



Squaxin Island Legal Department
3711 SE Old Olympic Hwy.
Shelton, WA 98584
Phone (360) 432-1771
Fax (360) 432-3699

SENT BY ELECTRONIC MAIL AND REGULAR U.S. MAIL

July 21, 2011

Matthew T. Ponish
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Ave., S.W.
STOP 0506
Washington, DC 20250-0506
Matthew.Ponish@wdc.usda.gov

SEPAdesk@dfw.wa.gov

Re: Squaxin Island Tribe's comments on programmatic EA and FONSI for
Washington State Voluntary Public Access and Habitat Incentive Program (June
2011)

Dear Mr. Ponish:

On behalf of the Squaxin Island Tribe, thank you for the opportunity to comment on the Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") for Washington State Voluntary Public Access and Habitat Incentive Program ("VPA-HIP"). These grant funds, to be administered by WDFW, will be used to encourage owners and operators of privately held farm, ranch, and forest land to voluntarily open land for public access for outdoor recreational activities that include hunting. WDFW proposes to use VPA-HIP funds to expand upon its long history of working with landowners to provide public access on private lands through various voluntary access programs.

The Tribe has serious concerns about the impacts of the Preferred Alternative on its Treaty right to hunt, deficiencies in the documents mentioned above, and the federal government's furtherance of WDFW's program without mitigating this impacts. As you

may know, the Squaxin Island Tribe holds a reserved right to hunt on “open and unclaimed land” outside reservation boundaries under Article 3 of the Treaty of Medicine Creek:

The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: Provided, however, That they shall not take shellfish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter. (emphasis added).

The Squaxin Island Tribe implements its treaty hunting right through its Natural Resources Code (specifically General Provisions in Chapter 7.04, and Treaty Hunting in Chapter 7.24) and annual regulations that are established by the Wildlife Committee. The Tribe is also a co-manager of both the fish and wildlife populations in the State of Washington. *See, e.g.*, Washington Fish & Wildlife Commission, Policy No. C-3607 (April 3, 1998).

WDFW will use VPA-HIP funds to expand upon the 1.3 million acres of private land currently enrolled in the three programs: Feel Free to Hunt, Register to Hunt, and Hunt by Written Permission. VPA-HIP funds will be used through a combination of landowner incentive payments and physical improvements to facilitate and encourage access opportunities. For all three programs, WDFW intends to attract more landowners to join their programs, to increase official postings and signage on private property, and to develop a new GoHunt interactive mapping program.

We implore the USDA to make this program and funding more sensitive to tribes’ needs and their exercise of Treaty-reserved hunting rights. The Tribe’s hunting right will be harmed by the program for numerous reasons. First, WDFW will use the funding to promote non-treaty hunting, which will come at the necessary expense of treaty hunting. WDFW’s position is that the Squaxin Island Tribe and other tribes have no Treaty right to hunt on private lands. The Squaxin Island Tribe, however, interprets the Treaty of Medicine Creek to allow hunting on private lands. WDFW will unquestionably use the increased signage and internet information to further exclude Tribal members from conducting Treaty hunting activities on specific private lands, regardless of parcel size. WDFW will assert that signs, and possibly information on the Internet, constitutes outward indications that the lands are privately owned, thus prohibiting Tribes from exercising their hunting rights. WDFW has taken an increasingly aggressive stance against Tribal hunting in recent years, bringing criminal cases against Tribal hunters. This is particularly true in southwest Washington.

Moreover, while WDFW has indicated a willingness to compromise and allow Treaty hunting on commercial industrial timberlands that are 640 acres or more, these kinds of lands are not covered by the instant funding.

Finally, the USDA's program and funding, and WDFW's implementation, fuels private landowners' expectations that they will be paid to allow hunting on their land. It is increasingly difficult for tribes to have conversations with private landowners about Treaty hunting access without providing them with a revenue source.

Accordingly, the EA and FONSI have the following inadequacies:

- The Proposed Action will have a significant impact on the Squaxin Island Tribe and likely other tribes and their cultural resources, requiring preparation of an EIS unless the impact can be sufficiently mitigated.
- The agencies should have examined an alternative that does not result in further interference with and diminishment of Tribal hunting rights.
- The Proposed Action will have a significant impact on Tribal resources. Tribal Treaty hunting usually occurs outside of reservation boundaries, particularly for smaller reservations such as the Squaxin Island Reservation.
- The Proposed Action will have a disproportionate effect on tribes in Washington, which constitute minorities and often have many low-income members. Many tribal members rely on Treaty hunting as a major source of their food supply.
- The Proposed Action will have a significant impact on cultural resources. Hunting activities are a critical component of many tribes' culture, including the Squaxin Island Tribe.
- The Proposed Action will have adverse, cumulative effects on tribes and their treaty-reserved hunting rights.
- The Proposed Action will have an irreversible and irretrievable commitment of resources.

The Tribe urges the USDA to craft this program and carry out its policies in a manner that recognizes its trust responsibilities to Indian tribes and tribal members. These policies include respect Indian tribal self-government and sovereignty, honoring tribal treaty rights, and striving to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. *See, e.g., Consultation and Coordination With Indian Tribal Governments, Executive Order 13175 65 Fed. Reg. 67249, (November 6, 2000).* We would greatly welcome

consultation with your agency on this matter.

Sincerely,

s/ Kevin Lyon

Kevin Lyon, Director
Squaxin Island Legal Department

cc: David Lopeman, Chairman, Squaxin Island Tribe
Andy Whitener, Director, Squaxin Island Natural Resources Department