeting** February 2, 2021

**DATE:** January 11, 2021  
**TO:** John Wolfe, Chief Executive Officer  
**FROM:** Kurt Beckett, Deputy Chief Executive Officer  
**SUBJECT:** Briefing on Northwest Seaport Alliance (NWSA) and Port of Seattle (POS) Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe

**A. BRIEFING REQUESTED**

Staff will provide a briefing on the two separate agreements with the Muckleshoot Indian Tribe and with the Suquamish Tribe on maritime access and impact mitigation. The current 2015-2020 agreements expired at the end of 2020 and new agreements are due to be established in early 2021.

**B. SYNOPSIS**

This memorandum and the associated briefing provide context of the historical relationship between the two tribes and the Port of Seattle, outline the purposes of these agreements and seek input from the Managing Members in advance finalizing negotiations and establishment of new NWSA-POS agreements with the Muckleshoot Indian Tribe and Suquamish Tribe.

Broadly, these agreements seek to strengthen the government-to-government relationships with the two federally recognized tribes in the North Harbor. The core purpose includes:

- (1) Acknowledging federally recognized treaty fishing rights and resources in Elliott Bay, the East and West waterways, and in the Duwamish Waterway and
- (2) Ensuring vessel access to marine cargo facilities, cruise terminals, and commercial marinas by maritime sectors engaged in port-related business.

**C. BACKGROUND**

**Current Agreements: Purpose and Intent**

The Agreements establish orderly Treaty-protected fishing access and cargo vessel access to marine terminal facilities. Without these Agreements, prior experience was that fishing

activity and cargo vessel access were in regular and constant conflict during seasonal fishing harvest periods.

The goals of these agreements include:

- Establishing a broader framework that confirms a mutual understanding, respect and commitment to our government-to-government relationship.
- Acknowledging operational impacts to Treaty-protected resources and reaffirm the NWSA/port mission that requires operational reliability and productivity.
- Continuing the more recently established principle that expenditure of any mitigation funds is more effectively prioritized and managed by each Tribe.
- Streamlining project permit reviews with process-clarity and review-timeframes that respect treaty rights and support port strategic competitiveness.
- Achieving a fair, sustainable level of mitigation compensation and creating additional value with the certainty of a longer-term agreement.

Since the 2016 Access Agreement was implemented, project-specific and operational relations with the Suquamish Tribe and Muckleshoot Indian Tribe have been productive and efficient. This framework has appropriately shifted responsibility to each tribe to manage their fishers accordingly and in turn resulted in no vessel movement delays in connection to fishing net moves. Further, NWSA-POS have appreciated both tribes have providing timely, helpful responses for permit authorizations for critical North Harbor infrastructure projects, including complex project schedule issues.

### **Basis of Tribal Rights**

Each Tribe has federally recognized treaty rights and resources, including usual and accustomed fishing areas in Elliott Bay, the East and West Waterways, and the Duwamish Waterway. These fishing rights and resources have been recognized as essential and integral elements of federal treaties with native sovereign nations and must be sustained. These fishing and resource areas overlap NWSA/port marine terminal facilities. The Port has historically reimbursed Tribe members when cargo vessel operations either damage tribal fishing equipment (nets) or otherwise infringe on fishing activities.

### **Renewal of Agreements**

After almost five years of operating under this newer approach maintaining usual and accustomed treaty fishing access around North Harbor, staff is recommending that we continue in this manner. The Maritime Access and Impact Mitigation Agreement framework provides an equitable, long-term commitment with the Muckleshoot Indian Tribe and Suquamish Tribe, recognizing and providing for fishing access adjacent to and consistent with the needs of continuously operating marine cargo, passenger, and marina sites throughout Elliott Bay, the East and West waterways, and the Duwamish Waterway.

Further, the five-year Agreements avoid significant, costly operational disruptions for tenants at Port and NWSA facilities at a cost comparable to what the Port and NWSA would otherwise incur. The Agreements also limit costs incurred for Port and NWSA staff time administering vessel coordination and damages claims programs. Tenants and shippers face less resistance from tribal fishers and the Port and NWSA maintain efficient operations in the harbor, bolstering competitiveness vis-à-vis other ports. Costs associated with these agreements was contemplated as an indirect expense associated with the Port of Seattle licensed properties during the NWSA valuation.

These agreements focus on operations. The Tribes and the Port and NWSA typically enter into separate agreements for individual projects. Over the last five years, permits for individual projects have been reviewed and authorized on their own merits.

Staff expects to see one proposed change in the next five-year Agreement – continuation of the “Pilot Program” first created under the Terminal 5 Agreements with each Tribe. As net moves do not include compensation for lost fishing time, this new element of the Agreements would compensate tribal members who, due to the arrival of a vessel, are displaced from a productive net set location at a NWSA or Port facility in Elliot Bay, the East and West Waterway and the Duwamish River.

The pilot grew out of discussions with the Muckleshoot Indian Tribe for the Terminal 5 Modernization Program and the anticipated future presence of ultra-large container ships. Cargo vessels in past years have been 900 to 960 feet long and 130 to 135 feet in beam. More recently, larger vessels are calling the marine cargo facilities, sized at approximately 1125-1200 feet long and up to 150-160 feet beam. Larger vessels are increasingly common at Elliott Bay cargo facilities, with beams approaching 200 feet. The East and West Waterways are 750 feet wide and 5000-6000 feet in length. Frequently, in past years and continuing to the present, the narrow dimension of the waterways, length and number of Treaty fishing nets, the increasing size of cargo vessels, and frequency of vessel operations have combined to impede fishing and vessel access. This is of acute importance when multiple large vessels are moored or moving among nets in a confined waterway such as the East Waterway.

