

**TAS APPLICATION – WQS and Water Quality Certification**

**SQUAXIN ISLAND TRIBE of the SQUAXIN ISLAND INDIAN RESERVATION**

**TREATMENT AS A STATE APPLICATION FOR WATER QUALITY STANDARDS AND CERTIFICATIONS  
UNDER THE CLEAN WATER ACT §§ 303(c) and 401 PROGRAMS**

The Squaxin Island Tribe applies to the U.S. Environmental Protection Agency under § 518 of the Clean Water Act to become eligible to be treated in a similar manner as a state to administer a Clean Water Act § 303 (c) water quality standards program and CWA § 401 water quality certification program.

The Squaxin Island Tribe intends to administer this authority for all waters located within the exterior boundary of Squaxin Island Reservation and Trust lands, which includes areas both on and off of Squaxin Island.

This Application, its Exhibits, and supporting documents can be found at <https://squaxinland.org/epa-treatment-as-a-state/>

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## **EXHIBIT LIST**

- Exhibit 1 Squaxin Island Tribal Council Resolution 22-46 authorizing TAS Application.
- Exhibit 2 Squaxin Island Tribal Constitution
- Exhibit 3 Treaty of Medicine Creek
- Exhibit 4 Maps
- Exhibit 5 Land List
- Exhibit 6 Legal Descriptions

## 1.0 BACKGROUND

The Squaxin Island Tribe is a federally recognized tribe whose reservation is located in Northwest Washington. Its Reservation lands and water encompass Squaxin Island, its tidelands, and submerged lands (collectively, on-Island) and off-Island Reservation lands and waters. The Tribe is a keen advocate for water quantity and quality, especially in support of the exercise of its treaty rights to fish, including shellfish.

In 1998, the Environmental Protection Agency (EPA or Agency) approved the Squaxin Island Tribe as satisfying the criteria for § 518 (e) § 504 of the Clean Water Act (CWA) and awarded it a § 106 Water Pollution Control Program grant.<sup>1</sup> The application included a demonstration of the Tribe's eligibility to administer programs for the prevention, reduction and elimination of water pollution, including the development and implementation of ground-water protection strategies.

In 2000, the Agency awarded a CWA § 319 grant.<sup>2</sup>

However, the EPA requires an applicant to demonstrate that it satisfies § 518 (e) and § 504 for implementation of its regulatory programs, including, as requested here, treatment as a state for CWA § 303 (c) water quality standards and § 401 water quality certification programs. Accordingly, the Squaxin Island Tribe supplements its 1998 and 2000 application for CWA § 518 (e) and § 504 eligibility as it relates to § 303 (c) and § 401. See 40 CFR 131.8(b)(6) and 40 CFR 130.16(b).

The regulations provide that a tribe need only provide the required information which was not submitted in previous applications. The Squaxin Island Tribe understands that with the approval of its 1998 and 2000 applications, it satisfied each of the four primary criteria for TAS. Nonetheless, the Tribe provides this application anew for the convenience of the EPA reviewers.

## 2.0 FEDERAL RECOGNITION (40 CFR 131.8(a)(1) and (b)(1))

The Squaxin Island Tribe of the Squaxin Island Reservation is listed in the Secretary of the Interior's list of federally recognized tribes at 87 FR 4636-02 published January 28, 2022.<sup>3</sup>

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<sup>1</sup> November 28, 1997, Application. § 106 grant award January 29, 1998. See also February 17, 1998, transmitting authorizing Resolution 98-11. <https://squaxinland.org/wp/wp-content/uploads/2022/06/Approved-SIT-CWA-106-Funding-98.pdf>

<sup>2</sup> See February 14, 2000, Application. § 319 grant award dated March 14, 2000. <https://squaxinland.org/wp/wp-content/uploads/2022/06/Approved-SIT-CWA-319-Application-2000.pdf>

<sup>3</sup> Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs. <https://squaxinland.org/wp/wp-content/uploads/2022/06/Indian-Entities-Recognized-by-and-Eligible-to-Receive-Services-from-the-United-States-Bureau-of-Indian-Affairs-2022.pdf>

The United States recognized the Squaxin Island Tribe by the Treaty of Medicine Creek, signed by the predecessors of the Tribe, consisting of seven bands, each representing one of the seven inlets of Southern Puget Sound, and the United States on December 26, 1854, ratified by the United States Senate on March 3, 1855, and thereafter signed by President Franklin Pierce. 10 Stat. 1132. Please see Exhibit 3.

### **3.0 AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40 CFR 131.8 (a)(1) and 131.3 (I))**

The Squaxin Island Tribe exercises authority over its reservation, and within its usual and accustomed fishing grounds and stations, and on lands open and unclaimed within the State of Washington. For purposes of this Application, the Squaxin Island Tribe exercises authority of a subset of those lands and waters within the exterior boundary of the Reservation and Trust Lands.<sup>4</sup>

The Reservation was created by the Treaty of Medicine Creek of December 1854. The initial Reservation is an island located in Southern Puget Sound. Subsequent federal proclamations added certain lands off-island as reservation.<sup>5</sup> Together, these lands are referred to as Reservation Lands.

The Squaxin Island Tribe holds fishing rights that extend to all species and marine resources there. *United States v. Washington*, 384 F.Supp. 312, 377 (W.D. Wash. 1974) (Judge Boldt recognizing Squaxin’s usual and accustomed fishing grounds and stations (U&A) in Finding of Fact #141)<sup>6</sup>; *Nisqually Indian Tribe v. Squaxin Island*, 193 F.Supp.3d 1190 (W.D. Wash. 2016) (confirming that Judge Boldt in 1974 had recognized Squaxin’s U&A as extending south and west from the Tacoma Narrows throughout South Puget Sound).<sup>7</sup>

The ancestors of the Squaxin Island Tribe resided in the seven inlets in southwestern Puget Sound. Since the Tribe relinquished thousands of acres to the United States and was forcibly relocated to Squaxin

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<sup>4</sup> “Reservation” or “Reservation and Trust Lands” means those lands formally designated as reservation together with trust lands over which the government exercises its authorities. 56 FR 64876, 64881.

<sup>5</sup> FR Doc. 77-30176 (October 14, 1977); 49 FR 50116-01, (December 26, 1984) and 64 FR 2499-01 (January 14, 1999), each Proclaiming Certain Lands as Reservation for the Squaxin Island Tribe of Indians in Washington. <https://squaxinland.org/wp/wp-content/uploads/2022/06/Proclamations-re-additional-Reservation-lands-of-Squaxin-Island-Tribe.pdf>

<sup>6</sup> 384 F.Supp. 312, 377. <https://squaxinland.org/wp/wp-content/uploads/2022/06/United-States-v-Washington-384-F.Supp.-312-1974.pdf>

<sup>7</sup> 193 F.Supp. 3d 1190. <https://squaxinland.org/wp/wp-content/uploads/2022/06/United-States-v-Washington-193-F.Supp.-3d-1190-2016.pdf>

Island, an inhospitable location lacking in potable water, it was particularly important to the Squaxin people's survival that they maintain off-reservation fishing and shell fishing rights and a self-sustaining homeland. The Treaty of Medicine Creek reserved these rights to the Tribe.

For example, Pickering Passage, Case Inlet, and the surrounding area, was historically important for the Squaxin Island Tribe's ancestors.<sup>8</sup> One of the seven communities resident in that area, the Squawksin or Squaks'Na'Mish, maintained their winter village (tuxsqwa'ksud) at the head of Case Inlet. Many seasonal resource use locations dotted the shoreline throughout Case Inlet and along the length of Pickering Passage, both on the mainland and on Harstine Island. Anthropologist T. T. Waterman chronicling Native American place names in Puget Sound in the early twentieth century, identified many of these sites. At tuxe'tcai ("mossy place"), opposite the town of Allyn, moss was used to wipe the slime from fish before drying them. Qola'tstEb ("serviceberry ground") is a beach lying west of McLane's Cove; just south of McLane's Cove, Ke'wai ("porpoise hunter") marked the spot where a man hunting porpoises was turned into stone by the Transformer. South of Dougall Point (sqwicqs, or "little promontory") on Harstine Island, dæxwædæxwił (Jarrell's Cove) was where good cedar for manufacturing canoes could be found. On the northern end of Squaxin Island, at the entrance to Pickering Passage and near Salmon Point, is Y'lbux – the name of a power and certain related ceremonies that enables someone to cause a herring run. Similar historic activities can be cited for the remaining six communities.

