

## MEMORANDUM OF AGREEMENT

BETWEEN THE U.S. ARMY CORPS OF ENGINEERS AND

THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER

SUBJECT: National Historic Preservation Act Section 106 Memorandum of Agreement for Resolution of Adverse Effects to Site 45-KI-1285, City of Kent, King County, Washington, U.S. Army Corps of Engineers, Corps Reference Number USACE NWS-2017-912 (Agreement).

1. WHEREAS, the U.S. Army Corps of Engineers (Corps), Seattle District Regulatory Branch received a Department of Army (DA) permit application from King County Flood Control District (KCFCD) associated with the Lower Russell Levee Setback project (the Project) located on City of Kent (City) Land, at Sections 10 and 11, Township 22 North, Range 10 East, Des Moines USGS 7.5' quadrangle, King County, Washington; and
2. WHEREAS, the Washington State Recreation and Conservation Office (RCO) is providing substantial funding for the project through the Puget Sound Acquisition and Restoration program; and
3. WHEREAS, a DA permit, pursuant to Section 404 of the Clean Water Act, is required from the Corps to conduct activities related to the construction of the undertaking; and
4. WHEREAS, the Corps issued KCFCD a DA permit, pursuant to Section 404 of the Clean Water Act, on February 6, 2020; and
5. WHEREAS, the Corps' issuance of a DA permit is subject to review under Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (NHPA); and
6. WHEREAS, the area of potential effects (APE) includes all areas of permitted in-water activity, including upland areas where work is directly associated, integrally related, and would not occur but for the in-water authorized activity associated with the DA permit, which includes the entire construction footprint of the project; and
7. WHEREAS, documentation on the findings for identification, assessment of eligibility, and determination of effects associated with the Undertaking include the reports titled: 1) *Cultural Resources Assessment for the Lower Russell Road Levee Setback Project, King County, Washington*, dated November 23, 2016; 2) *Cultural Resources Assessment for the Lower Russell Levee Setback Project, King County, Washington*, dated March 16, 2018; 3) *Addendum/Technical Memorandum—Cultural Resources Assessment for the Lower Russell Levee Setback Project: Results of Supplemental Near-Surface Explorations at Archaeological Site 45KI1285, King County, Washington State*, dated January 31, 2019; and 4) *Archaeological Resources Monitoring Plan for the Lower Russell Levee Setback Project, King County, Washington State*, dated January 31, 2019, as well as by Corps' letters to SHPO dated February 6, 2019, and SHPO's response letters dated February 6, 2019, and these documents are incorporated into the Agreement by reference; and

8. WHEREAS, the Corps identified archaeological site 45-KI-1285 (Van Doren's Landing/Maddocksville (1861–early 1900s), which included the deeply buried thermal Feature 1, and Prentice Nursery (1920s–1960s) as eligible for listing in the National Register of Historic Places (NRHP) under Criterion D, and previously recorded 45-KI-206/HPI 40975 (Maddocksville Landing, not relocated), previously recorded 45-KI-1195 (Historic artifact scatter, not relocated), 45-KI-1284 (Historic artifact scatter), the Lower Russell Road Levee (HPI 708213), and a residence (HPI 710242) as not eligible for listing in the NRHP; and

9. WHEREAS, the Washington State Department of Archaeology & Historic Preservation (DAHP), also known as the Washington State Historic Preservation Officer (SHPO), concurs 45-KI-1285 is eligible for listing in the NRHP, and the remaining properties are not; and

10. WHEREAS, in addition to KCFCD and SHPO, the Corps notified the Muckleshoot Indian Tribe (Muckleshoot), the Snoqualmie Indian Tribe (Snoqualmie), the Stillaguamish Tribe of Indians (Stillaguamish), the Suquamish Tribe (Suquamish), the Tulalip Tribes (Tulalip), , the Kent Historical Society; the King County Historic Preservation Program (KCHPP), RCO, and the City about this Project; and

11. WHEREAS, prior to construction, the Corps and SHPO agreed the Undertaking would have no adverse effect to historic properties with a requirement for archaeological monitoring; and

12. WHEREAS, during construction, 49 buried features associated with a precontact component of 45-KI-1285 were discovered and the Corps consulted the consulting parties to resolve adverse effects under 36 CFR 800.13 (Post-review Discoveries); and