Historically, project mitigation measures have eventually consolidated into the Maritime Access and Impact Mitigation Agreements and the current tribal request for inclusion of the pilot program is consistent in this regard, and responds to evolving operating conditions. The pilot program was funded by the Terminal 5 Modernization Program in the amount of \$75,000 per year for three years, with a total of \$225,000 for each tribe; the amount was established based on estimated ship calls and displacements. Based on lower displacement claims by the Muckleshoot Indian Tribe during the pilot program, staff believe that the remaining pilot funds will cover any displacement impacts for the next 5-year agreement.

### **Next Steps**

Following the February 2 briefing and Managing Member feedback, staff intends to return to both Tribes to discuss the collaborative path forward to securing new five-year Agreements. We will then return to the Managing Members to seek additional feedback as needed, ideally

seeking request for authorization to execute these new five-year Agreements at the March or April public meeting.

## **D. ADDITIONAL BACKGROUND**

### **Pre-2016 Approach**

Previous letters of agreement and interlocal agreements have been linked to project-specific actions and have included variable timeframes. In each instance project settlement agreements have included payments to the Muckleshoot Indian Tribe and the Suquamish Tribe. In the past 20 years, agreements between Treaty tribes and the port have included:

- (1) Compensation payments relating to specific port facility development projects;
- (2) Payments for the purpose of avoiding conflicts between Treaty fishing harvest activities and cargo vessels serving port facilities; and
- (3) Services provided by the port to accommodate Treaty fishing-related activities.

In general, the Muckleshoot Indian Tribe received payments relating to port development actions and fishing/vessel coordination efforts. Payments to the Suquamish Tribe have been linked, for the most part, to Port development actions. Both Tribes have benefited from services provided by the port intended to assist with Treaty fishing access in areas affected by port facilities.

- (1) Facility development: Beginning in 1997 and extending through 2015, the Muckleshoot Indian Tribe, the Suquamish Tribe, and the Port have completed eight agreements, linked principally with capital marine cargo facility development actions.
- (2) Treaty fishing and vessel conflicts: Beginning in 2010, the Muckleshoot Indian Tribe asserted that additional funding was required to compensate Treaty fishers for disruption of fishing access due to movement of vessels serving port facilities. The Muckleshoot Indian Tribe and the port agreed on a Treaty fishing/cargo vessel coordination program, including payment and compensation for:
  - a. Movement of fishing nets when placement of nets and vessel navigation/berth access conflict;
  - b. Loss or damage to fishing gear attributed to vessel access;
  - c. Lost fishing time in the case of damaged or lost fishing gear; and,
  - d. Coordination of staff time and purchase of boats used to manage fishing activity.
- (3) Services provided by the Port of Seattle: Starting in 1994, the Muckleshoot Indian Tribe, the Suquamish Tribe, and the Port, worked together to provide fishers with equitable access to Treaty fishing locations. This has included moorage of Treaty fishing boats, fishing-related storage areas, access to mechanical equipment (e.g., small dock and truck-mounted cranes and forklifts), educational/display opportunities, payment for operation of a juvenile salmon rearing facility, and funds to off-set potential fishing gear loss and damage around recreational moorage facilities.

### **Additional Treaty Protected Fishing Access**

The Muckleshoot Indian Tribe, the Suquamish Tribe, The Northwest Seaport Alliance, and the Port of Seattle share common locations for operations, including bay and channel areas throughout north and south Elliott Bay. Since 1995, these Treaty tribes and the Port of Seattle have cooperated through a series of agreements, with the objective of avoiding and minimizing potential negative effects on Treaty protected fishing access, coincident with improvement and continuing cargo, passenger, and marina activities at port marine terminal facilities.

The Muckleshoot Indian Tribe and the Suquamish Tribe maintain treaty reserved rights and resources, including usual and accustomed fishing areas, in Elliott Bay, the East and West waterways, and the Duwamish Waterway. Stewardship of these shared resource areas is critically important to the welfare of the two tribes as well as essential to the Port of Seattle and the Northwest Seaport Alliance marine cargo, passenger, and marina facility, business, and environmental objectives.

The principal element of Treaty-protected fishing access, applicable to the Northwest Seaport Alliance and the Port of Seattle, provides the Muckleshoot and Suquamish Indian tribes with the ability to fish in nearly all areas required for navigational access to marine cargo, passenger, and marina facilities. This means that navigational and berth access to all facilities must be accomplished without substantially impeding fishing activities. In addition, Treaty tribes have the authority to participate in all federal decision-making with the potential to affect Treaty protected fishing access. Authority derived from protection of Treaty fishing access extends to decision-making regarding actions with the potential to adversely affect natural resources important to sustaining fish resources. Treaty tribes have equal decision-making authority with federal agencies, including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Environmental Protection Agency, regarding authorizations required by for development, operation, and maintenance of marine cargo, passenger, and marina infrastructure. This authority also extends to federal Superfund cleanup determinations and natural resource damage and restoration requirements. Continuing, long-term access to “usual and accustomed” fishing areas for harvest of fish and shellfish affects daily port operations during fishing periods and requires Treaty tribe approval of proposed port facility improvements that require alteration of shoreline and aquatic areas related to fishing access.

### **Muckleshoot Tribal History**

The Muckleshoot Indian Tribe is a federally recognized Indian tribe whose membership is composed of descendants of the Duwamish and Upper Puyallup people who inhabited Central Puget Sound for thousands of years before non-Indian settlement. The Tribe’s name is derived from the native name for the prairie on which the Muckleshoot Reservation was established. Following the tribal Reservation’s establishment in 1857, the Tribe and its members came to be known as Muckleshoot, rather than by the historic tribal names of their Duwamish and Upper Puyallup ancestors. Today, the federal government recognizes the Muckleshoot Tribe as a tribal successor to the Duwamish and Upper Puyallup bands from which the Tribe’s membership descends.