The Squaxin Island Tribe's ancestors depended upon fish more than any other resource – hence why Gibbs characterized them as "saltwater Indians." They caught and utilized any edible fin-fish including, but not limited to, salmon, trout, sturgeon, flounder, dog fish, cod, herring, smelt and bullhead, as well as shellfish. Their fishing methods were highly developed, with specialized gear and inter-generational knowledge of where, when and how to most efficiently catch and manage all fish species. Fish were caught with line and hook baited with clam, cockle or shrimp; in nets made of nettle string and willow rope with stones tied to one side of the net and cedar floats to the other, or large cylindrical nets fastened by two cedar poles; and with traps or weirs. Additionally, salmon, flounder, and sturgeon were speared. A sophisticated harpoon with a detachable point was used to catch sturgeon and porpoise. Large schools of spawning smelt, and herring crowded to shore, where they were scooped out using large, twined matting; when not spawning they were usually caught at night using a cedar rake that had pointed pegs of ironwood. While fishing occurred in daylight, the Squaxin Island Tribe's ancestors spent significant time

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<sup>8</sup> Sources for this and the following paragraph are: Alfred J. Smith Notebooks, ca. 1948, at University of Washington Special Collections, accn 4815-001; Bern Anderson, "The Vancouver Expedition, Peter Puget's Journal of the Exploration of Puget Sound May 7 – June 11, 1792," *The Pacific Northwest Quarterly* 30, no. 2 (April 1939): 177-217; George Gibbs, *Indian Tribes of Washington Territory* (Fairfield, WA: Ye Galleon Press, 1972); George Gibbs, Unpublished notebook 1, at Yale University Library Beinecke Rare Book and Manuscript Library, New Haven, Connecticut, WA MSS S-1810, box 1, folder 1; Elizabeth Galentine and the Anderson Island Historical Society. *Anderson Island* (San Francisco, CA: Arcadia Publishing, 2006); Hazel Hackman, *Island in the Sound* (Seattle: University of Washington Press, 1967); Marian Smith, *The Puyallup-Nisqually* (New York: Columbia University Press, 1940); T. T. Waterman, *Notes on the Ethnology of the Indians of Puget Sound* (New York: Museum of the American Indian, Heye Foundation, 1973); and T. T. Waterman and Geraldine Coffin, *Types of Canoes on Puget Sound* (New York: Museum of the American Indian, Heye Foundation, 1920).

fishing in the darkness before dawn when certain species, such as flounder, were easily lured with fire. Once caught, fish would be hauled to nearby fishing camps, such as on Harstine Island, Squaxin Island, or the mainland, for processing.

Fishing was and remains an essential part of Squaxin culture, subsistence, identity, economy and commerce. Squaxin has an active and skillful fishing fleet. Its Tribally owned company Salish Seafoods buys and sells fish and shellfish, including the harvests of Tribal fishers.<sup>9</sup> The fishery on and around Squaxin Island was and continues to be very important to Tribal fishers and members because it represents a fishing area where their ancestors fished. Today, the Squaxin Island Tribe co-manages fin fisheries in Puget Sound with the State.

The Tribe considers fish and shellfish, its Treaty-reserved fishing grounds and stations, and its continued access to those places, to be protected cultural resources. These rights are, as one court has explained, “priceless symbols of cultural and religious traditions.” See *United States v. State of Or.*, 787 F. Supp. 1557, 1572 (D. Or. 1992), *aff’d*, 29 F.3d 481 (9th Cir. 1994), *amended*, 43 F.3d 1284 (9th Cir. 1994). Fishing remains critical to “the preservation of Indian cultural heritage and way of life, and the provision of a significant element of Indian diet.” *United States v. State of Wash.*, 384 F. Supp. 312, 383 (W.D. Wash. 1974), *aff’d and remanded*, 520 F.2d 676 (9th Cir. 1975).<sup>10</sup> This is true for the Squaxin people.

The quality and quantity of waters within the exterior boundary of the Squaxin Island Reservation and Trust Lands are critical to those cultural and economic interests.

The EPA recognized the Squaxin Island Tribes exercise of governmental authority over its Reservation and Trust Lands in its 1998 and 2000 § 518(e) approvals.<sup>11</sup>

With respect to the exercise of its governmental authority, the Tribe also notes that it is designated as, and contracts under, the Self-Governance Act. The Act established the Tribal Self-Governance program on a permanent basis and was added as Title IV (Tribal Self Governance Act of 1994) of the Indian Self-Determination and Education Assistance Act of 1975 (the ISDEA) (Pub. L. 93-638). See also the comprehensive laws of the Tribe.<sup>12</sup>

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<sup>9</sup> Available at <http://salishseafoods.com/>

<sup>10</sup>See: <https://squaxinland.org/wp/wp-content/uploads/2022/06/United-States-v-Washington-384-F.Supp.-312-1974.pdf>

<sup>11</sup> *Infra*, FN 1 and 2.

<sup>12</sup> See: <http://squaxinland.org>. See also: [https://library.municode.com/tribes and tribal nations/squaxin island tribe/codes/code of ordinances](https://library.municode.com/tribes%20and%20tribal%20nations/squaxin%20island%20tribe/codes/code%20of%20ordinances) (last accessed July 24, 2022)

The Tribe also relies, in part, on the Congress' delegation of authority under § 518 as affirmation of the Tribe's governmental authority in regulating its land and waters. 80 Fed. Reg. 47430-02, 47436 (Aug. 7, 2015).

In sum, the Tribe exercises its governmental authority over "water resources which are within the boundary of the Indian Reservation and held by the ... Tribe." 40 CFR 131.8 (a)(3). This includes lands and waters within the exterior boundary of the Reservation and lands held in trust by the United States for the benefit of the Tribe. See Section 5 of this application for more information about the description of the lands designated by this application.

#### **4.0 TRIBAL GOVERNANCE (40 CFR 131.8 (a)(2) and (b)(2))**

The Squaxin Island Tribe has a governing body carrying out substantial governmental duties and powers.

See the Tribe's previously approved TAS application for the § 106 Water Pollution Control Program.<sup>13</sup> See also the Tribe's previously TAS application for CWA § 319 grant.<sup>14</sup>

Since the prior approvals, there have been significant and positive changes, including a substantial increase in its size, capacity and capabilities of the tribal government, each department having grown significantly in budget, staff and experience, and alternate revenue streams for tribal government developed through its many economic development initiatives.

#### **4.1 Description of the form of the Squaxin Island Tribe's Government. 40 CFR 131.8 (b)(2)(i) and 40 CFR 130.16 (b)(2)(i).**

The Squaxin Island Tribe is a federally recognized Indian Tribe constituted in 1965. Pursuant to an election authorized by the Secretary of the Interior on December 29, 1964, in accordance with § 16 of the Indian Reorganization Act of June 18, 1934, as amended by the Act of June 15, 1935, the Constitution and Bylaws of the Squaxin Island Tribe were submitted to qualified Tribal voters on May 15, 1965 and duly adopted. The Constitution and Bylaws were approved by the Secretary of Interior, Stewart L. Udall, on July 8, 1965. Exhibit 2. The Constitution and Bylaws were amended in 1998 and 2000.<sup>15</sup>

The Constitution and Bylaws establish the Squaxin Island Tribal Council as the governing body of the Squaxin Island Tribe and charge the Tribal Council with the duty of protecting the health, security, and general welfare of the Tribe's members.

The Tribal Council consists of seven members including: A Chairman, a Vice Chairman, a Secretary, a

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<sup>13</sup> Infra FN 1.

<sup>14</sup> Infra FN 2.

<sup>15</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/Constitution-1965-as-amended-1998-and-2000.pdf>.



Treasurer, and three at-large members. All Tribal Council members and officers are elected to serve a three-year term. Elections are held each year, at the annual Spring meeting of the General Council. Any enrolled Tribal member, 18 years of age and older, is eligible to vote. Members meeting voting eligibility and living within a fifty-mile radius from any point on Squaxin Island are eligible to serve on the Tribal Council.

The authority of the Tribe is vested in the Tribal Council by the General Body save for five functions: the election or removal of members of the Tribal Council, resolving election disputes, referendum, and amending the Constitution. See Articles V, VII, IX and X.

The Squaxin Island Tribal Council exercises virtually all traditional governmental powers with regard to land and water resources, including within the boundaries of its Reservation and Trust Lands.

The Chairman of the Tribal Council presides over meetings of the Tribal Council and the General Council and exercises any authorities specifically delegated to him by the Tribal Council. In the absence of the Chairman, the Vice Chairman assumes all the rights, privileges, duties, and responsibilities of the Chairman; otherwise, the Vice-Chairman assists the Chairman when called upon to do so. The Secretary is responsible for the preparation of all Tribal correspondence, taking minutes, recording official actions, and maintaining custody of all files and records pertaining to matters transacted at Tribal Council and General Council meetings. The Secretary signs notices and documents only as authorized by the Tribal Council. The Treasurer maintains custody of and is responsible for all funds in the control of the Tribal Council. The Treasurer must be bonded and may not disburse Tribal funds except as duly authorized by the Tribal Council.<sup>16</sup> The Tribal Council delegates its authorities by appointing commissions and other personnel as required and outlining their duties and responsibilities by proper resolution.

The Tribal Council is supported by commissions and committees. Its commissions exercise certain delegated authorities. Its committees are advisory. The commissions of the Squaxin Island Tribe include the Budget Commission, Education Commission, Gaming Commission, Housing Commission, and Utilities Commission. Its committees including 2%, Aquatics (shellfish-related), Benefits, Elders, Elections, Employment Law, Enrollment, Explorers Program, Fireworks, Fish, Gathering (botanicals), Golf Advisory, Hunting, Law Enforcement, Personnel, Shellfish, Veterans, and Workers Comp Plan Committees.