13. WHEREAS, the Corps notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination and the Council has not opted to participate in the consultation; and

14. WHEREAS, the Muckleshoot, Snoqualmie, Stillaguamish, and Suquamish tribes (collectively “the Consulting Tribes”), KCHPP, RCO, and the City expressed a desire to consult on a resolution of adverse effects, and along with the Corps, SHPO, and KCFCD are hereafter referred to as “the Consulting Parties”; and

15. WHEREAS, because of its role and responsibilities as the applicant for the DA permit, the Corps has invited KCFCD to sign this Agreement as an invited signatory; and

16. WHEREAS, because of its role and responsibilities as the landowner and caretaker of the Van Doren's Park and surrounding habitat area and the proposed mitigation at the park and habitat area, the Corps has invited the City to sign this Agreement as an invited signatory; and

17. WHEREAS, based on their stated interest, the Corps has invited Muckleshoot, Stillaguamish, Suquamish, KCHPP, and RCO to sign this Agreement as concurring parties; and

18. WHEREAS, the Corps has consulted with the Consulting Parties in accordance with Section 106 of the NHPA to resolve the adverse effects of the undertaking on historic properties;

NOW, THEREFORE, the Corps and SHPO (collectively the “Parties” and individually the “Party”) agree that should the undertaking move forward to construction, the following Corps-enforced stipulations shall resolve adverse effects to historic properties associated with the undertaking, and that these stipulations shall govern the Project and all of its parts unless this Agreement expires or is terminated.

### **Stipulations**

The Corps shall ensure that the following stipulations are implemented:

- I. Data Recovery and Analysis. Forty-nine archaeological features were excavated at 45-KI-1285 during construction. Analysis and reporting will be completed following the memo titled *Lower Russell Levee: Proposal to complete research and reporting at 45KI1285 with accompanying budget*, dated November 11, 2021, and this plan is included as if attached and incorporated by this reference. The precontact component of 45-KI-1285 holds the potential for addressing research topics of local and regional interest to the scientific community, Indian tribes, and the general public, in conjunction with other recorded sites in the vicinity.
- II. Site Preservation. During construction, the project was redesigned to preserve Features 5–7, 9–11, 18, and part of Features 17 and 19 at 45-KI-1285. Ecofabric and soil fill were placed over the features to protect them, and the slopes were engineered to minimize erosion. Within six months of completion of data recovery and analysis activities identified in Stipulation I of this Agreement, KCFCD will update the archaeological site form for 45-KI-1285 to document these features are intact and preserved for the future. The City, as the landowner and caretaker of the land within which the features rest, acknowledges that archaeological resource 45-KI-1285 is preserved within the land, and any alteration, excavation, or development outside of those identified in Stipulations I-IV dictated in this Agreement will require a permit pursuant to RCW 27.53. In such event, the City, or any contractor or subcontractor of the City, agree to not proceed without such a permit. The City also agrees that it will evaluate and consider improvements DAHP, King County, and interested Consulting Parties may recommend to the City to help reduce negative effects development projects may have on historic properties, including consideration of long-term protection of the intact portions of site 45-KI-1285 (e.g., adding a GIS layer with protected sites, linking to DAHP's database, etc.).
- III. Tribal Outreach. In recognition of native traditional occupation and continuing use of the area, KCFCD shall work with the Consulting Tribes to develop interpretive and educational components to be incorporated in the project to inform the public about ancestral use of the area in the precontact and early historic periods, and to the present day. For work in this Section, KCFCD is responsible for all permits, including any DAHP permits required by this Agreement, costs, providing Consulting Parties with an opportunity to review and comment on any proposal prior to approval, and taking consulting parties' comments into consideration. Tribal Outreach includes the following:

