

MEMORANDUM OF AGREEMENT
BETWEEN THE
DEPARTMENT OF DEFENSE
AND
THE SUQUAMISH TRIBE
OF
THE PORT MADISON INDIAN RESERVATION

BACKGROUND

Whereas, each federal agency is bound by the United States' trust responsibility to protect tribal lands and tribal trust resources, both on and off tribal lands; and

Whereas, both President Reagan's Indian Policy Statement of January 24, 1983, and President Clinton's Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments of April 29, 1994, require federal agencies both to operate within a government-to-government relationship with federally recognized tribal governments, and to take appropriate steps to remove procedural impediments to working directly and effectively with tribal governments on activities that affect the tribal trust property; and

Whereas, the Suquamish Tribe of the Port Madison Indian Reservation (Suquamish Tribe) is a federally recognized sovereign Indian tribe; and

Whereas, the Suquamish Tribe is a signatory to the 1855 Treaty of Point Elliott, whereby the Suquamish Tribe ceded certain of its aboriginal lands to the United States but reserved under the Treaty "the right of taking fish at all usual and accustomed grounds and stations"; and

Whereas, the Suquamish Tribe's treaty-reserved tribal trust resources include on-and-off-reservation fishery resources situated within the Suquamish Tribe's adjudicated usual and accustomed fishing area; and

Whereas, the Suquamish Tribe has responsibilities for fisheries resources and treaty fisheries within its adjudicated usual and accustomed fishing area; and

Whereas, the Department of Defense (DoD) has certain responsibilities for remediating contamination sites in the Puget Sound region of Washington attributable to past DoD activities, which remediation efforts must be exercised in conformity with the United States' obligation to protect treaty fishing rights reserved by the Suquamish Tribe and defined by federal court decisions and orders; and

Whereas, the Suquamish Tribe has a right, where tribal trust resources and archeological resources of religious or cultural significance to the Suquamish Tribe may be affected, to a substantial and meaningful role in DoD's development of any such remediation efforts; and

Whereas, a cooperative approach to the management of these remediation efforts that respects the principle of government-to-government relations depends on joint planning, regular consultation, explicit objectives, and agreed-upon data; and

Whereas, the Suquamish Tribe has demonstrated expertise to offer DoD as a cooperating entity in the development and implementation of these remedial actions; and

Whereas, DoD is desirous of taking advantage of the Suquamish Tribe's technical expertise through increased involvement by the Suquamish Tribe in the review of the DoD's remediation programs regarding contamination sites within the Suquamish Tribe's adjudicated usual and accustomed fishing area in which the Suquamish Tribe possesses exclusive treaty fishing rights; and

Whereas, the Suquamish Tribe is prepared to provide these technical reviews on a cost-reimbursable basis; and

Whereas, it is the intent of the parties to this Agreement that this document, in conjunction with approved cooperative agreement applications (which will include two year work plans) and the award of funds thereunder, will be the vehicle by which the Suquamish Tribe will receive financial assistance to aid the Department of Defense in ensuring that its environmental restoration efforts are consistent with its obligation to protect the Tribe's reserved treaty rights.

Now Therefore, the Department of Defense and the Suquamish Indian Tribe hereby agree as follows:

AUTHORITY

1. DoD's authority for entering into this agreement include:

a. DoD's response authorities and obligations under CERCLA §104, §107 (f) and §120 (42 USC §§9604, 9607 and 9620), as delegated to DoD by the President in E.O. 12580, §2.d. and §5.d.; and

b. DoD's response authorities and obligations under DERP 10 USC § 2701, including DoD's authority to enter into agreements on a reimbursable basis with any Indian Tribe to assist DoD in carrying out DoD's responsibilities under DERP and CERCLA.

2. The Suquamish Tribe's authority for entering into this agreement include:

a. The various treaty rights the Suquamish Tribe is entitled to under the 1855 Treaty of Point Elliott, 12 Stat. 927; and

b. the various responsibilities and authorities created by CERCLA §126 (42 USC §9626) for Indian Tribes.