The Tribal Council houses the legislative and executive functions. The executive oversees general government activities, as distinguished from its several economic development enterprises, each with its own administrator. The general government executive is titled the Tribal Administrator and oversees the function of the Tribe's departments, each implementing the Council's policy directives.

The Tribe has an extensive governmental organization and is administers numerous programs for the benefit of Tribal members, residents of the Squaxin Island Indian Reservation, and the surrounding community.

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<sup>16</sup> See Article VI s 4:

[https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances?nodeId=COBYSQISTRSQISINREWA\\_ARTVITIOF\\_SE4](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances?nodeId=COBYSQISTRSQISINREWA_ARTVITIOF_SE4) [last accessed July 24, 2022, 2022].

The Tribe has fifteen major departments performing governmental functions and reporting to the Tribal Administrator. The departments include: Behavior Health Services, Cultural Resources Department, Department of Planning and Community Development, Executive Service, Family Services, Finance Department, Health Clinic, Human Resources, Information Services, Natural Resources, Northwest Indian Treatment Center, Public Safety and Justice, and the Ta Ha’Buts Learning Center.<sup>17</sup> The Legal Department serves at the pleasure of the Tribal Council (its client) but manages its administrative matters through the Tribal Administrator.

The Tribe owns and operates Island Enterprises, Skookum Creek Tobacco Company, the Child Development Center and the non-profit Museum Library Research Center. Each is organized as a corporation with a Board of Directors and a Director, General Manager, or Executive Officer.

The Tribe also owns Little Creek Casino and Resort, an unincorporated entity of the Tribe.

Judicial services are provided through the Tribe’s Court System. The Court is organized into three branches: (1) general, including civil and criminal jurisdiction; (2) employment court; and (3) child welfare court. The court has both trial and appellate level services. The Tribe’s courts are statutory courts, that is, each is defined by, and delegated specific authorities by statute.

The Tribal Council has appointed a chief judge and an associate judge as well as a court clerk and administrator. The Tribe’s Court System code delimits the authority of the Court, establishes the duties and requirements of each position, establishes the rules of evidence, civil procedure, criminal procedure, and other administrative rules of the Court. The Tribe's court system and staff have existed in this form since 1996.<sup>18</sup>

The Tribe contracts with the Northwest Inter tribal Court System for appellate judicial services.<sup>19</sup>

Finally, the Tribe has adopted a comprehensive set of civil and criminal laws in the exercise of its inherent and constitutional authorities.<sup>20</sup>

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<sup>17</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/Government-Report-FY21.pdf>

<sup>18</sup> See Tribal Court provisions: [https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances?nodeId=TIT4COSY](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances?nodeId=TIT4COSY) [last accessed July 24, 2022].

<sup>19</sup> See: <https://www.nics.ws/> [last accessed July 24, 2022].

<sup>20</sup> See: [https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances) (last accessed July 24, 2022).

#### **4.2 Description of the Types of Governmental Functions currently performed by the Squaxin Island Tribe. 40 CFR 131.8 (b)(2)(ii) and 40 CFR 130.16 (b)(2)(ii).**

The EPA previously recognized the governmental functions performed by the Tribe as sufficient to satisfy CWA § 518 (e) requirements in its 1998 and 2000 approvals.

The Tribal Council is the representative governing body authorized by the Tribe's Constitution, adopted in 1965. It established a seven-member Council elected to three-year terms on a staggered basis. The Council sets policy, considers community input, and relies upon the administrative staff to effectively carry out its policies. Through this process, the needs of Tribal members and other Indian people, including Squaxin Island Tribal member descendants, living within the Tribe's designated service area is effectively met. Tribal governmental programs receive overall direction from the Tribal Council through the Administrator. The Tribe adheres to the practice of separation of Tribal government and Tribal administration to provide continuity and stability in its day-to-day operations.

In 1988, Congress authorized a demonstration project called Self-Governance, which allowed for many programs and services formally administered by the Bureau of Indian Affairs (BIA) to be transferred to the Tribes themselves. The Squaxin Island Tribe was one of the first seven Tribes in the nation to participate in this project. Self-Governance funding is used to support numerous Tribal programs and activities. Some of these services include tuition and books for educational purposes; housing; cultural enhancement; natural resources and harvest management; habitat protection; enrollment; water resources planning; aquaculture planning and other business development activities.

The Tribe has continued to perform governmental functions to among other matters, exercise its police powers to protect the environment, including, for example, establishing regulatory programs or carrying out permitting and enforcement activities.<sup>21</sup>

#### **Police Powers Affecting Health, Safety and Welfare**

The Tribe possesses inherent powers to govern, at minimum, within the exterior boundaries of the lands and waters defined within its Reservation and Trust Lands and additionally, its members conduct on lands and waters outside of its Reservation in the exercise of the Tribe's treaty rights. The Tribe retains substantial authority over matters affecting tribal health and welfare. The Tribe legislates to ensure environmental protection to the full extent of its inherent governmental authority to act. The Tribe has enacted codes that establish standards, permit requirements, and penalties for violations, and provide for enforcement in tribal court and through tribal agency proceedings.<sup>22</sup>

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<sup>21</sup> For a comprehensive review of goals and objectives and performance measures for each department, please see the 2021 Annual Report <https://squaxinland.org/wp/wp-content/uploads/2022/06/Government-Report-FY21.pdf>

<sup>22</sup> Id.

In addition, the Tribe's authority as co-manager in the exercise of treaty fishing rights has been affirmed.<sup>23</sup> The Tribe's authority as co-manager similarly extends to the exercise of the right to hunt and gather.<sup>24</sup>

Further the Tribe has been authorized under federal law to assume primary regulatory authority for administering various federal environmental programs and other federal programs, like gaming, food safety, and occupational health.

### **Taxation**

"The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services. The power does not derive solely from the Indian tribe's power to exclude non-Indians from tribal lands. Instead, it derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982). The Squaxin Island Tribe exercises this authority by levying a sales tax, cigarette tax, tobacco tax, fuel tax, liquor tax, marijuana tax, and natural resource harvest tax.

### **Determination of Enrollment**

The Tribal government has inherent authority to govern enrollment, which is central to the Squaxin Island Tribe's health, welfare, economic security, culture and existence as an independent political community. To that end, the Tribe adopted a comprehensive enrollment code. The purposes of the code are, consistent with the Tribal Council's findings and policy directives, to implement and interpret the Constitution's membership provisions, and to provide a means for consistent decision-making on membership issues, including resolving membership-related disputes.<sup>25</sup>

The Enrollment Code is enforced to ensure that confidentiality is not violated and that submissions are not false or misleading, with civil and criminal penalties.

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<sup>23</sup> See for example, April 28, 1997, Stipulation and Order Concerning Co-Management and Mass Marking. <https://squaxinland.org/wp/wp-content/uploads/2022/06/Stipulation-and-Order-Concerning-Co-Management-and-Mass-Marking-96-3-April-28-1997-Dkt-16-15961.pdf>

<sup>24</sup> <https://squaxinland.org/wp/wp-content/uploads/2022/06/MOA-WDFW-Co-Management-2015.pdf>

<sup>25</sup> See: [https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances?nodeId=TIT5ENCO](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances?nodeId=TIT5ENCO) [last accessed July 24, 2022].

### **Specific regulatory activities the Tribe undertakes.**

The Tribe undertakes three categories of oversight: implementing regulations, code enforcement and permit compliance.

The Tribe adopts annual and in-season regulations for the exercise of treaty rights, primarily time, place and manner restrictions. Those regulations include fish, shellfish, aquaculture, hunting and gathering, and access. The Tribe has also adopted a forest practice act and implementing regulations.

The Tribe has adopted a comprehensive set of codes. Each has a compliance and enforcement component. In the arena of environmental matters, natural resource management is paramount. The Natural Resource Management code includes prohibitions and penalties, including civil seizure and forfeiture.<sup>26</sup> Its topics include treaty finfish, inter-tidal shellfish, commercial fish buyers, treaty sub-tidal aquatic resources, treaty hunting, shellfish sanitation, tideland access, and forest practices.

The Tribe has also adopted wastewater, utility, building, housing and contaminated properties codes.<sup>27</sup> Each has a compliance and enforcement component.

The Tribe also undertakes regulatory activities by agreement with federal, state or local partners via cross-commission, co-management or other agreements.

### **Permit compliance**

The Tribe partners with federal, state and local partners to implement and enforce the regulations of the other via cross-commission, co-management or other agreement.

For example, the Tribe, together with the Washington Department of Health, have employed an inter-governmental system regarding shellfish sanitation for monitoring, enforcement and dispute resolution under a consent decree. The consent decree entered by the Court on May 4, 1994, specifies those public health requirements to be applied to Treaty shell fishing activities together with oversight and enforcement.<sup>28</sup>

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<sup>26</sup> See:

[https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances?nodeId=TIT7NAREMA](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances?nodeId=TIT7NAREMA) [last accessed July 24, 2022].

