



MAKAH TRIBE

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December 20, 2006

Carla McConnell
Olympic National Park – GMP
National Park Service
Denver Service Center-Planning
P.O. Box 25287
Denver, CO 80225

Re: Comments on Draft General Management Plan / Environmental Impact Statement
for Olympic National Park in Washington State.

Dear Ms. McConnell,

Thank you for the consideration of the comments listed below at this late date.

The Makah Indian Tribe hereby provides the following comments on the Olympic National Park Draft General Management Plan/Environmental Impact Statement (GMP/EIS). The Makah Tribe's principal concern over the Draft GMP/EIS relates to the proposed expansion of the Park boundary in the Lake Ozette area. The Tribe also has concerns regarding the effects of the GMP/EIS on other Treaty protected uses of natural resources, the Ozette portion of the Makah Reservation, and cultural resources.

I. Park Boundary Expansion.

With the exception of the no action alternative, all of the alternatives evaluated in the GMP/EIS propose significant expansions of the Park boundary around Lake Ozette. The Tribe has serious concerns about the effect of these proposed boundary expansions on the Tribe's ability to exercise its Treaty hunting and gathering rights.

Under the Treaty of Neah Bay, the Tribe's right to hunt and gather may be exercised only on "open and unclaimed lands." In *United States v. Hicks*, 587 F. Supp. 1162 (W.D. Wash. 1984), the Court held that lands included within Olympic National Park are not "open and unclaimed lands" and are therefore closed to Treaty hunting. In *State v. Buchanan*, 138 Wn. 2d 186, 978 P.2d 1070 (1999), it was held that the hunting rights reserved by the Stevens Treaties are limited to each Tribe's traditional hunting areas. Because the Makah Tribe has one of the smallest traditional hunting areas of any Western Washington Tribe, any loss of access to "open and unclaimed lands" could have a serious impact on Tribal hunting and gathering.

The Ozette area is within the traditional hunting territory of the Makah Tribe and the lands affected by any of the proposed boundary expansions in the Ozette area currently provide Tribal members particularly important hunting opportunities. A four-year Tribal study that

actively studied two elk herds utilizing radio-collared cows from each herd between 2000 and 2004 indicates that the property proposed for expansion in the Preferred Alternative is "rich" in elk abundance. The proposed Park expansion would greatly reduce hunting opportunities for Makah Tribal members in regards to the two studied herds as well as other known herds that utilize habitats within the proposed boundary expansion to the southeast and south of Lake Ozette.

The draft GMP/EIS contains inadequate discussion regarding the effect of the proposed boundary expansions on Tribal hunting or other Treaty protected uses of natural resources. In the affected environment chapter of the document, there is a brief discussion of Tribal treaty rights, which concludes with the inaccurate statement: "Nothing in this plan diminishes reserved treaty rights." (Page 133). No discussion of the effect of the boundary expansion on the Makah Tribe's treaty right to hunt and gather can be found in the environmental consequences chapter of the GMP/EIS. In the past, Tribal elk hunting has not been allowed within the Park. Indeed, Park rangers have even prohibited Tribal members from salvaging road-killed elk within Park boundaries.

As a federal agency, the Park Service has a trust responsibility to protect Treaty rights, not just ethnographic and archaeological resources. The Tribe requests government-to-government consultation on the potential effects of the proposed boundary expansions on Treaty hunting and gathering.

The GMP/EIS should carefully analyze the effect the Park boundary expansion would have on Treaty hunting and gathering opportunities and discuss measures that could reduce or mitigate these effects. Such mitigation measures should include a Memorandum of Agreement involving the Park Service, the Tribe and the Washington Department of Fish and Wildlife guaranteeing that any lands acquired under the GMP/EIS would remain open to Tribal hunting and gathering.

The Tribe has other concerns about the Park boundary expansion. In Appendix B of the GMP/EIS it is revealed that under the Preferred Alternative approximately 44,000 acres of land in the Lake Ozette watershed would be acquired outside the Park boundaries and exchanged with the State of Washington Department of Natural Resources to be managed under the "Legacy Forest" concept. (Page 372). There is no further discussion in the document concerning the Legacy Forest concept and it is unclear what goals and objective would apply to the management of Legacy Forest lands. It is also unclear whether these lands would be open to Treaty hunting and gathering. The GMP/EIS should explain the Legacy Forest concept in greater detail and analyze its effects on Treaty hunting and gathering activities and other Tribal rights and interests. Furthermore, the GMP/EIS should discuss measures that can be taken to accommodate Treaty hunting and gathering in this area should the Legacy Forest concept be implemented.

The GMP/EIS should also analyze the effect of the Park boundary expansion on road access to and from the southern portion of the Makah Reservation. Would newly acquired Park lands be managed as Wilderness, and if so, how would this affect road access to and from the Makah Reservation?