Like all native people of Western Washington, Muckleshoot ancestors depended on fish, animal, and plant resources and traveled widely to harvest these resources. In the winter when travel was difficult, they lived in villages along the region's watercourses relying upon stored foods and local resources. In the summer they dispersed and moved to summer camps and resource gathering areas, where they joined with families from other winter villages in fishing, clamming, hunting, gathering, and other pursuits.

In 1854 and 1855, Territorial Governor Isaac Stevens negotiated treaties with the native inhabitants of Puget Sound. The Treaty of Medicine Creek was negotiated in December 1854 with the Puyallup, Nisqually, and Squaxin tribes. Stevens then journeyed to Mukilteo where he negotiated the Treaty of Point Elliott with the Duwamish, Suquamish, Snohomish, Snoqualmie, Lummi, Swinomish, and other Indian groups occupying the area between the White River and the Canadian border.

In their treaties, the native people of Western Washington ceded their territory in exchange for the United States' promise that they would retain small reservation homelands and would be free to continue to fish, hunt, and gather the resources upon which they depended at off-reservation locations. The Treaty of Point Elliott established four reservations: Port Madison for the Duwamish and Suquamish, and the Tulalip, Lummi, and Swinomish Reservations.

Following the negotiation of these treaties, in the fall of 1855 hostilities commenced between native people and white settlers on both sides of the Cascade Mountains. By the summer of 1856, the conflict in Western Washington had subsided and Governor Stevens held a meeting at Fox Island with representatives of the Nisqually, Puyallup, White and Green River Indians. At the meeting Stevens agreed to changes in the Puyallup and Nisqually Reservations and to the establishment of an additional reservation at Muckleshoot where there was a military fort on the prairie of that name.

In the 1960s, the Muckleshoot Tribe, together with the Puyallup and Nisqually Tribes, repeatedly challenged state efforts to prohibit Indian fishing at traditional fishing locations. In 1970 these actions led the federal government to file a lawsuit against the State of Washington to definitively determine the nature of the fishing rights reserved in the Treaties concluded by Governor Stevens.

The decision in that case, *United States v. Washington*, was rendered in 1974 and subsequently upheld by the United States Supreme Court. It held that the Tribes that are party to the Stevens Treaties are entitled to take 50 percent of the fish available for harvest at traditional tribal fishing locations free from most state regulation. It also affirmed the United States' recognition of the Muckleshoot Tribe as a political successor to the Duwamish bands that were party to the Treaty of Point Elliott, including the band to which Chief Seattle belonged, and a political successor to the Upper Puyallups, party to the Treaty of Medicine Creek. Thus, the Court found the Muckleshoot Tribe to uniquely possess rights under both the Treaty of Point Elliott and Treaty of Medicine Creek.

The renewed access to fishing resources resulted in a revitalization of tribal economies and communities throughout Western Washington, including Muckleshoot. Starting in the 1990s, this revitalization accelerated with the introduction of bingo and casino gaming on the

Reservation and has continued with the diversification of the Tribe's economic enterprises and investments which include: Muckleshoot Seafood Products, the Muckleshoot Mini Mart, the Salish Tree Farm, the White River Amphitheatre, the Salish Lodge, and Emerald Downs. The Tribe has become a major contributor to the local economy and community providing resources to other governments, schools, nonprofits, and churches throughout Washington.

### **Suquamish Tribal History**

The ancestral Suquamish have lived in Central Puget Sound for approximately 10,000 years. The major Suquamish winter village was at Old Man House on the shoreline of Agate Passage at d'suq'wub meaning "clear saltwater." The Suquamish name translates into the "people of the clear saltwater."

The Suquamish lived in shed-roofed, cedar plank houses during the winter months. The Suquamish had winter villages at Suquamish (Old-Man-House), Point Bolin, Poulsbo, Silverdale, Chico, Colby, Olalla, Point White, Lynwood Center, Eagle Harbor, Port Madison and Battle Point. The best-known winter village was at Old Man House, the home of Chief Seattle and Chief Kitsap.

The Suquamish had their first recorded contact with non-natives in 1792 with the arrival of British explorer Captain George Vancouver. Vancouver anchored off Bainbridge Island and traded with the Suquamish and surveyed Suquamish waters. Over the next fifty years, the Suquamish adapted to changes brought on by the entry of non-natives into the Puget Sound. Fur traders and missionaries were the first and were then followed by permanent settlers traveling over the Oregon Trail. Settlement intensified in the 1850s after Congress passed the Oregon Donation Land Claim Act that opened Suquamish and other tribal lands to non-native settlement. Entrepreneurs also began building sawmills to harvest the vast stands of virgin timber on Suquamish lands, including mills at Port Madison, Port Gamble and Port Blakely. The Suquamish cut and delivered logs to the mills to support themselves.

In 1855, Washington Territorial Governor Isaac Stevens arrived in Puget Sound intent on clearing the land for more intensive settlement. Four years earlier, the City of Seattle, named for Chief Seattle, was established by Seattle pioneers, who were indebted to the Suquamish/Duwamish Chief for helping them during their early struggles to survive. Governor Stevens needed to clear the aboriginal title to the land to claim the property ahead of his plans to bring the transcontinental railroad to Puget Sound. On January 22, 1855, Suquamish leaders, led by Chief Seattle, signed the Treaty of Point Elliott at Mukilteo. The Suquamish gave up title to their lands, which encompassed most of present Kitsap County, for acknowledgement and protection of their fishing and hunting rights, health care, education and a reservation at Port Madison.

The Suquamish continue to live on the Port Madison Indian Reservation. The Suquamish Tribe has 950 enrolled members of which half live on the reservation. The Suquamish have persevered despite attempts by the federal government to assimilate them through land policy; especially the allotment of the reservation into separate parcels assigned to family heads in 1886, the destruction of Old Man House village and scattering of the tribal settlement in 1904, and the mandatory attendance of Suquamish children at Indian Boarding Schools from 1900-1920. The Suquamish presently are experiencing a cultural resurgence and are

planning to begin construction of a new community house in the tradition of Old-Man-House. They continue to exercise their treaty rights to fish and gather shellfish. They are exercising their right to self-governance and currently have 240 employees in a variety of government programs.