- a. *Plantings*. The Consulting Tribes, with Muckleshoot taking the lead, will work with KCFCD to revise the Project planting plan to incorporate native species of interest to the Consulting Tribes. This stipulation will be considered complete after KCFCD completes the plantings and provides the Consulting Parties an accounting of the finished plantings.
- b. *Interpretive Signage*. The Consulting Tribes, with Muckleshoot taking the lead, will provide text and images and will work with the KCFCD and the City to develop interpretive signs documenting precontact and ethnographic period Indian use of the site and surrounding area. Content for the interpretive panels for tribal outreach (this Section) and public outreach (Stipulation IV) can be combined together. KCFCD desires to install a total of 4–6 interpretive panels (including those from Stipulation IV) at Van Doren's Park and/or on property owned by the City in the surrounding habitat area. The City's concurrence of the design, size, construction materials, and installation location, is required prior to installation of interpretive signage on City owned property. The requirements of this Stipulation will be considered complete after KCFCD completes the sign installation and provides the Consulting Parties pictures of the installed signs.
- c. *Teaching Station*. The Consulting Tribes, with Muckleshoot taking the lead, will work with KCFCD and the City to design and develop a teaching station that will be installed in the vicinity of the preserved features (Stipulation II) at Van Doren's Park and/or on property owned by the City in the surrounding habitat area. The City's concurrence of the design, size, construction materials, and the installation location, is required prior to installation of any teaching station on City owned property. The requirements of this Stipulation will be considered complete after KCFCD completes the installation and provides the Consulting Parties pictures of the installed teaching station.
- d. *BBQ/First Foods*. The Consulting Tribes, with Muckleshoot taking the lead, will work with KCFCD and the City to design and develop one or more BBQ/First Foods stations that will be installed at Van Doren's Park and/or on property owned by the City in the surrounding habitat area. The City's concurrence of the design, size, construction materials, the number of stations to be developed and installed, and the installation location, is required prior to installation of any BBQ/First Foods stations on City owned property. The requirements of this Stipulation will be considered complete after KCFCD completes the installation and provides the Consulting Parties pictures of the cooking station(s).
- e. *Marker Stone*. The Consulting Tribes, with Muckleshoot taking the lead, will work with KCFCD and the City to design and develop a Marker Stone that will be installed at Van Doren's Park and/or on property owned by the City in the surrounding habitat area. The City's concurrence of the design, size, construction materials, and the installation location, is required prior to installation of marker stones on City owned property. The requirements of this Stipulation will be considered complete after KCFCD completes the installation of the marker stone and provides the Consulting Parties pictures of the installed Marker Stone.

- f. *Tribal Art.* The Consulting Tribes, with Suquamish taking the lead, will retain a Tribal artist to produce an art installation of durable and low maintenance material. The Consulting Tribes will design the art and coordinate with the City's Department of Parks, Recreation, and Community Services to submit it for review and approval by the City of Kent Arts Commission, describing the art, its size, the materials to be used, and the proposed installation location. The art piece will incorporate imagery related to the Lushootseed language place name for the project area, *stək*, meaning log jam. The place name refers to an ethnographic village in the area associated with *sx̣ilaʔcəʔ*, the mother of Suquamish leader *siʔaʔ*, Chief Seattle. Place name imagery and materials for *stək* may mirror an outdoor installation made by Suquamish artist Kate Ahvakana on a SR305 highway project that incorporated the Lushootseed name for the Poulsbo area Suquamish village *čuʔčuʔlac*, place of vine maple. The Consulting Tribes agree to work with the City on this art and its installation. A plaque or engraving shall be incorporated as part of the public art to commemorate the piece consistent with the public art requirements of the City. The requirements of this Stipulation will be considered complete after KCFCD completes the installation and provides the Consulting Parties pictures of the installed art.

IV. Educational Signage. Within three years of execution of the MOA, KCFCD will design and develop an interpretive display to serve as educational signage about the project and the natural and cultural history of the project area. The interpretive display would be expected to consist of four to six exhibit panels and include narrative text, copies of contemporary and historic photographs, and/or illustrative art. Content for the display will be derived from prior research and previously prepared documentation as well as in collaboration with the Consulting Tribes (see Stipulation III.b.). As this interpretive display will be placed at Van Doren's Park and/or on City owned land in the surrounding habitat area, KCFCD will work to obtain the City's concurrence on the design, size, construction materials, installation location, and that the display is consistent with City standards. The panels will be developed by a professional interpretive specialist. Consulting Parties will have an opportunity to comment on the layout and text of the draft interpretive display. Consulting Tribes will have the right to approve or deny the language in the tribal component, and the City will have the sole and exclusive right to approve or deny the finished signage for installation. The requirements of this Stipulation will be considered complete after KCFCD completes the installation and provides the Consulting Parties pictures of the installed signage.