<sup>27</sup> See Title 11:

[https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances?nodeId=TIT11BUUT](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances?nodeId=TIT11BUUT) [last accessed July 24, 2022].

<sup>28</sup> See: Consent Decree Regarding Shellfish Sanitation Issues at [https://squaxinland.org/wp/wp-content/uploads/2022/06/Shellfish-Sanitation-Consent-Decree-19-F.Supp\\_.3d-1126-1134.pdf](https://squaxinland.org/wp/wp-content/uploads/2022/06/Shellfish-Sanitation-Consent-Decree-19-F.Supp_.3d-1126-1134.pdf)

### **Specific legislative activities the Tribe undertakes.**

The legislative activities of the Tribe are expressed primarily in its codes, implementing regulations or resolutions. Resolutions are directives, authorizations or policy pronouncements or interpretations.

The Tribe undertakes all manner of general governance legislative activities, including, those related to the environment.

### **Specific executive activities the Tribe undertakes.**

The executive, or administrative, activities of the Tribe are expressed in its Annual Report. Please see the 2021 Annual Report.<sup>29</sup> See also the Incomplete Survey of Goods and Services dated May 2014.<sup>30</sup>

### **Financial Management**

The Tribe has a comprehensive administration infrastructure, complete with finance, legal, and grants compliance staff. It conducts its business and accounting practices in compliance with federal and state regulations and has developed its own financial policies and procedures, which are in place and in use for effective overall management and control of government operations.

The Tribe's policies and procedures for financial management have been developed to meet the requirements of the applicable governing regulations: 2 CFR Part 200, 24 CFR part 85, and 24 CFR part 1003. The Tribe employs fund accounting and uses computerized accounting systems: MIP governmental series version 2016.1.1, CUSI for Utilities billing, and Microix for purchasing.

The financial statements of the Squaxin Island Tribe are prepared in conformity with Generally Accepted Accounting Principles as applied to government units. The Tribe has annual audits by a certified public accounting firm and is in good standing as described in annual audit reports. The current audit, which was submitted within 9 months of the end of the Tribe's fiscal year, is available through the Federal Audit Clearinghouse. The Tribe is fully capable of administering grants analogous to this opportunity and has an impressive history of successful audits and grant/contract compliance, evidenced by 23 consecutive years of Financial Audits with no material adverse findings.

### **Public Health**

#### **Health and Wellness Services**

The Sally Selvidge Health Clinic provides more than 9,000 patient/client contacts each year for the

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<sup>29</sup> Infra FN 21.

<sup>30</sup> See Incomplete Survey of Goods and Services Provided by the Squaxin Island Tribe at <https://squaxinland.org/wp/wp-content/uploads/2022/06/Incomplete-Sampling-of-Governmental-Programs-and-Services-May-2014.pdf>

provision of services that include medical, dental, and mental health. For specialty services not provided on the Reservation, the IHS Contract Health Services program, administered by the Clinic, provides purchase order numbers for eligible clients to make health-related visits to Off-Reservation facilities and care providers.

The Tribe also operates a substance abuse treatment center at its facility in Elma, Washington. The Northwest Indian Treatment Center (NWITC) is a 45-day drug and alcohol residential treatment program for primarily Native Americans from Washington, Oregon and Idaho. NWITC opened in 1994 and received national accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) in January 1998. The center accepts patients referred through outpatient treatment programs, parole and probation services, hospitals, assessment centers, and child and family service centers.

### **Public Water System**

Management of the community water, wastewater and solid waste management programs resides in the Tribe's Department of Community Development. The Tribe has a certified water plant operator (contract) and certified wastewater treatment plant operator (contract). It performs all the required tests and meets all the Federal standards under the Safe Drinking Water Act. The Tribe provides services to approximately 431 residential customers and 18 commercial and governmental customers.

The Tribe's potable water system is comprised of two drilled wells that pump directly to a 261,740-gallon concrete reservoir located approximately 160 feet higher in elevation than the first connection served on the Reservation. The reservoir is located on a hill near the intersection of US 101 and SR 108 in the Kamilche Valley. A third well, located near the tobacco factory, is not connected to the community system at the time of this writing. It serves the potable water needs of the tobacco factory, wastewater reclamation facility, golf course maintenance shed, and clubhouse.

In 2021, the department noted the following public water system accomplishments:

- Completed EPA water system inspection.
- Completed energy efficiency study.
- Processed waivers for water testing.

### **Wastewater Collection, Treatment, and Reuse**

The Tribe's wastewater collection system originates in the Tribal housing and government services area where wastewater from individual locations is routed to gravity mains throughout the area and carried to one of three lift stations. The gravity mains are comprised of approximately 8,000 lineal feet of 4-inch diameter polyvinyl chloride (PVC) pipe. Wastewater generated on the Reservation is treated in a Water Reclamation Facility (WRF) utilizing Membrane Bioreactor (MBR) technology. The WRF is located in the Tribe's light industrial park. Effluent quality generated by the WRF is Class A, suitable for unregulated reuse. Treated effluent is pumped to an 18 million gallon constructed storage pond adjacent to the Salish Cliffs Golf course and used primarily for golf course irrigation. Bio solids are stabilized during the long sludge residence time in the MBR process. The Tribe contracts sludge hauling services.

In 2021, the department noted the following wastewater related accomplishments:

- Improving sewer and storm water system located at the Child Development Center.
- Regular cleaning of the storm system.
- Cleaned the retention Pond.
- Wet Well installation at the Child Development Center.
- Purchased grinder pumps for maintenance station.
- Purchased blowers for the wastewater treatment Plant.
- Purchased two trucks.
- Jetted storm pond and system.

### **Solid Waste Collection, Recycling, and Disposal**

The Squaxin Island Tribe Integrated Solid Waste Management Plan (ISWMP) was prepared in 2012 with U.S. Environmental Protection Agency (EPA) grant funds.<sup>31</sup> The Plan identifies existing solid waste systems and proposed practices and describes a solid waste and recycling program for the Reservation. Prior to implementing the ISWMP, the Tribe did not have an organized program for carrying out solid waste collection and recycling activities.

Solid waste collection services are provided on the Reservation through a contract with Mason County Garbage and Recycling (MCG). Curbside collection from garbage totes is provided in the housing area. Larger containers are provided for office buildings, community service buildings, and business enterprises. Waste for disposal is hauled by MCG trucks to the Mason County Transfer station for consolidation and compaction in specialized cargo containers. Trucks transport these containers to an intermodal yard in Centralia where they are transferred from trucks to rail cars for transport to the Roosevelt Regional Landfill in Klickitat County, Washington.

### **Police Services**

The Tribal Code grants the Squaxin Island Tribal Police Department the authority to enforce the laws and regulations of the Squaxin Island Tribe. The goal of the Department is to enforce the laws and regulations set forth by the Tribal Council, federal law, and to the extent embraced by the tribal government, state law; to protect human life and to maintain the peace; to protect the property and resources of the Tribe and its members; to serve the Squaxin Island Tribe in a reasonable and prudent manner; and to carry out these responsibilities diligently and courteously and to take pride in the services provided.

The Police Department is composed of two divisions: The Land Services Division and the Natural Resources Division. The Land Services Division patrols the reservation, casino, tobacco factory and all other properties owned by the Tribe. To better serve the Tribe, the Land Services Division is cross commissioned

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<sup>31</sup> See ISWMP at <https://squaxinland.org/wp/wp-content/uploads/2022/06/Integrated-Solid-Waste-Management-Plan.pdf>



with Mason County. The Natural Resource Division focuses on protecting fisheries, shellfish, aquatics, and hunting resources.

There are currently 11 commissioned staff in the Natural Resource Division whose focus is the enforcement of the Tribe's Natural Resource Management code. In FY 2021 the department responded to 994 calls for service, filed 43 citations representing 58 distinct infractions.

Notably, the Tribe's Natural Resources, Legal and Public Safety (police) implement the policy directives of the Tribe for environmentally related activities through inspections and enforcement.

### **Specific judicial activities the Tribe undertakes.**

The Tribe's judiciary is ultimately responsible for the enforcement and imposition of sanctions for violation of the Tribe's code and implementing regulations.

The trial court is organized into three divisions: civil and criminal; employment; and family services. The Tribe has two judges and a court clerk. In FY 2021 the court managed 113 cases representing 43 criminal, 58 civil, 8 Indian Child Welfare and 4 Vulnerable Adult matters. The Court also has a prosecutor and offers public defense service to indigent criminal defendants.

### **Governance compacts and contracts.**

#### **Gaming Compact 1993, as amended (5<sup>th</sup>).**

In the fall of 1988, President Reagan signed into law the Indian Gaming Regulatory Act (IGRA). This confirmed the rights of tribes to conduct gaming on Indian lands and required states and tribes to enter into a compact (contract) for certain types of gaming. IGRA also created three classes of Indian gaming and provided for a different regulatory framework for each class.

