



Allyson Brooks Ph.D., Director
State Historic Preservation Officer

March 30, 2017

Mr. Jesse Waknitz
Port of Port Angeles
338 W. First Street
Port Angeles, WA98362

In future correspondence please refer to:

Project Tracking Code: 2017-03-02268

Property: Port of Port Angeles DNS for Terminal 7 & Site Redevelopment and Stormwater Conveyance Improvements

Re: Archaeology – Professional Archaeological Monitor and archaeological Monitoring and Inadvertent Discovery Plan (MIDP) Requested

Dear Mr. Waknitz:

Thank you for contacting the Washington State Historic Preservation Officer (SHPO) and Department of Archaeology and Historic Preservation (DAHP) and providing documentation regarding the above referenced project. The project area is adjacent to archaeological site 45CA523Tse-whit-zen Village Site and archaeological resources associated with this site may extend into the project area. Depths of fill vary across the project area and it is likely that precontact archaeological resource will be discovered during ground disturbing activities. Please be aware that archaeological sites are protected from knowing disturbance on both public and private lands in Washington States. Both RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from our Department before excavating, removing, or altering Native American human remains or archaeological resources in Washington. Failure to obtain a permit is punishable by civil fines and other penalties under RCW 27.53.095, and by criminal prosecution under RCW 27.53.090.

Chapter 27.53.095 RCW allows the Department of Archaeology and Historic Preservation to issue civil penalties for the violation of this statute in an amount up to five thousand dollars, in addition to site restoration costs and investigative costs. Also, these remedies do not prevent concerned tribes from undertaking civil action in state or federal court, or law enforcement agencies from undertaking criminal investigation or prosecution. Chapter 27.44.050 RCW allows the affected Indian Tribe to undertake civil action apart from any criminal prosecution if burials are disturbed.

Identification of archaeological resources during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. We request that a professional archaeologist be onsite to monitor ground disturbing activities including those for outfalls, lift stations, pressure mains and grading. An MIDP should be prepared and submitted to DAHP and the interested Tribes for review prior to ground disturbance.



Thank you for the opportunity to comment on this project and we look forward to receiving the MIDP for review. Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Gretchen Kaehler". The signature is written in a cursive style and is followed by a long horizontal flourish.

Gretchen Kaehler
Assistant State Archaeologist, Local Governments
(360) 586-3088
gretchen.kaehler@dahp.wa.gov

cc. William White, Archaeologist, LEKT



LOWER ELWHA KLALLAM TRIBE

ʔəʔtɬə nəxʷsʔayəm "Strong People"

2851 Lower Elwha Road
Port Angeles, WA 98363

Phone: 360.452.8471
Fax: 360.452.3428

July 21, 2017

Port of Port Angeles
Attn: Jesse Waknitz
338 W. First Street
Port Angeles, WA 98362
jessew@portofpa.com

Re: Lower Elwha Klallam Tribe's Comments on the Port of Port Angeles' MDNS for the Terminal 7 Site Redevelopment and Stormwater Conveyance Improvements Project

Dear Mr. Waknitz:

The Lower Elwha Klallam Tribe (the "Tribe") is in receipt of the July 7, 2017 Revised and Reissued Mitigated Determination of Non-Significance ("MDNS") from the Port of Port Angeles (the "Port") for its Terminal 7 Site Redevelopment and Stormwater Conveyance Improvements Project (the "Project"). The Tribe submits these comments in response to the MDNS as well as the June 29, 2017 Revised State Environmental Protection Act ("SEPA") Environmental Checklist and its attachments. A copy of these comments will be provided to the City of Port Angeles (the "City") and the State Department of Archeology and Historic Preservation (the "DAHP").

The Tribe does appreciate the Port taking the time to meet with the Tribe's representatives on July 19, 2017, to discuss and share additional information about the proposed Project. The Tribe also appreciates the Port's modifications made to the proposed Project that were intended to protect the Tribe's important interests in this culturally sensitive area. The Tribe remains concerned that the modifications made to date do not do enough to protect this culturally sensitive area from unnecessary, and potentially preventable, harms.