**E. ATTACHMENTS TO THIS REQUEST**

- Original Muckleshoot Indian Tribe Access Agreement
- Original Suquamish Tribe Access Agreement

**Muckleshoot Indian Tribe, Port of Seattle, and the Northwest Seaport Alliance  
Maritime Access and Impact Mitigation Agreement**

The parties to this Maritime Access and Impact Mitigation Agreement (“Agreement”) are the Muckleshoot Tribe, a federally recognized sovereign Indian Tribe (“Tribe”), the Port of Seattle, a Washington State port district (“Port”), and the Northwest Seaport Alliance, a port development authority (“Alliance”).

**Recitals**

- A. With regard to fishing activities, the Tribe is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132. Through these treaties, the Tribe has reserved Treaty fishing, hunting, and gathering rights, including the right to take fish at its usual and accustomed fishing grounds and stations. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974); *Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504 (W.D. Wash. 1988). These usual and accustomed grounds and stations include, but are not limited to, the Duwamish Waterway, East Waterway, West Waterway, and Elliott Bay (“Fishing Areas”). These fishing rights and resources are integral to the Tribe’s history and cultural identity and the sustainability of both are therefore essential to the Tribe.
- B. The Port of Seattle is a port district created under the authority of state law by the voters of King County in 1911. Port districts were created in part to regain public control of commercial waterfronts and to create a means for public development of commercial transportation facilities for cargo and passengers.
- C. The Fishing Areas are also used by non-Tribal vessels engaged in Alliance and Port-related business. The waters covered by the Fishing Areas are thus a shared resource with rights and interests critical to the Tribe, the Alliance, and the Port.

- D. The Port owns marine cargo and cruise terminals and commercial marinas (collectively, "Facilities") adjacent to the usual and accustomed Fishing Areas. Tribal fishers in the Fishing Areas may be affected by vessels serving the Facilities. These effects include fishing access conflicts, resulting in diminished fishing opportunities and fishing gear damage. These circumstances directly affect the Tribe and the welfare of its members.
- E. Vessels calling at the Facilities have also experienced access delays on occasion in order to avoid damaging tribal fishing gear. Such delays negatively affect the Facilities' efficiency, reliability, and productivity as well as negatively affecting the Port's and Alliance's strategic competitiveness with other ports.
- F. The Tribe and the Port have worked together since 1995 to address impacts on tribal fishing activities caused by vessels calling at the Facilities. The Tribe and Port created a vessel coordination program to prevent damage to tribal fishing gear and to prevent delays to vessels calling at the Facilities. The program also provided for compensation for lost nets and lost fishing time if a Tribal member's gear suffered damage from vessels moving to or from the Facilities.
- G. The Tribe, the Port, and the Alliance approach this Agreement as governments recognizing and respecting the rights each has in Elliott Bay, the East and West Waterways, and the Duwamish Waterway. Each party is also willing to share the use of these aquatic areas that they recognize as being vital to their respective interests.
- H. The Tribe, the Port, and the Alliance recognize that it is the parties' interests to establish and observe procedures to facilitate cooperation and communication. Such efforts can result in the parties educating each other about their respective interests and values and lead to resolutions of issues as they arise.
- I. Some of the Facilities in the Tribe's usual and accustomed Fishing Areas are under the management of the Alliance, a port development authority created by the Port of Tacoma and the Port of Seattle. The Alliance and the Port's interests are aligned and so the interests of both entities are covered under this Agreement.

The parties therefore agree to the following terms and conditions:

1. Term. This Agreement will be for a term of five years, starting from January 1, 2016.

2. Compensation.

2.1 The Alliance and the Port will collectively pay to the Tribe \$489,500 in 2016 dollars during each year this Agreement is in effect, including annual adjustments representing Consumer Price Index escalation as described in this section. The annual payments will be in quarterly installments on January 1, April 1, July 1, and October 1 each year this Agreement is in effect. However, for the first year of the program, the first payment shall reflect the total sum of quarterly payments that would have been due for the calendar year to date, and will be made to the Tribe within 30 days of signature of the agreement. This payment reflects the recognition of the effect the Alliance's and the Port's business has on the Tribe's rights and interests. The Tribe shall use these funds to maintain its fishery operations and management activities in usual and accustomed Fishing Areas. The Tribe may use these funds to develop and maintain a program coordinating treaty fishing access and commercial vessel access to the Facilities. The amount the Alliance and the Port pay the Tribe will adjust each year by the Consumer Price Index (CPI) for All Urban Consumers, U.S. City Average, all items, as published by the United States Department of Labor, Bureau of Statistics, but in no event to exceed 5% per year.

2.2 During the period when the Washington State Department of Transportation's ("WSDOT") Viaduct Replacement Project generates barge traffic from Terminal 46, the Tribe will process and settle all claims from Tribal members for fishing gear damage and net moves (including lost fishing time) as a result of WSDOT's Terminal 46 barge activity. Net move compensation will be paid out in accordance with paragraph 4 of the "Muckleshoot Indian Tribe and Port of Seattle Vessel Coordination Program Elements 2014 and 2015 Treaty Fishing"

agreement ("2014 Agreement") signed by the parties. Lost fishing time from gear damage will be paid out in accordance with paragraph 5 of the 2014 Agreement. The Tribe will send the Port a report containing the list and amount of the individual claims at the end of each fishing season and request reimbursement for the aggregate amount of the claims. The Port will reimburse the Tribe for the aggregate amount within 15 days of the Port's receipt of the report and request for reimbursement.