Class III (Nevada-style) gaming includes activities such as lotteries, casino games, house-banked card games, horse racing, pari-mutuel wagering, off-track betting, keno and machine gaming. Tribal-state Class III gaming compacts between each tribe and the state outline: the style of gaming allowed, standards of operation, criminal and civil jurisdiction, state regulation fees and remedies for breach of compact.

Class II gaming includes bingo, pull-tabs, punch boards, tip jars and other games similar to bingo. Card games that are not banked by the house are considered Class II. Regulation of these games is within tribal jurisdiction, subject to oversight by the National Indian Gaming Commission.

Traditional or ceremonial Class I gaming remains within the exclusive jurisdiction of the Indian tribes. These are social games played solely for prizes of minimal value or traditional forms of Indian gaming connected to tribal ceremonies or celebrations.

IGRA requires states to negotiate gaming compacts in good faith to allow tribes to offer casino-style gaming if it is allowed in the state.

The Squaxin Island Tribe holds a gaming compact with its partner the State of Washington regarding Class III and II gaming. The Tribe has adopted its own regulatory package regarding Class I gaming.

The Tribe entered into initial compact in 1993. The compact was amended in 1995 (implementing Phase II, and increasing the size of gaming floor, the number of gaming stations, wagering limits, and hours of operation, providing for renegotiations, non-profit table, and a Most Favored Nation clause); 1998 (adding Appendix X - tribal lottery system); 2007 (adding Appendix X2 and Y); 2015 (amending Appendix X2); 2017 (adding second Facility, updating Indian land definition and adding Gaming and Gaming Promotions definitions, Gaming Facility owned by Tribe or tribally chartered entities, annual problem gambling reporting, clarifies age limit, adds eligibility to individual background options) and 2021 adding sport wagering.<sup>32</sup>

The geographic scope of that governance includes all of Indian Country as defined at 18 U.S.C. 1151. The Tribe's only gaming facility is located on Reservation lands.

### **Fuel Tax Agreement.**

In 1994, following disputes over the state's authority to impose the fuel tax upon the tribe or tribal members, consent decrees were entered. Those consent decrees set up systems to split fuel tax revenues with certain tribal governments. In 1995, the state Legislature recognized the potential for conflict over fuel taxes on fuel sold at tribal stations and enacted Substitute House Bill 1271. The new law gave the Department of Licensing (DOL) the authority to enter into an agreement with any federally recognized Indian tribe regarding the taxation of fuel on the reservation. In 1999, DOL began entering into agreements where fuel tax refunds were made to tribes based on a formula. A lawsuit was filed in late 2003 in U.S. District Court by the Squaxin Island Tribe and Swinomish Indian Tribal Community. This suit resulted in a ruling by Judge Thomas Zilly on January 5, 2006, that held that under Washington's fuel tax structure these two tribes were exempt from paying state fuel tax on fuel delivered to their tribal stations. The basis of Judge Zilly's ruling stemmed from longstanding federal case law that prohibits states from enforcing its taxes on a Tribe or its members for sales made within Indian Country absent specific Congressional delegated authority. Following the ruling, these two tribes negotiated an interim fuel tax agreement that included a one-year sunset clause.<sup>33</sup>

Under these agreements, tribal fuel stations received fuel with 100 percent of the fuel tax included in the price and they refunded 25 percent of the state fuel tax to the state. Senate Bill 5272 was passed in 2007 moving the legal incidence of the tax to the fuel licensee, often referred to as "tax at the rack." The legislation provided a framework to improve cooperation and communication between DOL and the tribes regarding the taxation of fuel delivered onto the reservation or trust lands. The fuel tax agreements between the Squaxin Island and Swinomish Tribes provided the model agreement for DOL to negotiate

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<sup>32</sup> See <https://squaxinland.org/wp/wp-content/uploads/2022/06/Gaming-Compact-1993-as-amended.pdf>

<sup>33</sup> See: <https://squaxinland.org/wp/wp-content/uploads/2022/06/Fuel-Excise-Tax-Agreement-2007.pdf>

with other tribes interested in a state fuel tax agreement, which were modified to require the tribes to pay the tax at the time of purchase, then DOL refunds 75 per cent of the state fuel tax to the tribes and the state retains 25 per cent of the state tax.

These agreements are limited to motor vehicle fuel (gasoline) and special fuel (diesel) taxes included in the price of fuel delivered to a tribally licensed retail station entirely owned by a tribe, tribal enterprise, or tribal member on reservation or trust land.

The geographic scope of that governance includes all of the Squaxin Island Tribe's Reservation and Trust Lands.

#### **Cigarette Excise Tax Agreement.**

Washington imposes a cigarette tax on the sale, use, consumption, possession or distribution of cigarettes. The Squaxin Island Tribe collect tribal cigarette and sales tax in place of the state taxes pursuant to a tax agreement between the tribe and the state. Anyone of legal age may purchase and possess cigarettes from tribal retailers covered by one of these contracts.

In 2004, the Tribe entered into a cigarette tax compact.<sup>34</sup> The geographic scope of that governance includes all of Indian Country as defined at 18 U.S.C. 1151. The compact is implemented on Reservation and Trust Lands.

#### **Liquor Agreement.**

The Squaxin Island Tribe entered into a liquor agreement December 11, 1996, and May 8, 2013.<sup>35</sup> The agreement is implemented on Reservation and Trust Lands.

#### **Cannabis Agreement.**

Washington law authorizes the Governor to enter into agreements with federally recognized Indian tribes located in Washington State concerning the commercial production, processing, and sale of marijuana. The Governor delegated the negotiation authority for these agreements to the Washington State Liquor and Cannabis Board.

The Squaxin Island Tribe entered into a marijuana agreement in 2015, amended 2016.<sup>36</sup> The geographic scope of that governance includes all of Indian Country as defined at 18 U.S.C. 1151. The compact is implemented on Reservation and Trust Lands.

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<sup>34</sup> See: <https://squaxinland.org/wp/wp-content/uploads/2022/06/Cigarette-Excise-Tax-Compact.pdf>

<sup>35</sup> See: <https://squaxinland.org/wp/wp-content/uploads/2022/06/MOA-Liquor-1996-2014.pdf>

<sup>36</sup> See: [https://squaxinland.org/wp/wp-content/uploads/2022/06/Marijuana-Compact-Amendment\\_DOH-MOA.pdf](https://squaxinland.org/wp/wp-content/uploads/2022/06/Marijuana-Compact-Amendment_DOH-MOA.pdf)

### **Inter-governmental mutual aid or special commission and cross commission agreements.**

The Tribe implements numerous inter-governmental cooperative agreements with its local, state and federal partners, including:

- Mason County Sheriff (MCSO) 2016 Agreement (special commission): The Squaxin Island Tribe and MCSO determined that a cooperative effort to provide law enforcement services is in the best interest of taxpayers and residents of their respective jurisdictions. The Squaxin Island Tribe and MCSO have undertaken numerous joint law enforcement activities, including coordination of training, shared use of radio frequencies, mutual participation in SWAT, special operations group, the Internet Crimes Against Children Task Force, search and rescue, and marine and dive enforcement.<sup>37</sup>
- Mason County (water). The Squaxin Island Tribe entered into an agreement providing for staging of water supply system for the County's new construction of a public works facility from an exempt well with limits on groundwater withdrawals to City supplied water via its system.<sup>38</sup>
- Mason County (watershed planning). The Tribe and the County entered into a letter of intent that memorialized their intent to develop a watershed restoration and enhancement plan for Water Resource Inventory Area 14a and work toward executing a binding memorandum of agreement. The letter of intent recognizes the government-to-government relationship that exists between them, commits to engage in cooperative land use and watershed planning, to provide for a long-term, environmentally sustainable water supply and human population growth, to protect and restore anadromous fish resources, and to pursue mutually beneficial governmental environmental and economic development interests and opportunities.<sup>39</sup>
- Mason County (pollution control). The Tribe entered into an Inter-Governmental Agreement with Mason County for a Pollution Identification and Correction (PIC) program and PIC Steering Committee for South Puget Sound.<sup>40</sup>

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<sup>37</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-Mason-County-Sheriff-2016.pdf> and <https://squaxiniland.org/wp/wp-content/uploads/2022/07/MOU-Amendment-1-Mason-County-Sheriff-2021.pdf>

<sup>38</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-Mason-County-re-water-supply-2007.pdf>

<sup>39</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-Mason-County-re-watershed-and-restoration-planning-2019-02-22.pdf>

<sup>40</sup> See <https://squaxiniland.org/wp/wp-content/uploads/2022/07/MOA-Mason-County-re-Pollution-Identification-and-Correction.pdf>