V. Cultural Resources Training. Within two years of execution of the Agreement, KCFCD will develop and present cultural resources training, or pay for an existing training course, for City staff to attend at no fee to the City, which will provide an overview of Section 106 of the National Historic Preservation Act, cultural resources, and tribal history and concerns. DAHP will have final authority on approval of the training. The City has identified approximately 20–25 people who will be provided the opportunity to attend this training, consisting of engineers, permittees, and planners. The Muckleshoot Tribe will be provided the opportunity to incorporate into this training an approximate 2-hour session. The requirements of this Stipulation will be considered complete after KCFCD notifies the consulting parties that those participating in the training have completed it, and KCFCD provides the Consulting Parties with an accounting of how many City staff participated in the training.

- VI. Japanese Outreach. KCFCD will work with the Japanese Cultural Community Center of Washington or another organization associated with Japanese history of the area to develop mitigation associated with the Japanese-American artifacts recovered at 45-KI-1285. Within two years of execution of the Agreement, KCFCD will provide Consulting Parties a plan for mitigation, and provide Consulting Parties an opportunity to provide comments. DAHP will have final approval authority on the plan. The requirements of this Stipulation will be considered complete after KCFCD notifies the Consulting Parties that the Japanese outreach has been completed, and KCFCD will email the Consulting Parties a copy of any final report produced as part of this Stipulation.
- VII. Web Site. In consultation with the Consulting Parties, KCFCD shall supplement a webpage hosted by the City (e.g., <https://www.kentwa.gov/residents/parks-recreation-and-community-services>) and King County's website (e.g., <https://kingcounty.gov/depts/dnrp/wlr/sections-programs/river-floodplain-section/capital-projects/lower-russell-levee-setback.aspx>) with additional information regarding the history of the project area, with a focus on tribal use of the area. Information provided on the web page will be consistent with the information developed in the educational signage (above). The Consulting Parties shall be afforded an opportunity to review and comment on a preview of the website information before it is finalized and uploaded to the website for public view. Any information posted or linked on webpages owned by the City must be approved by the City and meet its design and communication standards. KCFCD will upload, or have the City upload, the web page within three years of execution of the MOA. KCFCD will notify the Consulting Parties by email and provide a link to the material after it is online and available for public viewing.
- VIII. Disclaimer for Installations on City Property. Work under Stipulations III, IV, and VII takes place on personal property, media, or land owned and under control of the City. KCFCD will work with the City and the Consulting Tribes early in the process to develop mitigation that the City intends to support. The City, however, will have the sole and exclusive right to approve or deny the installation of any product created under this Agreement on its personal property, media, or land. Once an installation under Stipulations III, IV, or VII occurs on City property, media, or land, and the same is accepted by the City and the other Consulting Parties as conforming to this Agreement, the City will be considered the owner of any such work and will possess the sole power and control over the work, including the right to remove the work when the City determines such removal is appropriate.
- IX. Yearly Status Updates. At least once a year, from the date of the DA permit issuance date until all Stipulations are complete, KCFCD will email a yearly status update to the Consulting Parties detailing the current status of any incomplete stipulation, which will include any scheduling changes proposed, any problems encountered, and any disputes and objections. KCFCD will inform the Consulting Parties if proposed work is not complete within 3 years of execution of the Agreement, or any different timeframe identified in this Agreement under a specific stipulation. The Consulting Parties will consult on either a time extension or appropriate alternative mitigation for that work, with final approval by the Corps and DAHP.

X. Dispute Resolution.

- a. Should any Signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:

(1) Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, Signatories, and consulting parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.

(2) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that considers any timely comments regarding the dispute from the Signatories and consulting parties to the Agreement and provide them and the ACHP with a copy of such written response.

(3) All other actions required pursuant to the terms of this Agreement that are not the subject of the dispute remain unchanged.

- b. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public or Consulting Party regarding historic preservation, the Corps shall take the objection into account and consult as needed with the objecting party, the SHPO, or the ACHP to determine how best to address the objection.