- 2.3 The Tribe and the Port agree that the following provision from paragraph 7 of the 2014 Agreement is hereby modified: "Any balance-of-funds established for claims processing which remains after addressing any incidents through December 31, 2015 will be returned to the Port of Seattle unless the term of this agreement has been extended by mutual agreement." The Tribe and the Port further agree that the Tribe will retain those referenced balance-of-funds. The parties agree that these funds may be spent for fisheries mitigation purposes.
3. The Port agrees to provide temporary moorage for two Muckleshoot Indian Tribe coordination program monitoring vessels at Harbor Island Marina, Terminal 102, during the chinook, pink, coho, chum, and steelhead fisheries in Elliott Bay and the Duwamish. In addition, the Port agrees to continue to provide assistance to the Tribe at Fishermen's Terminal and the Maritime Industrial Center relating to treaty fishing activities. Treaty fishing assistance includes temporary fishing boat moorage during the fishing seasons, use of crane equipment for transfer of fishing gear and catch, fish broker/buyer truck access, and use of lift trucks.
4. In order for the activities identified in Section 2 to be successful, the Alliance and Port commit to regular communication and coordination with appropriate Tribal personnel in order to keep the Tribe apprised of anticipated vessel traffic movements to, from, and at facilities covered by this agreement.
5. In further consideration for the Alliance's and Port's payment, the Port, the Alliance, and the Tribe agree to the following:

- 5.1 The Tribe and the Port or the Alliance (as appropriate) will work together to review in-water development/construction projects and related facility plans, environmental analyses and evaluations, and operational documents (to the extent they are not confidential) that may affect treaty rights.
  - 5.2 The Port and/or the Alliance (as appropriate) will consult with the Tribe in advance of permit submittals, including project plans, with the objective of avoiding and minimizing potential negative effects on Treaty fishing access and to assist in efficient Tribe review.
  - 5.3 The Port, the Alliance and the Tribe agree to meet quarterly, or more frequently, as required, with the Tribe's Fish Commission for the purpose of informing each other on issues of mutual interest, including ongoing treaty fishing access and Facilities development and operations. The parties agree that coordination will include projected workload, with the interest of efficient collaborative review of mutually important Treaty fishing access and marine cargo matters.
  - 5.4 The Port, the Alliance and the Tribe, will work together to resolve any questions, maintain clear points of receipt for information transmitted from the Alliance or Port to the Tribe, identify the need for additional documentation, and avoid potential disputes at the lowest possible level of authority as expeditiously as possible. Each side promises to make good-faith efforts to resolve any questions.
6. Dispute Resolution Process: If a dispute regarding the interpretation and implementation of obligations undertaken in this Agreement arises between the Port, the Tribe, and the Seaport Alliance, they will strive to address the matter informally.
- 6.1 Points of Contact. The Port, the Tribe, and the Seaport Alliance will attempt to resolve all disputes at the lowest possible level of authority as expeditiously as possible. Each side promises to negotiate to the fullest extent possible in

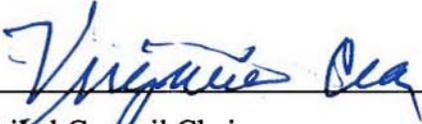
resolving the dispute in order to avoid delays. In the event a dispute is not resolved within fourteen (14) calendar days after one of the parties has notified the other, the dispute shall be elevated for resolution as set forth in paragraph 6.2.

- 6.2 Elevation of Dispute. The disputing party shall elevate the matter that is the subject of the dispute in writing to the Chairperson of the Muckleshoot Tribal Council, the Muckleshoot Fish Commission, the Alliance's Deputy CEO, and to the President of the Port of Seattle Commission. The Chairperson, the Deputy CEO, and/or the Port Commission President or their designees shall meet and confer as many times as necessary during a period not to exceed thirty (30) calendar days in an attempt to resolve the dispute. If the parties are unable to resolve the dispute, the parties shall engage in non-binding mediation using a mutually agreed-upon mediator to be chosen by the parties within fourteen days. The parties will have 45 days from the end of the 30 day consultation between the Tribe's Chairperson, the Alliance's Deputy CEO, and/or the Port Commission President to conclude mediation. The parties shall share equally in the cost of the agreed upon mediation.
7. Agreement Extension: This Agreement may be extended for an additional period not to exceed five years upon mutual agreement by the parties. The extension must be agreed by the parties as evidenced by written approval from all parties not less than 60 days before the expiration date.
8. The Tribe, the Alliance, and the Port agree that nothing in this Agreement is intended to

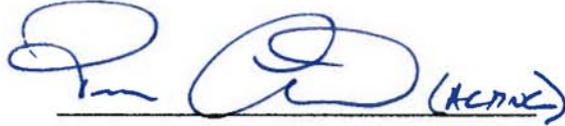
or should be construed to define the nature and scope of treaty fishing rights.

MUCKLESHOOT INDIAN TRIBE

PORT OF SEATTLE

  
\_\_\_\_\_

Tribal Council Chair

  
\_\_\_\_\_ (Kern)

President, Port of Seattle Commission

Date: 7/22/16

Date: 7/12/16

THE NORTHWEST SEAPORT ALLIANCE

  
\_\_\_\_\_ (Kern)

Co-Chair, The Northwest Seaport Alliance

  
\_\_\_\_\_

Co-Chair, The Northwest Seaport Alliance

Date: 7/12/16



**Suquamish Tribe, Port of Seattle, the Northwest Seaport Alliance  
Maritime Access and Impact Mitigation Agreement**

The parties to this Maritime Access and Impact Mitigation Agreement (“Agreement”) are the Suquamish Tribe, a federally recognized sovereign Indian Tribe (“Tribe”), the Port of Seattle, a Washington state port district (“Port”), and the Northwest Seaport Alliance, a port development Authority (“Alliance”).