- Mason County (shellfish recovery grant). The Tribe entered into an Inter-Governmental Agreement with Mason County to provide South Puget Sound area residents with field work and analysis that addresses water quality and water protection issues. It provides for a Quality Assurance Project Plan specifically for continuous sampling, water sample collection and testing, and technical expertise for data entry into GIS and STORET, all intended to carry out the mission of South Sound Shellfish Recovery.<sup>41</sup>
- Mason and Pierce County (for shellfish quality assurance related activities). The Tribe entered into a sub recipient agreement with Mason County. The funds available were used to support efforts to improve water quality by implementing Shellfish Protection District (SPD) Closure Response Plans (CRP) for the Oakland Bay and North Bay drainage areas.<sup>42</sup>
- Washington Department of Fish and Wildlife (WDFW) (enforcement and co-management agreement). The Tribe and WDFW agreed to co-manage game resources, joint enforcement and collaborate to ensure that enforcement is coordinated, effective, and efficient.<sup>43</sup>
- Washington Department of Health (DoH) (shellfish consent decree). In 1994, the federal district court reaffirmed treaty shellfish rights for the tribes in western Washington (the Rafeedie decision). Thereafter, a series of negotiations between the tribes, including the Squaxin Island Tribe, the DoH and the U.S. Department of Justice ensued. An agreement was reached to ensure the public was assured of the safest shellfish possible. The agreement signed by each tribal chair, the U.S. Department of Justice and DoH was entered as a consent decree in federal court.<sup>44</sup>
- Washington Department of Fish and Wildlife (WDFW) (shellfish implementation plan).<sup>45</sup>

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<sup>41</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOU-Mason-County-Shellfish-Recovery-Grant-Agreement.pdf>

<sup>42</sup> See: <https://dms.masoncountywa.gov/Commissioners/DocView.aspx?id=367962&dbid=0&repo=Mason>  
<https://dms.masoncountywa.gov/Commissioners/DocView.aspx?id=368729&dbid=0&repo=Mason>

<sup>43</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-WDFW-Co-Management-2015.pdf>

<sup>44</sup> See: Note 30. See also: <https://www.wawd.uscourts.gov/sites/wawd/files/MotionandSettlementAgreement14476.pdf>  
 [last accessed July 24, 2022].

<sup>45</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/Stipulation-and-Order-Amending-Shellfish-Implementation-Plan-2002.pdf>

- Department of Fish and Wildlife (fish buyer program). The Squaxin Island Tribe and WDFW entered into an agreement regulating the purchase and sale of treaty fish. The agreement ensures that all harvesters and all buyers properly document and timely report commercial transactions on fish tickets and that this information is made available on a timely basis to ensure effective management of state and tribal fisheries.<sup>46</sup>
- Washington Department of Natural Resources (access agreement). The Squaxin Island Tribe and the WA DNR signed an agreement to provide the Tribe greater vehicle access to DNR-managed lands, where DNR had installed gates thereby denying access to exercise treaty rights.<sup>47</sup>
- Mason County Fire District #4 (mutual aid). The Squaxin Island Tribe entered into a long-term agreement providing for fire protection services and construction of a fire facility.<sup>48</sup>
- Mason County (road cost sharing). The Tribe and the County entered into a roads' cost sharing agreement.<sup>49</sup>
- Mason County (mutual aid re public works costs). The Tribe and the County entered into a work and cost share agreement for County public works reimbursable to the County.<sup>50</sup>
- Memorandum of Understanding between the Squaxin Island Tribe, City of Olympia, City of Lacey and City of Yelm regarding Budd Inlet and Deschutes Watershed Restoration dated November 29, 2011. The Tribe and the Cities agreed to create and fund a coalition to design and construct restoration projects with the watershed.<sup>51</sup>

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<sup>46</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-WDFW-Fish-Buyer-2013.pdf>

<sup>47</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-DNR-re-vehicle-access-2014.pdf>

<sup>48</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-Mason-County-FD-4-for-Fire-and-Emergency-Medical-Services-2016.pdf>

<sup>49</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-Mason-County-re-road-cost-sharing.pdf>

<sup>50</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOA-Mason-County-re-Reimbursable-Maintenance-Costs.pdf>

<sup>51</sup> See: <https://squaxiniland.org/wp/wp-content/uploads/2022/06/MOU-Budd-Inlet-and-Deschutes-Watershed-Restoration-Coalition.pdf>

## **5.0 MANAGEMENT AND PROTECTION OF WATER RESOURCES OF THE RESERVATION (40 CFR 31.8 (a)(3) and (b)(3))**

The water quality standards and water quality certification programs to be administered by the Tribe will assist in managing and protecting water resources on Reservation and Trust Lands.

The Reservation and Trust Lands for which the Tribe is seeking authority to administer the water quality standards and water quality certification programs are identified in the included maps and legal descriptions.

***The included maps also identify properties held in fee by the Tribe, notably, in 5.2.3 Skookum Valley. Many of the fee parcels have been or are soon to be submitted to the federal government to be designated trust lands. When, and if, trust status is granted, the Tribe will supplement this Application to include those trust lands. For purposes of the Application, the identification of the Tribe's fee properties is for information purposes only.***

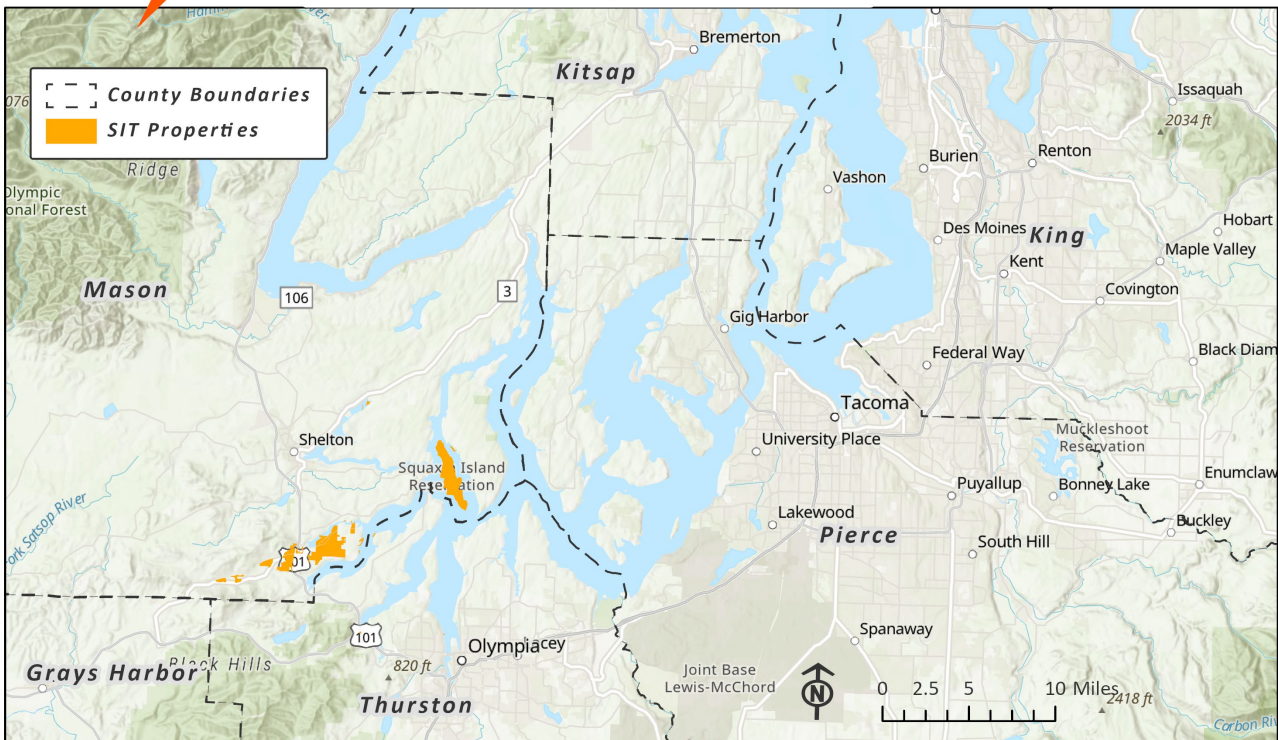
The following maps are based on best available spatial data.