Additionally, the GMP/EIS should analyze the social and economic effects of the proposed Park boundary expansion. No discussion of the social and economic effects of the boundary expansion is found in the draft document. Over the years, the Tribe has acquired

several thousand acres of forest lands south of the original Makah Reservation and has plans to purchase additional lands. If the Tribe is unable to acquire additional commercial forest lands, this could have a negative effect on the Reservation economy. How would the Park Service's acquisition plans affect the Tribe's ability to acquire lands for economic development?

II. Ozette Reservation.

The GMP/EIS contains little discussion of the effect of Park management on the Ozette Reservation which was transferred by Congress to the Makah Tribe in 1970. The Ozette parcel is completely surrounded by Olympic National Park and is heavily used by Park visitors. Recently, the Tribe has implemented a recreational permit program that requires visitors using Tribal lands to obtain a permit for a nominal fee. Non-members using the Tribe's lands at Ozette are subject to this requirement. However, due to the Tribe's limited resources and the Ozette parcel's geographic isolation, the Tribe has been unable to enforce this requirement with respect to the Ozette parcel, despite heavy non-member visitation.

The Tribe would like to work with the Park Service to develop a mechanism that encourages Park visitors who intend to use the Ozette parcel to obtain the proper Tribal permits in addition to Park Service permits. In addition, the Tribe would like to discuss with the Park Service the possibility that Tribal members can be hired as Park Service employees to provide interpretive services to Park visitors in the Ozette area. It is our understanding that few if any Tribal members are employed as Park rangers despite the extremely important traditional cultural properties located in this area.

III. Tribal Whaling.

The GMP/EIS states that whaling "was" an important activity for the Makah, but should also acknowledge the current importance of whaling to the Tribe. (Page 136). Additionally, the GMP/EIS should acknowledge that the Tribe's whaling rights includes the right to use the shore for the purpose of landing and harvesting whales and the right to utilize whales that become stranded on beaches within its usual and accustomed whaling area. Park beaches are clearly within the Tribe's usual and accustomed whaling grounds. The Tribe asks the Park Service to acknowledge the Tribe's whaling rights in the GMP/EIS so that issues do not arise in the future when the Tribal members seek to exercise their rights to use Park beaches for whaling purposes.

IV. Cultural Resources.

The following comments were prepared by the Makah Tribal Historic Preservation Office (THPO) and relate to the protection and preservation of cultural and archaeological resources directly related to the Makah Tribe. In 2000, the Makah Tribe entered into agreement with the National Park Service to assume the responsibilities of the State Historic Preservation Officer within the boundaries of the Makah Indian Reservation. As discussed above, the Makah hold a satellite reservation at Ozette, which is surrounded by Park lands.

The Makah people have occupied the area on the northwest tip of the Olympic Peninsula for millennia as evidenced in both the oral record and supported by archaeological evidence studied over the past decades. Therefore the comments formulated by the THPO office pertain to the continuation of customs and practices of Makah tribal members within the affected area of the draft GMP/EIS. As a general matter, it is worth emphasizing state that any action taken by

the Park that impedes the Tribe's ability to continue cultural practices such as hunting, fishing, gathering, etc., including ceremonial practices, erodes the cultural continuity and causes an adverse effect to the Tribe. Specific issues of concern are listed below:

- Cultural landscape definitions seem to exclude prehistoric landscape features. Prehistoric features such as the Ozette prairies are being lost due to the conflict with wilderness designation and management. These prairies are important cultural resources as they provide a source of medicinal plants. Limitations on fire use prevent the long-term maintenance of these cultural landscapes. The GMP/EIS should evaluate the effects of current and proposed future management on the survival of historical prairies at Ozette and other locations with the Park.
- Where ethnographic resources are described the plan speaks to the protection and preservation of traditional cultural properties yet leaves out the discussion of the Tribe's traditional use of these properties. While natural resources need to be protected, the significance of the properties can only be preserved by traditional use, which in many cases involves harvesting. (See page 327 paragraph 3)
- The draft GMP/EIS does not mention documentation/ tracking/prosecution of violations of cultural resource laws. This is a vital part of cultural resource management.
- The Museum Collections plan in the draft GMP/EIS does not include tribal consultation for appropriate handling and or restrictions. Consultation is a valuable tool that can enhance interpretation from a tribal perspective and lends to overall respectful relationships between the Park and Tribes.
- Where Memoranda of Agreement are prescribed regarding impacts to cultural resources, appropriate Tribes should be invited signatories.

The Tribe appreciates the opportunity to comment on the GMP/EIS and requests consultation with the Park Service on the proposed expansion of the Park boundary.

Sincerely,

MAKAH TRIBAL COUNCIL



Ben Johnson, Jr.
Chairman