**Recitals**

- A. The Tribe has federally-recognized treaty reserved rights and resources, including adjudicated usual and accustomed fishing areas in the Duwamish Waterway, East Waterway, West Waterway, Shilshole Bay, Salmon Bay, and Elliott Bay (“Fishing and Resource Areas”). A map of Fishing and Resource Areas is attached to this Agreement and is incorporated by this reference. These fishing rights and resources are integral to the Tribe’s history and cultural identity and the sustainability of both are therefore essential to the Tribe.
- B. The Fishing and Resource Areas are also used by non-Tribal vessels engaged in Port-related business. The waters covered by the Fishing and Resource Areas are thus a shared resource with rights and interests critical to the Tribe, the Alliance, and the Port.
- C. The Port owns marine cargo and cruise terminals and commercial marinas (collectively, “Facilities”) adjacent to the Fishing and Resource Areas. Tribal fishers and members in the Fishing and Resource Areas may be affected by vessels serving the Facilities. These effects include fishing access conflicts, resulting in diminished fishing or cultural opportunities and fishing gear damage. These circumstances directly affect the Tribe and the welfare of its members.
- D. Vessels calling at the Facilities have also experienced access delays in order to avoid damaging tribal fishing gear. Such delays negatively affect the Facilities’ efficiency,

reliability and productivity as well as negatively affecting the Port's strategic competitiveness with other ports.

- E. The Tribe, the Alliance and the Port approach this Agreement as governmental entities recognizing and respecting the rights each has in the Fishing and Resource Areas. The parties are also willing to share the use of these aquatic areas and recognize this as being vital to their respective interests.
- F. The Tribe, the Alliance, and the Port recognize that it is in their interests to establish and observe procedures to facilitate cooperation and communication. Such efforts can result in the parties educating each other about their respective interests and values and lead to resolutions of issues as they arise.
- G. Some of the Facilities are under the management of the Alliance, a port development authority created by the Port of Tacoma and the Port of Seattle. The Alliance and the Port's interests are aligned and so the interests of both entities are covered under this Agreement.

The parties therefore agree to the following terms and conditions:

1. This Agreement will be for a term of 5 years, beginning January 1, 2016.
2. The Port and the Alliance will collectively pay to the Tribe \$489,500 during each year this Agreement is in effect, including annual adjustments representing Consumer Price Index escalation as described in this section. The annual payments will be in quarterly installments on January 1, April 1, July 1, and October 1 each year this Agreement is in effect. This payment reflects the recognition of the effect the Port's and the Alliance's business has on the Tribe's rights and interests. The Tribe shall use these funds to maintain its fishery operations, cultural and management activities in the Fishing and Resource Areas. The Tribe may use these funds to facilitate treaty fishing access to the Fishing and Resource Areas and commercial vessel access to the Facilities. The amount the Port pays the Tribe will escalate each year by the Consumer Price Index for All Urban

Consumers, U.S. City Average, all items, as published by the United States Department of Labor, Bureau of Statistics, but in no event to exceed 5% % per year.

3. In further consideration for the Port's payment, the Port, the Alliance, and Tribe agree to the following:

3.1 The Tribe will undertake timely review of all project permit applications within the Fishing and Resource Areas that the Port and the Alliance submit to regulatory agencies for approval and that require the Tribe's approval.

3.2 The Port and the Alliance will, where possible, consult with the Tribe in advance of permit submittals to obtain Tribe input. Such consultation will be carried out at the meetings described in paragraph 5 below. The types of projects that require review by the Tribe include in-water and nearshore development/construction projects that require the Tribe's review and approval of required permits.

3.3 The Port and the Alliance will also provide the Tribe, upon the Tribe's request, the opportunity to review other types of planning and operational documents (to the extent they are not confidential) that may have an impact on treaty rights but may not require a regulatory permit. The Port and the Alliance will advise the Tribe of any agreements that the Port's tenants make with any other tribes for the Fishing and Resource Areas, to the extent the Port or Alliance is aware of them.

3.4 The Tribe will make its best efforts to complete the review of permit applications within thirty days after the Tribe receives the complete permit application package and any other relevant support documents from the Alliance, the Port or the regulatory agency. The Tribe will inform the Port or Alliance, as appropriate, in writing of its position on each permit application reviewed. The Tribe may, however, require a reasonable extension for permit review due to the complexity of any given permit(s). The Tribe will advise the Port how much extra time it will need to carry out the review after receiving the complete permit application and other relevant

documents. The Tribe and the Port or the Alliance will mutually agree to a time frame for an extension; each extension shall be permit specific. When requested by the Tribe, the Port or Alliance will provide site visits for the Tribe when necessary to complete its permit review. The Port or Alliance will notify the Tribe of any regulatory agency visit to a project site that is the subject to the Tribe's permit review and the Tribe may participate in such visit (unless the agency visit is unannounced).

3.5 The Tribe reserves its rights to file written comments to any regulatory agency or to object to any proposed project permit based on the Tribe's view of the proposed project merits. The parties agree to coordinate at least annually on the projected workload for the following year and maximize opportunities to avoid surges of permit review. The Port or Alliance will also provide monthly project updates and schedule to the Tribe.

3.6 The Port will provide services to the Tribe as the parties may agree and the Port will continue to provide services to the Tribe as required under prior project mitigation agreements. Port services that were negotiated as part of project mitigation agreements are subject to the terms of those agreements and will survive the term of this agreement.

4. Dispute Resolution Process: If a dispute regarding the interpretation and implementation of obligations undertaken in this Agreement arises between the Port or Alliance and the Tribe, they will strive to address the matter informally.

*4.1 Points of Contact.* The Port (or the Alliance) and Tribe will attempt to resolve all disputes at the lowest possible level of authority as expeditiously as possible. Each side promises to negotiate to the fullest extent possible in resolving the dispute in order to avoid delays. In the event a dispute is not resolved within fourteen (14) calendar days after one of the parties has notified the other, the dispute shall be elevated for resolution as set forth in paragraph 4.2.

