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The Tulalip Tribes are federally recognized successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands signatory to the Treaty of Point Elliott.

October 4, 2019

Honorable Christine Cook
City Council President
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275

Misty Blair, Senior Shoreline Planner, WA Department of Ecology

RE: Tulalip Tribes Comments on Proposed Ordinance No. 1427 Shoreline Management Program (SMP) Update.

These comments are provided for the record of City of Mukilteo's 2019 Shoreline Master Program Update. The Tulalip Tribes 'Tribes' owns Lot 7 of the Elliot Point Binding Site Plan, which is recorded under recording Number 201701205001, commonly known as the Mukilteo Tank Farm site at 1st Street, Mukilteo, WA. The Tulalip Tribes strongly objects to the proposed limitations on Tulalip Tribal parcel that impose conditions which restrict Tulalip's options on the property in ways which do not apply to the adjoining federal and state government parcels.

The Tulalip Tribes is a federally recognized Indian tribe, and the successor in interest to the Snohomish, Snoqualmie, Skykomish and other tribes and bands, who were signatory to the 1855 Treaty of Point Elliott. In the Treaty, the Tulalip Tribes reserved the Tulalip Indian Reservation, as a permanent homeland in exchange for ceding millions of acres of land to the United States. Tulalip also reserved important treaty rights off the Reservation including the right to continue fishing, hunting, and gathering throughout Tulalip's traditional territory, which spans the entirety of Snohomish County and beyond. Under Article VI of the U.S. Constitution, the Point Elliott Treaty and the rights reserved by the Tulalip People are "the supreme law of the land." The Shoreline Management Act also specifies that it shall not "affect any rights established by treaty to which the United States is a party." RCW 90.58.350.

This shoreline site is of major cultural and historical significance for the Tulalip Tribes. The property is located at the encampment site for the Treaty of Point Elliot. Cultural resources surveys of this site establish that it was occupied and used by s'dohodsh people (for whom Tulalip is the successor) for over 1000 years prior to Washington statehood.

The Tulalip Tribes acquired the Tank Farm parcel in negotiations with the Port of Everett and WSDOT in 2014 as part of the resolution of claims resulting from the construction of the new Ferry terminal at the Point Elliott treaty and usual and accustomed fishing site. At that time, Tulalip was also in discussions with the City of Mukilteo and its Planning Department, who represented that they supported raising height restrictions to 35' on the Tulalip parcel to create more equity with the WSDOT and NOAA developments on the site. We are perplexed that the City now appears to rescinding that commitment.

Tulalip Tribes has been discussing a Development Agreement with the City of Mukilteo for several years. Tulalip Tribes has entered into an agreement with Port of South Whidbey to develop a parking lot as a temporary use, but has decided to abandon it at this time. Tulalip looks forward to working with the City on responsible development of the site. However, it is important that the Tulalip government is not unduly restricted by rules that do not apply to the other government projects at the tank farm site.

The Tribes considers the City's response to the Department of Ecology's comments, as articulated in Ecology's August 2, 2019 Determination of Initial Concurrence regarding changes in the City's SMP Periodic Review, unreasonable in holding the Tribes to standards that others with similar properties in the former Tank Farm areas will not be held to. The Tribes also object to the current height limits in the 200 foot shoreline setback, because it appears the Tribes' property will be the only one subject to them.

1) The City's 75 foot setback for non-water dependent uses constitutes a potential excessive regulatory burden on the Tribes' ability to use the property that does not apply to other properties within the same Urban Waterfront Shoreline Environment east of Park Avenue.

Configuration of Tribes' and other Tank Farm Properties

The tank farm parcels, including the Tribes' property, are sandwiched between the shoreline and 1st Street and First Burlington Northern Railroad. Their depth dimension (perpendicular to the shoreline) is much less than their length (parallel to the shoreline).

The Tribes' property (Lot 7) has an average depth of 195 feet including tidelands water ward of the Ordinary High Water Mark. When the tidelands, the City's promenade, and its setback are subtracted 135 feet of property remain. Once the 75 foot setback from the OHWM is applied the usable depth of the property shrinks to a mere 100 feet. Applied across the upland area of the property that is a, approximately 43% reduction of usable upland area. This standard applies to non-water dependent uses.