SCOPE

1. This Memorandum of Agreement is entered into between the Department of Defense (DoD) and the Suquamish Tribe.
2. It is the intent of the Parties to this Agreement:
 - a. That this document will be implemented in conjunction with an approved Cooperative Agreement; and
 - b. That this MOA and the Cooperative Agreement will constitute the vehicle by which the Suquamish Tribe will receive financial reimbursement for the technical support the Suquamish Tribe will provide DoD; and
 - c. That this technical support will assist DoD in carrying out its remediation obligations under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Defense Environmental Restoration Program (DERP) for releases of hazardous substances, pollutants and contaminants from DoD facilities potentially affecting:
 - (1) areas within the Suquamish Tribe's usual and accustomed fishing area in which the Suquamish Tribe possesses exclusive treaty fishing rights, as specifically set forth in the Cooperative Agreement;
 - (2) Suquamish property; and
 - (3) natural resources over which the Suquamish Tribe is a natural resource trustee as defined in CERCLA.

ELIGIBLE SERVICES

Services by the Tribe that qualify for payment under this Agreement, as provided for in approved two year Cooperative Agreements and work plans, may include the following types of assistance to the Department of Defense:

1. Technical review, comments and recommendations on all documents a Department of Defense service component requests the Tribe to review.
2. Conduct and participation in cooperation with the Department of Defense in public education and public participation activities in accordance with Federal requirements for public involvement.
3. Site visits to review Department of Defense response actions and ensure their consistency with the Tribe's reserved treaty rights.

4. Services provided at the request of the Department of Defense in connection with participation on Technical Review Committees and Restoration Advisory Boards.
5. Preparation, negotiation and administration of Cooperative Agreements to implement this Agreement, including the estimate of the Tribe's costs.
6. Preparation, negotiation and administration of this Agreement and amendments thereof.
7. Determination of agreements, determination of legal and technical applicability of agreements, and assurances of satisfactory performance of interagency agreements, but excluding any costs which may be incurred preparing for litigation against the United States Government.
8. Costs associated with the Tribe's involvement and document review during the Inventory Review Process.

AWARD AND PAYMENT OF FUNDS

1. This Agreement is neither a fiscal nor a funds obligation document. Nothing in this Agreement shall be interpreted to require any obligation of payment of funds in violation of the Anti-deficiency Act (31 U.S.C. 1341). Any activity, action, endeavor or undertaking involving reimbursement or contribution of funds by the Department of Defense to the Suquamish Tribe will be handled in accordance with and subject to applicable laws, regulations and procedures. The Suquamish Tribe will submit two year cooperative agreement applications for approval of work plans and award of related costs. The United States Army Corps of Engineers, as the executive agent for the Department of Defense under this Agreement, will work with the Suquamish Tribe to develop and negotiate the proposed cooperative agreement applications and work plans, and will oversee the Suquamish Tribe's activities under this Agreement. The Corps of Engineers will accept the applications, review them, and approve the work plans and the award of funds.
2. Nothing in this Agreement shall obligate the Department of Defense to approve any cooperative agreement application and work plan or to award any funds hereunder. Nor, is there anything in this Agreement that restricts the Department of Defense from participating in similar activities or arrangements with other Indian Tribes.
3. Payment of funds to the Suquamish Tribe will be accomplished using Federal procedures for cooperative agreements. Eligible activities are limited to those authorized under 10 U.S.C. 2701 and Section IV of this Agreement.
4. After a cooperative agreement is approved and funds are awarded, the Suquamish Tribe may (in accordance with OMB Circular A-102 and 32 CFR Part 33) submit a request to the Department of Defense for advancement or reimbursement on a quarterly basis. The Department of Defense will process the request and transfer funds in accordance with OMB Circular A-102. Within thirty (30) days after the end of each quarter, the Suquamish Tribe shall submit to the

Department of Defense a status report, including cost summaries which directly relate allowable costs actually incurred by the Suquamish Tribe under this Agreement during the quarter for services. Allowable costs shall be determined in accordance with this Agreement and OMB Circular A-87. The Department of Defense shall reconcile continuing awards and close out completed awards in accordance with OMB Circular A-102. Auditing of the Suquamish Tribe's program shall be accomplished in accordance with OMB Circular A-133.