During the Washington State Department of Transportation Graving Dock project (located at the Tribe's Tsewhitzen property (listed as a state Archeological Site and on the National Register of Historic Places) some burials were located within 2.5 feet of the surface elevation. Over 20 of the burials were found between 2.5 and 5 feet of the surface elevation. It should be noted that the surface elevations used here are based on 2012 LiDaR. However, the Port's Project is located immediately adjacent to the Tribe's Tsewhitzen property and the elevation contours on the 2012 LiDaR are similar. The Port is planning to regrade the entire 10 acre Project site at depths ranging

from one to 4 feet. The Port will also be installing 1,100 feet of force main at a depth of 4 feet below the ground surface, as well as a lift station, valve vault and settling vault at a depth between 12 and 18 feet below the ground surface.

The ground disturbing work proposed by the Port for this Project is likely to have a probable significant adverse impact on the environment, primarily to archeological resources and human remains associated with the Tribe. The Port has made an effort to decrease the overall scope of the regrading that will be done for the project. However, the entire area will still need to be monitored for archeological resources during this regrading. In addition, the force main, lift station, valve vault and settling vault have a very high potential to impact archeological resources and human remains given the density in which those features were found at the adjacent Tsewhitzen site, which is assumed to extend both east and west of the Tribe's property.

Consistent with Section 9.6.3 of the August 14, 2006 Settlement Agreement among the State of Washington, Lower Elwha Klallam Tribe, City of Port Angeles and Port of Port Angeles (the "2006 Settlement Agreement"), the Tribe will expect to have its archeologist and Tribal member monitors on site to monitor all ground disturbing work during the project. The Tribe's archeologist and Tribal member monitors must also have the authority to direct the Port's contractor to stop work or modify excavations to expose suspected cultural resources. The Port's Cultural Resources Monitoring and Discovery Plan for the Terminal 7 Site Redevelopment and Stormwater Conveyance Improvements Project dated June 27, 2017, must be amended to reflect this requirement.

In addition, Section 9.6.3 of the 2006 Settlement Agreement requires that the Tribe be consulted on the proposed mitigation plan for ground disturbing projects that are to occur in a culturally sensitive area of interest to the Tribe. The area immediately adjacent to the Tribe's Tsewhitzen property, which is listed on the National Register of Historic Places qualifies as such a culturally sensitive area. One of the areas evaluated for the National Register listing is known to extend into the Project area, but the eastern extent of that area is unknown. The Tribe's position is that the consultation on mitigation should occur in advance of an MDNS being issued that relies upon a monitoring and discovery plan before the Tribe has had an opportunity to review or consult on that plan, or the draft SEPA Environmental Checklist, on a government-to-government basis with the Port. A determination of non-significance cannot be made in the absence of consultation with the Tribe that will be most impacted by the decision.

Specifically, the Tribe does not agree that intact cultural deposits and burials are not likely to be encountered at depths of four feet or less. The Tribe's prior experience in the Project area has demonstrated otherwise.

The 2006 Settlement Agreement and state law, RCW 27.53, require an archeological excavation permit from the DAHP prior to the disturbance of any archeological resource. The Tribe requests that the Port conduct an archeological survey of the Project area, particularly the area adjacent to the archeological area that extends onto the Port's property (this area can be more particularly identified in a confidential setting), and the areas around the proposed 1,100 foot trench for the force main, the proposed lift station, valve vault, settling vault, and asphalted roadway. If the results of the testing are positive, then the Port must seek an Archaeological Excavation Permit from the DAHP. Given the very high probability of archeological resources in the Project area, this testing should be completed prior to the initiation of the Project.

Jesse Waknitz
July 21, 2017
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The Tribe looks forward to continued communication on this matter with the Port. Please do not hesitate to contact me at (360) 452-8471, ext. 7436 with any questions or requests for additional information.