# Squaxin Island Tribe: Overview Maps

## Overview Map: Washington State



## Overview Map: Counties



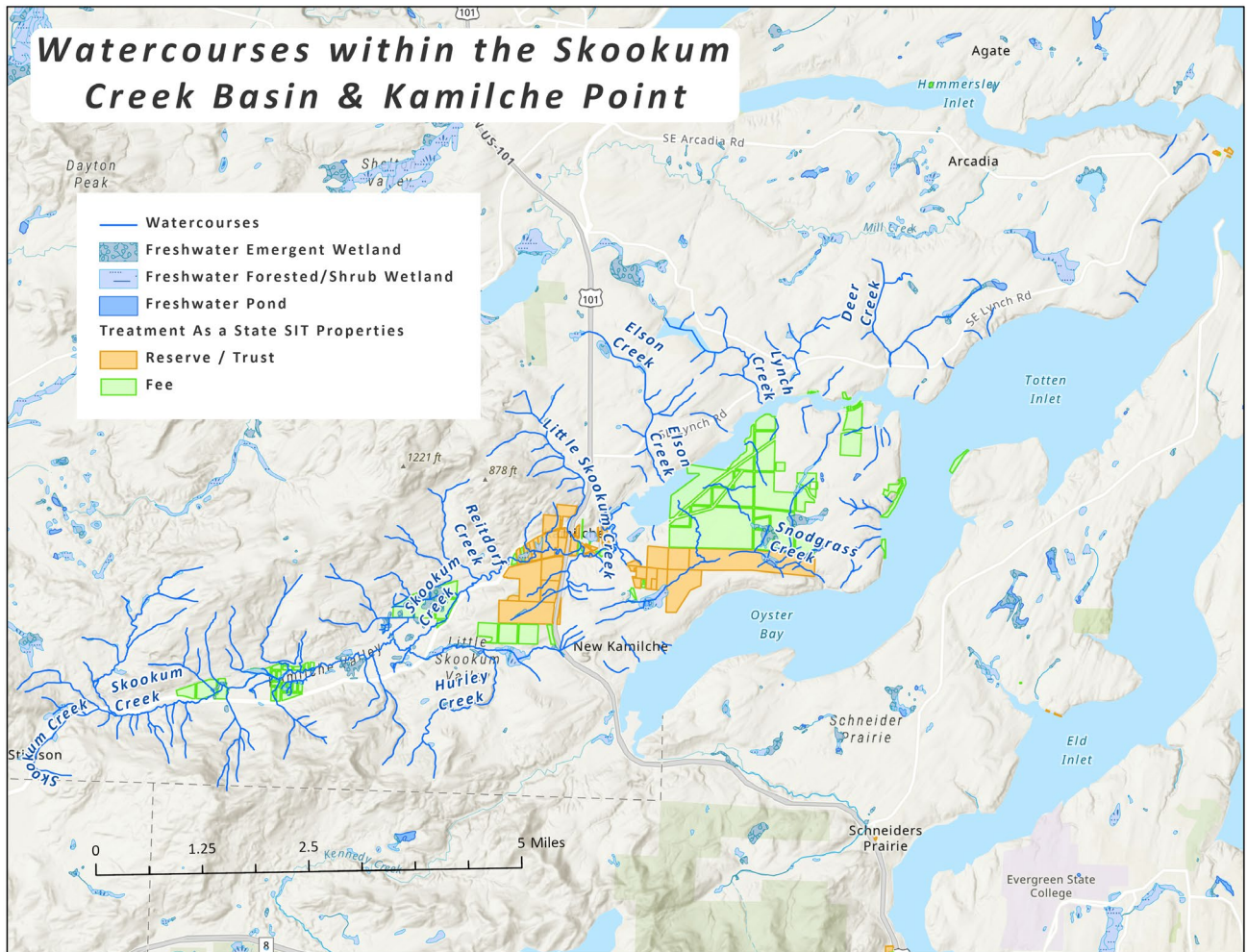


The following map illustrates the usual and accustomed fishing grounds and stations of the Squaxin Island Tribe.

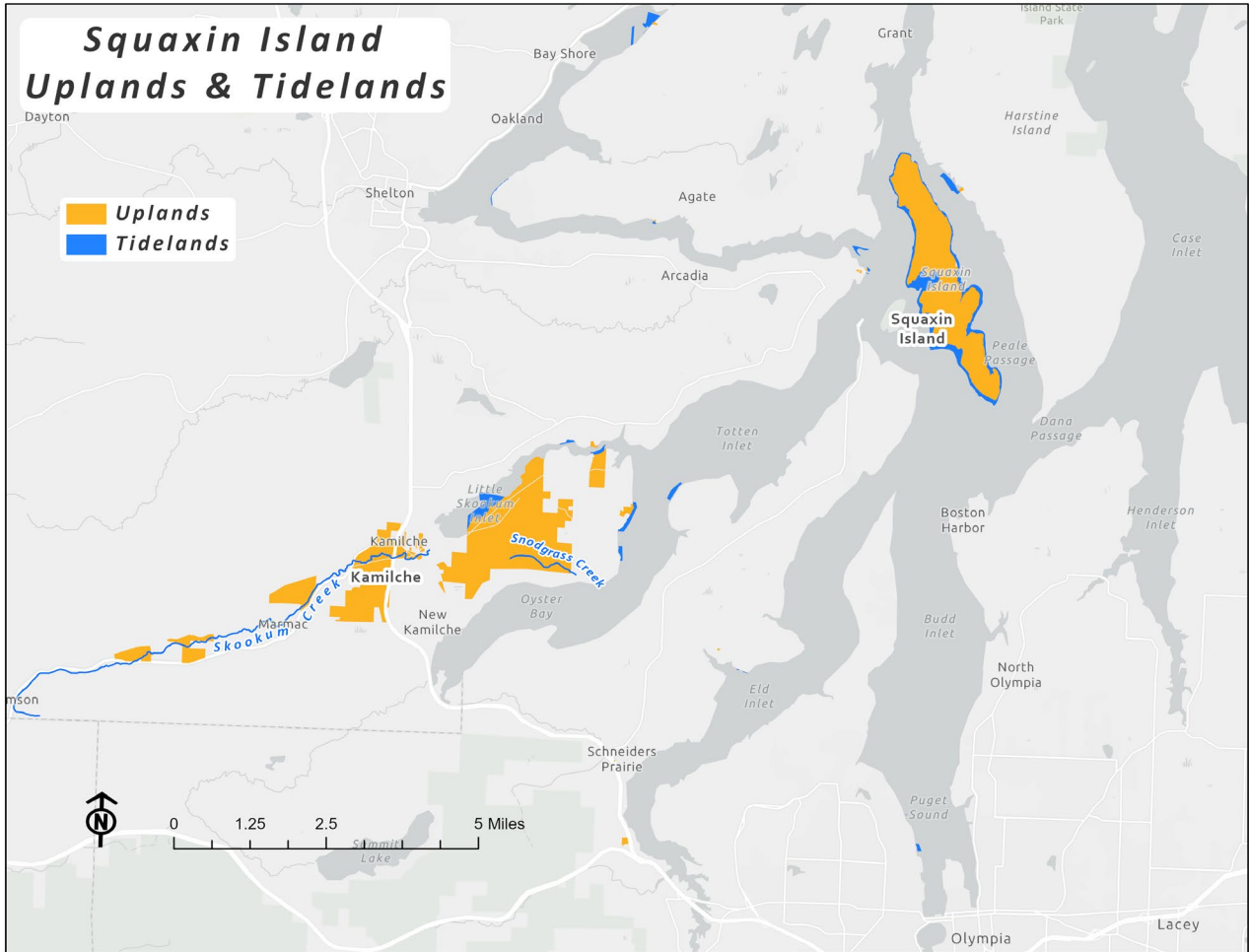


The Usual and Accustomed Areas map is for illustrative purposes only and should not be relied on for any purpose other than to ascertain the general area where the Squaxin Island Tribe currently authorizes fishing activities under *United States v. Washington*. The authorized use areas for fishing are subject to change and should not be considered to limit the treaty rights of the Squaxin Island Tribe.

The following map illustrates the marine and fresh-water courses within the geographic scope of this Application.