5. Administration of the cooperative agreement applications and awards will be in accordance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Governments; OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; and, 32 CFR Part 33, Office of the Secretary of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

6. Cooperative agreements will be awarded for a term of two (2) years, based on a two year estimate of requirements.

PROGRAM MANAGERS

The Department of Defense and Suquamish Tribe shall each designate a program manager as the single point of contact for coordinating all activities under this agreement. Until otherwise changed by written notice to the other party, the following are designated as the initial program managers:

For the Department of Defense:

Native American Lands Environmental Mitigation Program Manager,
Hazardous, Toxic, and Radiological Waste Branch
United States Army Corps of Engineers, Seattle District
P.O. Box 3755
4735 East Marginal Way South
Seattle, WA 98124-3755

For the Suquamish Tribe:

Director, Suquamish Tribal Fisheries Department
P.O. Box 498
Suquamish, WA 98392-0498

DISPUTE RESOLUTION

1. The Project Manager shall be the primary points of contact to coordinate all activities under this Agreement, including the resolution of disputes. It is the intention of the parties that all disputes shall be resolved at the lowest possible level of authority as expeditiously as possible

within the following framework. All time frames for resolving disputes below may be lengthened by mutual consent.

a. Should the Project Managers be unable to agree, the matter shall be referred in writing as soon as practicable, but in no event to exceed thirty (30) working days after the failure to agree, to the Commander, United States Army Corps of Engineers, Seattle District and the Program Manager for the Suquamish Tribe or their mutually agreed upon representatives designated in writing.

b. Should the Commander, Seattle District and the Program Manager for the Suquamish Tribe or their mutually agreed upon representatives designated in writing be unable to agree within (30) working days, the matter shall be elevated to the Chief, Environmental Division, Directorate of Military Programs, Headquarters, United States Army Corps of Engineers and the Executive Director for the Suquamish Tribe.

c. Should the Chief of the Environmental Division, Headquarters United States Army Corps of Engineers and the Executive Director for the Suquamish Tribe or their mutually agreed upon representatives designated in writing be unable to agree within thirty (30) working days, the matter shall be elevated to the Deputy Under Secretary of the Department of Defense (Environmental Security) and the Suquamish Tribal Council.

2. It is the intention of the parties that all disputes shall be resolved in this manner. Alternative dispute resolution methods may be used. In the event that the Deputy Under Secretary of the Department of Defense (Environmental Security) and the Suquamish Tribal Council are unable to resolve a dispute, the Department of Defense and the Suquamish Tribe retain any rights they may otherwise have to seek resolution of this issue under applicable law.

AMENDMENT

This Agreement may modified or amended only upon written consent of the Department of Defense and the Suquamish Tribe.

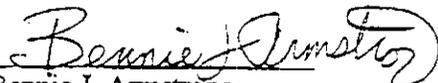
TERMINATION

This Agreement may be terminated by either party at this expiration of any cooperative agreement award entered into pursuant to this Agreement if the party seeking termination has notified the other party in writing at least sixty (60) day prior to the expiration of the cooperative agreement award.

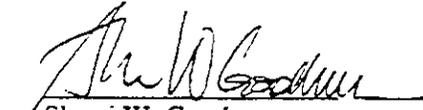
SOVEREIGNTY AND DISCLAIMER

The Parties to this agreement recognize and respect the sovereignty and legal status of one another. The Parties further recognize that each has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute, Treaty, or otherwise. This

Agreement does not modify, diminish, or alter the rights and entitlements of the Parties. The Parties' joinder to this Agreement shall not constitute a waiver of sovereign immunity. This Agreement does not modify or supercede Agreements with other entities or other Agreements between DoD unless expressly noted.


Bennie J. Armstrong
Tribal Chairman
Suquamish Tribe

DATE: 9/14/98


Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

DATE: 12/8/98

SUQUAMISH TRIBE TWO-YEAR PRELIMINARY WORK PLAN
 DEFENSE INSTALLATION RESTORATION ACTIVITIES
 OCTOBER 1, 1998 TO SEPTEMBER 30, 2000

Service	Tribal Activities
U.S. Navy	<ul style="list-style-type: none"> - Review remedial investigation reports - Review feasibility study reports - Review proposed plans - Review record of decision reports - Review remedial design documents - Review remedial action work plans - Review site assessment work plans and data - Review removal action documents - Review sampling work plans and analytical results - Review archaeological resources protection plans, management plans, and other reports associated with archaeological investigations - Participate in five-year review process - Attend technical review meetings - Conduct site visits - Coordinate with federal and state regulatory and resource agencies - Provide updates to and receive direction from Tribal policy representatives and Tribal Council - Coordinate with Tribal Curator/Archivist - Attend Restoration Advisory Board meetings - Attend public hearings for proposed plans - Advertise, interview, and hire project management staff - Administer the Memorandum of Agreement and the Cooperative Agreement, and amendments thereof - Develop quarterly reports and participate in management meetings - Attend training regarding statutes, regulations, and procedures applicable to the protection of archaeological resources - Attend DoD planning meetings - Develop cost estimates and budget expenditures - Negotiate and develop the Memorandum of Agreement and the Cooperative Agreement, and amendments thereof - Determine the need for additional agreements, determine the legal and technical applicability of such agreement(s), and develop and assure the satisfactory performance of such agreement(s) - Prepare the scope of work and budget for next Cooperative Agreement