Sincerely,



Samuel D. Hough
Associate Tribal Attorney
Lower Elwha Klallam Tribe

CC: Dr. Allyson Brooks, SHPO
Gretchen Kaehler, DAHP
Nathan West, Director of Community and Economic Development



LOWER ELWHA KLALLAM TRIBE

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2851 Lower Elwha Road
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June 26, 2017

Nathan A. West, AICP
Director of Community and Economic Development
City of Port Angeles
nwest@cityofpa.us

Re: Lower Elwha Klallam Tribe's Comments on the Port of Port Angeles' JARPA for the Terminal 7 Site Redevelopment and Stormwater Conveyance Improvements

Dear Mr. West:

Thank you for the opportunity to comment on the Port of Port Angeles' Joint Aquatic Resources Permit Application ("JARPA") for the Terminal 7 Site Redevelopment and Stormwater Conveyance Improvements. The Lower Elwha Klallam Tribe ("Tribe") is concerned about the failure of the Port of Port Angeles ("Port") to adequately address the strong likelihood that cultural resources of the Tribe, including archeological artifacts, features, and burials of ancestral human remains, will be encountered during the extensive ground disturbing activity the Port plans to conduct at Terminal 7. As you know, the Tribe's ancestral Tse-whit-zen village site, which was the focus of local, regional and national attention just a little over a decade ago, is located in the area where the Port is planning to conduct ground disturbing work in Terminal 7. The portion of this cultural property that is located on the property owned by the Tribe on Marine Drive was listed on the National Register in October 2014. The site is known to extend to the east and west of the property owned by the Tribe.

In Section 5n of its JARPA the Port did not even mention the Tribe's Marine Drive parcel as an adjacent property. This section of the JARPA requests a description of how adjacent properties are currently used. The Port's response does not include that the Tribe's Tse-whit-zen village site is listed on the National Register of Historic Places the Tribe's cultural use of the property as a cemetery.

The Port did not provide an adequate description of the Tribe's historic use of the Tse-whit-zen property in Section 9j of its JARPA. Tse-whit-zen was a large village site that was utilized by the Tribe's ancestors for over 2,700 years. The earliest confirmed habitation at the site dates back to approximately 750 BC. In addition to a high volume of archeological artifacts, the area contains

Nathan West
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a large number of burials, with 335 human remains recovered on the Tribe's parcel during the SR 104 Hood Canal Bridge East Half Replacement Project in 2004.

The Port did not prepare an adequate archeological site assessment report for its Terminal 7 stormwater project. In Section 9k of its JARPA, the Port listed studies conducted for previous projects. The response mentions the Tse-whit-zen village site as an adjacent property. Had adequate investigation been conducted, the Port's response would have identified the Tse-whit-zen village site as extending throughout Terminal 7. The Tribe requests that the Port be required to hire a consulting archeologist to prepare an archaeological site assessment report for the project. The Tribe further requests the opportunity to consult with the City over the results of the report to determine whether, or to what extent, additional studies should be conducted for the project.

There is a very strong likelihood that archeological resources and human remains will be discovered as a result of the significant ground disturbing activities proposed by the Port. For this reason, the Tribe is requesting that an archaeological monitoring and inadvertent discovery plan be prepared and submitted to the City, the Washington Department of Archaeology and Historic Preservation (DAHP) and the Tribe for review and approval prior to any ground disturbance. The Tribe is also requesting that the Port be required to hire a professional archeologist and a sufficient number of cultural resource monitors from the Tribe to be on site and observe all of the ground disturbing activities. The archaeological monitoring and inadvertent discovery plan and the cultural resource monitoring contract between the Port and the Tribe must provide the professional archeologist and the cultural resource monitors with the authority to immediately halt all ground disturbance if any potential artifacts or human remains are discovered. In the event of such a discovery, the Port must notify the City, and the City will in turn notify the Tribe, the DAHP and the County Coroner as required by the archeological monitoring and inadvertent discovery plan. Ground disturbing activities will not resume until the archeological resources are properly protected. Finally, the professional archeologist should be required to submit a detailed professional report to the City and the Tribe upon completion of the ground disturbing activities.

The Tribe looks forward to continued communication on this matter with the City. Please do not hesitate to contact me at (360) 452-8471, ext 7436 with any questions or requests for additional information.

Sincerely,



Samuel D. Hough
Associate Tribal Attorney
Lower Elwha Klallam Tribe