XI. Duration.

This Agreement shall automatically expire 5 years from the execution of the Agreement, unless an amendment extending the duration of the Agreement is executed in accordance with Stipulation XII.

XII. Amendment.

Any Signatory to this agreement may propose to the Corps that the agreement be amended, whereupon the Corps shall consult with the other parties to this agreement to consider such an amendment. This Agreement will be amended when such an amendment is agreed to in writing by all Signatories. The amendment will go into effect on the date of the last signature from Signatories.

### XIII. Termination.

If any Signatory to this Agreement determines that its terms will not or cannot be carried out within its term (Stipulation XI and XII), that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XII, above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.

Once the Agreement is terminated, and prior to work continuing on the Undertaking, the Corps must either (a) execute a new Memorandum of Agreement pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Corps shall notify the Signatories as to the course of action it will pursue.

### XIV. Coordination with Other Federal Reviews.

If another federal agency not initially a party to or subject to this Agreement has an undertaking associated with the Project as described in this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying the Corps, SHPO, and the ACHP that it intends to do so. The Corps will confirm in writing that the Corps accepts Lead Agency status for Section 106, and the SHPO and ACHP will confirm in writing that the new federal action is covered by the Corps' Agreement and Section 106 process. Such agreement shall be evidenced by implementation of the terms of this Agreement and attachments.

### XV. Execution in Counterpart.

This Agreement may be executed in counterparts, with a separate page for each Signatory. The Corps will ensure that each party is provided with a copy of the fully executed Agreement.

### XIV. Contact Information.

The contact information for each Signatory and Invited Signatory (collectively referenced as Signatories) to this Agreement and for consulting parties may be updated without requiring an amendment to this Agreement. An electronic message (email) exchanged among the contacts, indicating the updated information, shall be sufficient provided the signature authority for each Party is included in such communication.

SIGNATORY PARTY

U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT



---

Date: 24 AUGUST 2023

*for* Kathryn P. Sanborn, PhD, PE, PMP  
Colonel, Corps of Engineers  
District Commander

Contact Information:

Lance Lundquist  
Cultural Resources Program Manager  
Regulatory Branch  
US Army Corps of Engineers, Seattle District  
P.O. Box 3755  
Seattle WA 98124

Voice: (206) 291-4574  
Email: [Cultural.Resources@usace.army.mil](mailto:Cultural.Resources@usace.army.mil)

Note: Signatures continued next page.

SIGNATORY PARTY

WASHINGTON STATE HISTORIC PRESERVATION OFFICER

  
Allyson Brooks (Jul 31, 2023 17:19 PDT)

Date: Jul 31, 2023

Allyson Brooks, Ph. D.  
State Historic Preservation Officer

Contact Information:

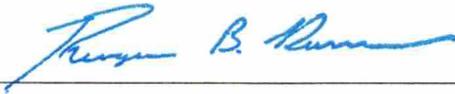
Rob Whitlam, PhD  
Department of Archaeology and Historic Preservation  
Post Office Box 48343c  
Olympia, Washington 98504-8343

Voice: (360) 890-2615  
E-mail: rob.whitlam@dahp.wa.gov

Note: Signatures continued next page.

INVITED SIGNATORY PARTY

KING COUNTY FLOOD CONTROL DISTRICT

  
\_\_\_\_\_

Date: 3/1/2023

Reagan Dunn,  
Chair, King County Flood Control District

Contact Information:

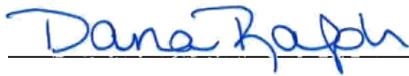
Michelle Clark  
Executive Director  
King County Flood Control District  
516 Third Avenue, Room 1200  
Seattle, WA 98104

Voice: (206) 477-2985  
Email: michelle.clark@kingcounty.gov

Note: Signatures continued next page.

INVITED SIGNATORY PARTY

CITY OF KENT



Date: 07/19/2023

Dana Ralph  
Mayor

Contact Information:

Toby Hallock, P.E., C.F.M.  
Environmental Engineering, Public Works Department  
220 Fourth Avenue South  
Kent, WA 98032

Voice: (253) 856-5536  
E-mail: [thallock@KentWa.gov](mailto:thallock@KentWa.gov)

Note: Signatures continued next page.