SUQUAMISH TRIBE TWO-YEAR PRELIMINARY WORK PLAN
 DEFENSE INSTALLATION RESTORATION ACTIVITIES
 OCTOBER 1, 1998 TO SEPTEMBER 30, 2000

Service	Tribal Activities
ACE	<ul style="list-style-type: none"> - Review remedial design documents - Review cultural resources management plan - Review remedial action work plans - Attend technical review meetings - Conduct site visits - Coordinate with federal and state regulatory and resource agencies - Provide updates to and receive direction from Tribal policy representatives and Tribal Council - Coordinate with Tribal Curator/Archivist - Advertise, interview, and hire project management staff - Administer the Memorandum of Agreement and the Cooperative Agreement, and amendments thereof - Develop quarterly reports and participate in management meetings - Attend training regarding statutes, regulations, and procedures applicable to the protection of archaeological resources - Attend DoD planning meetings - Develop cost estimates and budget expenditures - Negotiate and develop the Memorandum of Agreement and the Cooperative Agreement, and amendments thereof - Determine the need for additional agreements, determine the legal and technical applicability of such agreement(s), and develop and assure the satisfactory performance of such agreement(s) - Prepare the scope of work and budget for next Cooperative Agreement

ACE = U.S. Army Corps of Engineers

**COOPERATIVE AGREEMENT BETWEEN THE
DEPARTMENT OF DEFENSE
AND THE
SUQUAMISH TRIBE
OCTOBER 1, 1998 to SEPTEMBER 31, 2000**

A. Management Plan

In order to satisfy Department of Defense (DoD) requirements for Cooperative Agreements the Suquamish Tribe (Tribe) presents and agrees to the following provisions.

1. The Suquamish Tribe designates:

Name: Randy Hatch
Fisheries Director
Address: Suquamish Tribe
P.O. Box 498
Suquamish, WA 98392
Phone: 360-598-3311
360-598-4666 (Fax)

as the program manager for Tribal activities associated with DoD response actions at installations identified in Attachment A and other issues related to the execution of this Cooperative Agreement.

2. The Suquamish Tribe designates:

Name: Scott Wheat, Esq.
Tribal Attorney
Address: Suquamish Tribe
P.O. Box 498
Suquamish, WA 98392
Phone: 360-598-3311
360-598-6295 (Fax)

as Tribal counsel for all legal, contractual, and regulatory matters arising from activities related to carrying out the Cooperative Agreement.

3. Commencing 90 days after the signing of the Cooperative Agreement between the Suquamish Tribe and the Department of Defense, and the receipt of initial funds, the Tribe agrees to provide quarterly reports using an ENG Form 93 to the U.S. Army Corps of Engineers - Seattle District including: [a] itemized expenditures; [b] a summary of the progress; and [c] explanation of any variances. These reports are to be submitted following the end of each quarter, preferably within fifteen calendar days but not later than 30 calendar days of the quarter's end.

It is the Tribe's intention to continue to seek funding and develop future cooperative agreements with the Department of Defense to support a meaningful and substantial role in DoD response actions where Tribal Treaty rights, Tribal trust resources and archaeological resources of religious or cultural importance to the Tribe may be affected. DoD agrees to seek sufficient funding through the DoD budgetary process to provide to the Tribe the financial assistance needed for DoD environmental restoration activities.

B. Scope of Work

1. Infrastructure Development

(a) The Tribe shall advertise, interview, and hire project management staff for activities associated with DoD response actions at installations identified in Attachment A and other activities related to the execution of this Cooperative Agreement.

(b) The Tribe shall seek training regarding statutes, regulations, and procedures applicable to the protection of archaeological resources of religious or cultural importance to the Tribe. It is anticipated that training will include, but not be limited to, the Archaeological Resource Protection Act and the Native American Graves Protection and Repatriation Act.