*4.2. Elevation of Dispute.* The disputing party shall elevate the matter that is the subject of the dispute in writing to the Chairperson of the Suquamish Tribal Council and to the Deputy CEO of the Alliance or the COO of the Port, as appropriate. The Chairperson and the Deputy CEO of the Alliance (or the COO of the Port, as appropriate) shall meet and confer as many times as necessary during a period not to exceed thirty (30) calendar days in an attempt to resolve the dispute. If the parties are unable to resolve the dispute, an alternative dispute resolution method(s) shall be used by mutual agreement prior to initiating legal action. The parties will have 45 days from the end of the 30 day consultation between the Tribe's Chairperson and Deputy CEO (or the Port's COO) to conclude alternative dispute resolution. For each dispute, the parties shall agree on the type of alternative dispute resolution method, where such method is timely, whether the outcome of the dispute resolution process shall be binding, and the method for enforcing such outcome. The parties shall share equally in the cost of the agreed upon alternative dispute resolution method.

*4.3 Exhaustion of Dispute Resolution Steps Required.* No party shall have the right to seek relief in a court of competent jurisdiction until and unless the party exhausts the dispute resolution process stated in paragraphs 4.1 and 4.2. Nothing whatsoever in this Agreement is an express waiver of the Tribe's sovereign immunity.

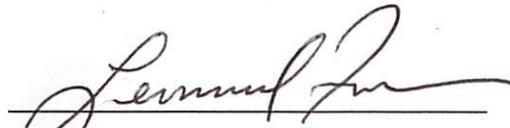
5. The Port or the Alliance and the Tribe agree to meet at least semi-annually with the Tribe's Fisheries Department for the purpose of updating each other on issues of mutual interest, including ongoing treaty fishing access and Facilities development and operations.
6. The Tribe will make good faith efforts to abstain from discussing publicly or to the media regarding matters relating to any Port or Alliance projects that are in a pre-permit or due diligence phase and when the Port or Alliance has not publicly commented on such projects.

7. The Tribe, the Alliance, and the Port agree that nothing in this Agreement is intended to or should be construed to define the nature and scope of treaty fishing rights.
8. Agreement Extension: This Agreement may be extended for an additional period not to exceed five years upon mutual agreement by the parties. The extension must be agreed by the parties as evidenced by written approval from all parties not less than 60 days before the expiration date.
9. The Port and the Alliance shall not consider one Tribe a most favored nation over another Tribe where equal reserved treaty rights exist in the Fishing and Resource Areas. In the event that any other Tribe is offered more favorable financial terms covering the subject matter of this Agreement, the Port, the Alliance and the Suquamish Tribe shall immediately incorporate the more favorable term(s) as an automatic written amendment to this Agreement after the parties document the new term(s) in a memorandum signed by the Chairperson of the Tribe, the Deputy CEO of the Alliance, and the COO of the Port.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this

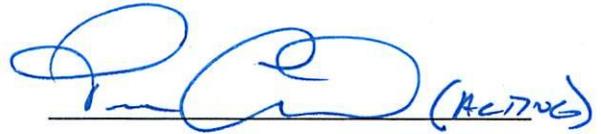
Agreement as of the day and year last written below.