To create more fairness for properties with this sort of configuration other jurisdictions in Puget Sound have provisions that allow for a proportional setback (percentage of the property depth) as an option, rather than a fixed distance setback, to reduce the potential economic burden of an unreasonable standard. (Example: City of Kirkland SMP)

When the City proposed to allow parking East of Park Avenue within the shoreline setback consistent with its 2016 Master Plan it probably did so because of the area's industrial history, severely impacted physical condition, and unique configuration of lots. When the Department of Ecology points out that the "75 feet from the ordinary high water mark standard currently applies to all shorelines within the City", it is simply not true for the Tank Farm properties.

Unfair application of the Law

A closer look at the Tank Farm Binding Site Plan reveals that it is highly unlikely that other tracts will be subject to the 75 foot setback making it a disproportionate burden on the Tribes' property. NOAA, a federal facility occupies Lot 1 and is exempt from City and State Laws. Lots 2, 4, and 5 are owned by Washington State Ferries and Lots 6 is owned by Sound Transit. Both are likely considered Essential Public Facilities and therefore will be exempt from the City's setback standards. Lot 9 owned by the Port of Everett already has a parking lot within 75 feet of the OHWM.

That leaves the Tribes' property as the single tract that may be subject to this standard. It has been suggested that the Tribes could apply for a variance to this standard once it submits an application for development of the site. Standards for granting a variance typically consider the unique size, shape, and topography of a single property in relation to surrounding properties that would make it impossible to meet a general standard. This test cannot be applied in this situation, since adjoining properties are very much alike. It is ironic that the Tulalip Tribes, who were stewards of this shoreline for countless generations, are being singled out with parcel restrictions that are not being applied to NOAA or the Ferry terminal.

What is and what is not a water-dependent Use?

State Law defines a water-dependent use as follows.

(41) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

The Tulalip Tribes have consistently stated their intention to continue to discuss options for flexibility for future uses on the Former Tank Farm site, because they simply have not decided on a future use. It should be pointed out that the Coast Salish Tribes' relationship to shorelines is an inherent part of who they are and it is difficult to imagine that Tulalip Tribes, who regard this waterfront property as a significant historic site, would not select a use with a direct tie to

the Tribes' water-dependent culture, history, and/or management and harvest of treaty resources.

Is parking a water-dependent use?

In commenting on the City's regulation the Department of Ecology cites that "parking is not a water-dependent use". However it fails to point out additional language in the State Law that regulates parking as follows. WAC 173-26-241(3)(k)

Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

In joining the Port of South Whidbey in proposing a parking lot as a temporary use of the property the Tribes proposed a use that directly supports the new Ferry terminal in providing parking for commuters. At the same time it provides additional parking to the City's waterfront promenade, which is a popular public feature and recreational use along the waterfront.

Further State Law elaborates on the issue of parking facilities as follows.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

In this particular proposed parking scenario the parking lot is not replacing unique and fragile shoreline features, but is replacing stark concrete footings. The parking lot as proposed would have created an uplift in ecological function on this stretch of shoreline by providing stormwater runoff treatment where currently none exists. Several dozen trees in the parking lot would have provided habitat and the many other benefits trees provide, as well as providing visual relief from the concrete remnants of the Tank Farm.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

Are parking lots ever a preferred use? They are a necessary accessory use to our automobile centric society. Due to the steep topography of much of the Mukilteo waterfront the Tank Farm parcels are flat areas that lend themselves to this use, because there aren't a lot of alternative flat properties in the vicinity of the shoreline.

Would we all prefer to have green waterfront parks? Of course we would! But it is not fair to require this at the expense of one water front property owner's disproportionate loss of economic opportunity from their property.

2) The existing 25 foot Building height requirement within the 200 foot Shoreline jurisdiction unfairly singles out the Tribes' property, while all existing structures in the Urban Waterfront Shoreline Environment exceed this height.

The 25 foot height limitation for properties in the 200 foot shoreline setback dates back to 2011 and is codified in Chapter 17B.20.