(c) The Tribe shall, in performance of work pursuant to the Agreement, submit to Department of Defense a scope of work and funding requirement for the next Cooperative Agreement by September 1, 2000.

2. Technical Planning and Review

(a) The Tribe shall review, comment, and make recommendations on documents and data pertaining to pre-remedial, remedial, time critical removal actions, and other response actions for Department of Defense facilities listed in Appendix A. The Tribe will work primarily on issues associated with the protection of Tribal Treaty rights, Tribal trust resources, and archaeological resources of religious or cultural importance to the Tribe.

(b) The Tribe shall participate in technical review committees, work groups, and other relevant activities for Department of Defense facilities identified in Attachment A.

(c) The Tribe shall designate project manager(s) to participate in planning and review of all documents pertaining to activities under paragraph (a) and (b).

(d) The Tribe shall help identify applicable or relevant and appropriate requirements for remediation activities occurring within areas identified in Attachment A.

- (e) DoD shall afford the Tribe opportunities to participate in DoD's planning activities for issues associated with, or that may affect, Tribal involvement at DoD installations within the Tribe's usual and accustomed fishing area, DoD response actions at installations identified in Attachment A, and agreements between DoD and the Tribe.

3. Community Relations

- (a) The Tribe shall participate with Department of Defense and other appropriate parties in restoration advisory board meetings and public hearings for proposed cleanup plans at sites identified in Attachment A.

4. Legal and Financial Activities.

- (a) The Tribe shall prepare, negotiate, administer, and manage the Cooperative Agreement and amendments thereof, and shall develop cost estimates and furnish documentation of Tribal costs relevant to this and future Cooperative Agreements and work plans.
- (b) The Tribe shall prepare, negotiate, and administer the Memorandum of Agreement and amendments thereof.
- (c) The Tribe shall determine the need for additional agreement(s), determine the legal and technical applicability of such agreement(s), and develop and assure the satisfactory performance of any such agreement(s).

5. General

- (a) The Tribe shall provide other services that are set out in this agreement or are included in or are consistent with the terms of this agreement.
- (b) The Tribe shall participate in efforts to identify culturally significant areas within all present and former Department of Defense facilities identified in Attachment A. It is understood by the parties that the Tribe shall make the final determination of the appropriateness of public disclosure for such areas.
- (c) The Tribe shall conduct site visits to review Department of Defense response actions for installations identified in Attachment A of this Agreement.
- (d) The Department of Defense shall provide escorts to Tribal personnel on any active Department of Defense facility.

C. ORGANIZATIONAL CAPABILITIES AND QUALIFICATIONS

1. Management and Administrative Structure of the Suquamish Tribe

The Suquamish Tribal Council is the duly constituted governing body of the Tribe by the authority of the Constitution and Bylaws for the Suquamish Tribe, as approved on July 2, 1965, by the Under-Secretary of the Interior. The Tribal Council is elected by the Suquamish General Council, which consist of Suquamish Tribal members of voting age. The Tribal Council consist of a chairman, vice-chairman, treasurer, secretary, and three members.

Tribal programs are administered by the Executive Director under the direction of the Tribal Council, and implemented under eight Tribal departments. Department directors are responsible for the administration and management of department-lead programs under the direction of the Executive Director. The Fisheries Department is responsible for the protection and management of Treaty-reserved fishery resources, and is the department lead for DoD installation restoration issues. The government organization of the Tribe is found in Attachment B.

The Tribal government receives financial assistance from federal, state, and local entities. In 1997, the Suquamish Tribe received approximately \$7 million of federal funds from 11 different federal agencies.

2. Position and Resumes of Key Personnel

Key personnel identified for the execution of this Agreement consist of a program manager, Tribal counsel, and two project managers. The program manager and Tribal counsel will be Randy Hatch and Scott Wheat, respectively. Resumes for Messrs. Hatch and Wheat are found in Attachment C. The Tribe anticipates hiring personnel for the project manager positions.

D. WORK PLAN

The work plan and budget for the Agreement are found in Attachment D. The work plan consists of a summary of Tribal activities that are anticipated during the October 1, 1998 to September 30, 2000 period for installations identified in Attachment A. The budget is a cost projection of assistance required to implement the two-year work plan.

E. AMENDMENTS

This agreement may be modified or amended only upon the written consent of DoD and the Suquamish Tribe.