CONCURRING PARTY

MUCKLESHOOT INDIAN TRIBE



---

Date: 4-25-23

The Honorable Jaison Elkins  
Chairman

Contact Information:

Laura Murphy and Warren King George  
Muckleshoot Indian Tribe  
39015 172nd Ave SE  
Auburn, Washington 98092-9763

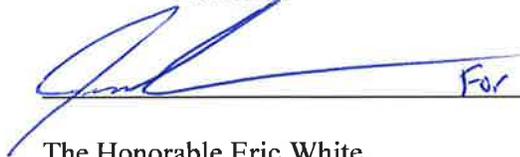
Voice: (253) 876-3272 (Laura)

E-mail: [laura.murphy@muckleshoot.nsn.us](mailto:laura.murphy@muckleshoot.nsn.us); [warren.kinggeorge@muckleshoot.nsn.us](mailto:warren.kinggeorge@muckleshoot.nsn.us)

Note: Signatures continued on next page.

CONCURRING PARTY

STILLAGUAMISH TRIBE OF INDIANS



For \_\_\_\_\_

Date: 02/16/23

The Honorable Eric White  
Chairman

Contact Information:

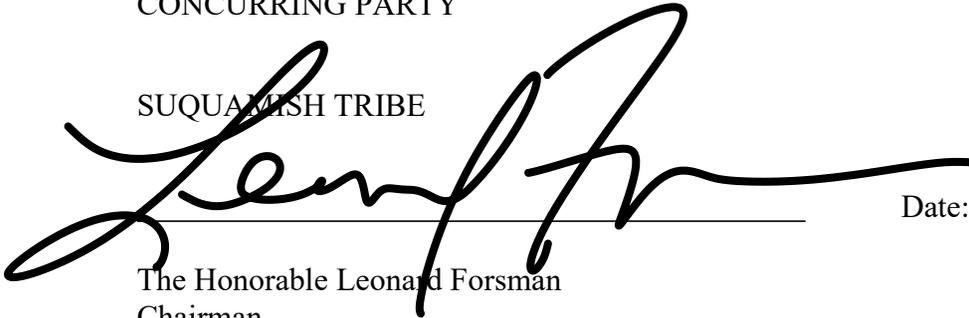
Kerry Lyste  
THPO/GIS Administrator  
Stillaguamish Tribe of Indians  
Post Office Box 277  
Arlington, Washington 98223

Voice: (360) 572-3072  
E-mail: [klyste@stillaguamish.com](mailto:klyste@stillaguamish.com)

Note: Signatures continued on next page.

CONCURRING PARTY

SUQUAMISH TRIBE

A large, stylized handwritten signature in black ink, appearing to read 'Leonard Forsman', is written over a horizontal line. The signature is fluid and cursive.

Date: March 13, 2023

The Honorable Leonard Forsman  
Chairman

Contact Information:

Dennis Lewarch, THPO  
Suquamish Tribe  
Post Office Box 498  
Suquamish, Washington 98392-0498

Voice: (360) 394-8529  
E-mail: [dlewarch@suquamish.nsn.us](mailto:dlewarch@suquamish.nsn.us)

Note: Signatures continued on next page.

CONCURRING PARTY

KING COUNTY HISTORIC PRESERVATION PROGRAM



Date: 1/19/2023

---

Jennifer Meisner  
King County Historic Preservation Officer

Contact Information:

Philippe D. LeTourneau, PhD  
Archaeologist  
King County Historic Preservation Program  
Department of Natural Resources and Parks  
201 South Jackson Street  
Seattle, WA 98104

Voice: (206) 477-4529  
Email: [Philippe.LeTourneau@kingcounty.gov](mailto:Philippe.LeTourneau@kingcounty.gov)

Note: Signatures continued on next page.

CONCURRING PARTY

WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

  
Megan Duffy (Apr 27, 2023 13:49 PDT)

Date: Apr 27, 2023

Megan Duffy  
Director

Contact Information:

Sarah Thirtyacre  
Cultural Resources Program Coordinator  
Recreation and Conservation Office  
1111 Washington St SE  
Olympia, WA 98504

Voice: (360) 764-9841  
Email: sarah.thirtyacre@rco.wa.gov

Note: End of signature pages