BULK REGULATIONS

Zone	Maximum Building Height^{1, 15}
WMU	Varies ¹¹

Water Front Mixed Use (WMU)

11. Height of Buildings.

a. The height of buildings within the two-hundred-foot shoreline jurisdiction shall be a maximum of twenty-five feet with no more than two stories in order to allow for a pitched roof no less than a 6:12 pitch over fifty percent of the roof area. No flat roofs are allowed.

In 2014 the Mukilteo Planning Commission held a workshop to study the height limitations presumably in conjunction with the proposed new ferry terminal. The City had prepared a Waterfront Redevelopment View Analysis to study the visual impact of different heights for potential development on the waterfront.

What is deceptive regarding the view analysis is that the respective 25 foot and 35 foot building envelope comparisons show the "structure" occupying the entire lot (and in some cases even areas beyond the lot), entirely disregarding bulk standards building setbacks from property lines and other common bulk standards the Tribes property would be subject to.

17B.20.020 Bulk matrix.

13. Breaks in the facade and building footprint along the waterfront shall be included to retain water views from Front Street and for pedestrian access to the waterfront promenade and beach, as regulated by the shoreline master program plan. All new buildings or additions to buildings located on land areas adjacent to Possession Sound and Port Gardner Bay shall be designed and constructed in such a manner that each floor provides the following amount of horizontal and vertical space open to public access and open to vistas of the sound and the bay:

a. On the first floor, twenty percent of lot width shall be open to public access and vistas to and of Possession Sound and Port Gardner Bay;

- b. The equivalent of twenty-five percent of lot depth shall be open for public vistas on all floors above the first;*
- c. A structure located on the north side of Front Street may not extend for more than one hundred lineal feet on the first floor without being interrupted by a space at least ten feet in width that is open to public access and vistas to and of Possession Sound and Port Gardner Bay.*

The following existing structures have height dimensions as follows: (Stan Reeves with the Port of South Whidbey)

Losvar Condominiums, 37'

Ivar's Restaurant, up to 30'

Silver Cloud Hotel, 41'

NOAA, exempt from municipal code, new facility will be 35'

WSDOT Ferry Terminal, exempt from municipal code, new facility will be in excess of 35'

Japanese Gulch, City owned, plan is for an estuary park, no commercial development

Tulalip Tribes property, undeveloped

It is clear that these rules are likely to apply only to the Tribes' property. According to the City's nonconforming rules, 17B.68.050, all existing structures will be allowed to re-develop as long as they will not be enlarged or expanded. Those that are exempt from the municipal code will follow their own rules.

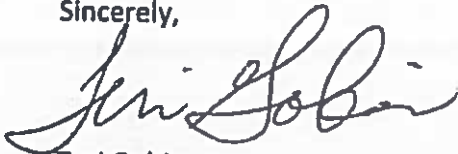
At the Tribes' property the obstruction of views is hardly a legitimate reason for the City's overly restrictive 25 foot standard, because land ward of the BNRR the topography rises steeply and Sound views of residential properties up on the hill are not significantly affected by the height of waterfront development. Moreover, the former tanks on the property were 45+ feet tall. In most of Snohomish County the 35 foot building height is standard height limit in residential areas, which makes Mukilteo's 25 foot limitation an unconventional choice for an urban standard considering that urban areas tend to allow more intensive uses in commercial or mixed use waterfront zones.

Again, the Tribes' objections to provisions in the City's Shoreline Management Plan Update take issue with the City's unfair application of the law on waterfront properties that are part of the former Tank Farm imposing restrictions on the Tribes' opportunity to develop their property to its full potential. The otherwise facially neutral appearing laws will have a disparate adverse impact essentially only on the Tulalip Tribes' Property.

We thought we shared a common vision and interest in re-developing and restoring the Mukilteo Tank Farm site together with the City of Mukilteo, but are currently very disappointed at the lack of consideration toward the Tulalip Tribes.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Teri Gobin". The signature is fluid and cursive, with the first name "Teri" and last name "Gobin" clearly distinguishable.

Teri Gobin
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Cc:

Julia Gold, Planning Manager, Tulalip Tribes
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