SUQUAMISH TRIBE

  
By \_\_\_\_\_

Date: 8-8-16

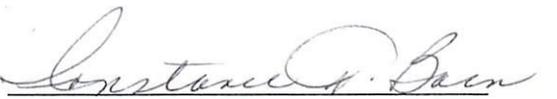
PORT OF SEATTLE

  
President, Port of Seattle Commission

Date: 7/12/16

THE NORTHWEST SEAPORT ALLIANCE

  
Co-Chair, The Northwest Seaport Alliance

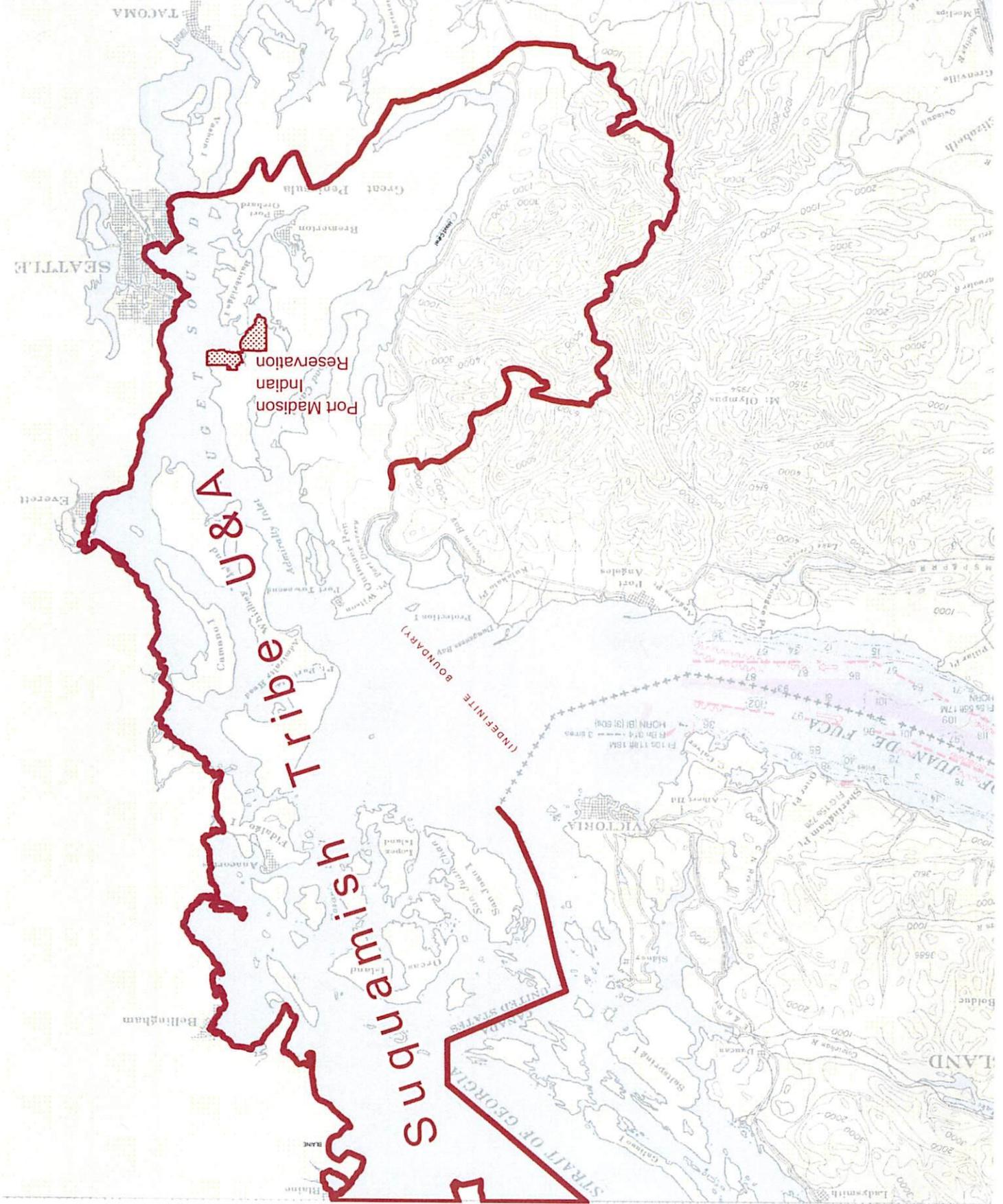
  
Co-Chair, The Northwest Seaport Alliance

Date: 7/12/16



Print Date: 2016-03-31

This map is for discussion purposes only, and does not fully portray the exact extent and nature of the Squamish Tribe's U&A.  
- UNITED STATES v. WASHINGTON, No. 5 Order, April 18, 1975  
"The usual and accustomed fishing places of the Squamish Tribe include the marine waters of the Puget Sound from the northern tip of Vashon Island to the Fraser River including Haro and Rosaro Straits, the streams draining into the western side of this portion of Puget Sound and also Hood Canal."  
Squamish Tribe U&A:



**U & A**  
**Tribe**  
**Squamish**

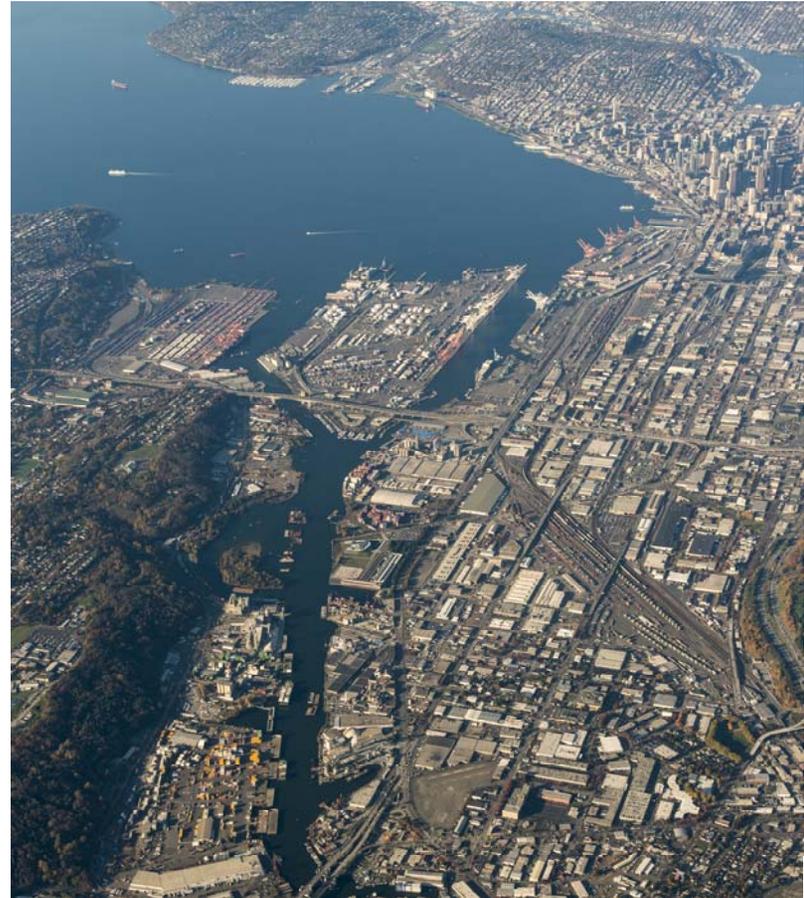


Item No: 6A\_Supp  
Date of Meeting: February 02, 2021

# Briefing on Renewal of 2016 Tribal Maritime Access and Impact Mitigation Agreements

# Agreement Intent

- 1) Acknowledging federally recognized treaty fishing rights and resources in Elliott Bay, the East and West waterways, and in the Duwamish Waterway; and
- 2) Ensuring consistent access to marine cargo facilities, cruise terminals, and commercial marinas by vessels engaged in port-related business.



# Background



- Historical Port of Seattle approach pre-NWSA
- Original 2016 Maritime Access and Impact Mitigation Agreement
- Successful implementation and ongoing relations

# Agreement Goals

- Establishing a broader framework that confirms a mutual understanding, respect and commitment to our government-to-government relationship.
- Acknowledging operational impacts to Treaty-protected resources and reaffirming the NWSA/port mission that requires operational reliability and productivity.
- Continuing the more recently established principle that expenditure of any mitigation funds is more effectively prioritized and managed by each Tribe.
- Streamlining project permit reviews with process-clarity and review-timeframes that respect treaty rights and support port strategic competitiveness.
- Achieving a fair, sustainable level of mitigation compensation and creating additional value with the certainty of a longer-term agreement.