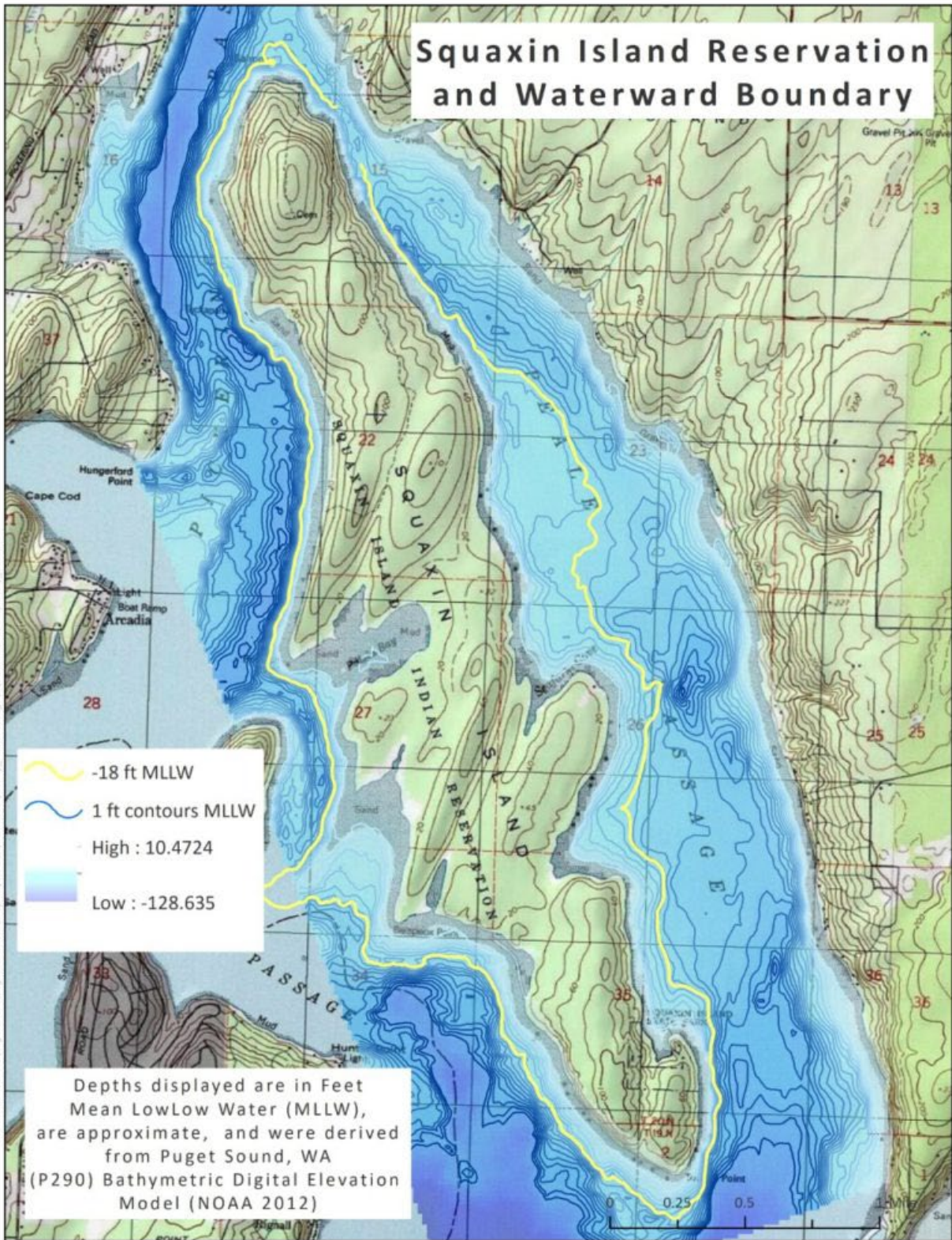


The following map illustrates an overview of the Tribe's land holdings. The specific Reservation and Trust Lands for this application are identified in the following sections.



### 5.1 On-Island Reservation Land and Waters

**Squaxin Island.** The Island's land area is 5.739 km<sup>2</sup> (2.216 sq mi). It has 492 acres of tidelands. The Island is uninhabited.



The Island was set aside as a reservation by the Treaty of Medicine Creek in 1854.<sup>52</sup> The Island Reservation includes all of the uplands, the tidelands, and adjacent submerged waters to -18 MLLW.<sup>53</sup>

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<sup>52</sup> Exhibit 3. See: <https://squaxinisland.org/wp/wp-content/uploads/2022/06/Treaty-of-Medicine-Creek-1854-10-Stat.-1132.pdf>

See also *United States v. Washington*, 384 F. Supp. 312, 377, at <https://squaxinisland.org/wp/wp-content/uploads/2022/06/United-States-v-Washington-384-F.Supp.-312-1974.pdf>

<sup>53</sup> More precisely, the Island Reservation is defined as “all of said Island, upland and tideland, and in addition, enough of the waters surrounding said island to enable a steamer to run at low tide.” *United States v. O’Brien et. al.* March 1902 Bill of Complaint, Article VII. See: <https://squaxinisland.org/wp/wp-content/uploads/2022/06/US-v-OBrien-Bill-of-Complaint-March-26-1902.pdf>

The full expression in Article VII is, “... that at the time of entering into said treaty it was intended and agreed between the parties thereto, and was explained to the headmen and members of said tribe by the said Isaac I. Stevens, that said treaty reserved and granted to said Indians all of said Island, upland and tideland, and in addition, enough of the waters surrounding said island to enable a steamer to run at low tide.”

See also the decisions in *U.S. v. O’Brien* at <https://squaxinisland.org/wp/wp-content/uploads/2022/06/U.S.-v.-OBrien-Chronology-Restraining-Order-Decisions-Decree.pdf>

The Tribe relies on the three part test articulated in *Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1261 (9th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984); applied in *United States v. Aam*, 887 F.2d 190, 196-98 (9th Cir. 1989); and explained in the Office of the Solicitor Memorandum Boundary of the Skokomish Reservation Along the Skokomish River. M-37034. 2016 WL 10957296 (I.B.L.A.)

The *Puyallup* three-part test is: “(1) [Whether] the reservation grant includes the navigable waters within its borders; (2) [Whether] the tribe is dependent on the fishery resource in that water for survival; and (3) [Whether] the government was plainly aware of the vital importance of the water resources to the tribe at the time of the grant.”

Following *Puyallup*, in *United States v. Aam*, the Ninth Circuit held that “the first *Puyallup* test should be understood to require only that the grant be capable of being interpreted to include the navigable waters within the reservation boundaries.” In determining whether the tidelands were “within” the reservation, the court “looked beyond the words of the grant” and “conclude[d] that the treaty language, when construed favorably for the Indians, supports the tribe’s contention that the tidelands may arguably have been intended to be a part of the reservation.”

The Tribe satisfies each of the three tests.

To determine the depth necessary for a steamer plying the waters of Southern Puget Sound for clear passage at low tide, it is necessary to consider the draw of steamers in Southern Puget Sound in 1854.

Some 16 steamers were in Southern Puget Sound and seaworthy, with an average draw of 2.972 m or 7.75 feet. The largest of the vessels with known measures was the Otter (1853) with a draw of 3.734 meters or 12' 3".

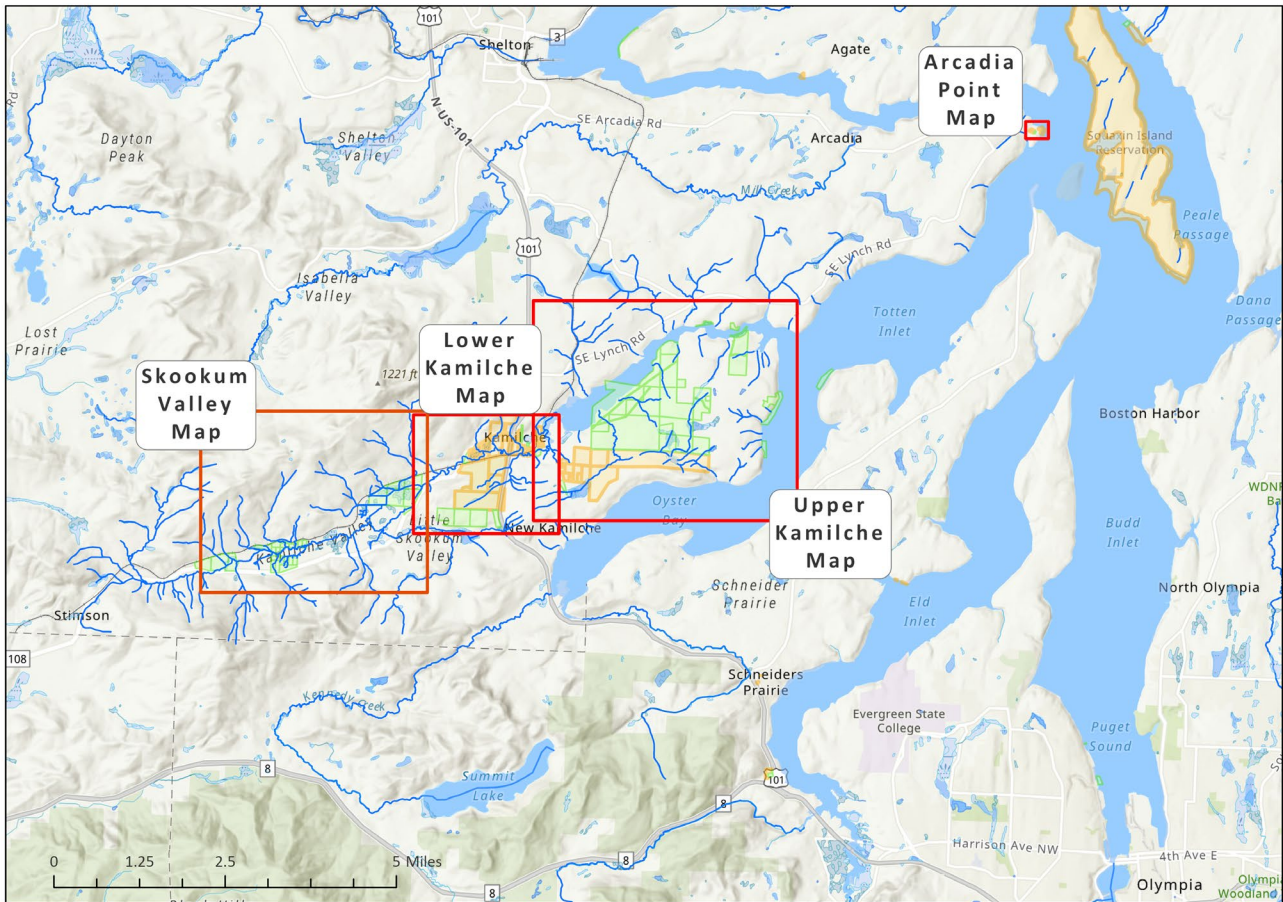
The depth necessary to any traverse is the draw plus an additional safety clearance. The merchant rule of thumb in the absence of data (i.e., squat, confinement, barometric pressure) states 1.5 (i.e., 50%) is safe in most conditions, here  $12' 3" + 6' 1.5" = 18' 8"$ . <https://marinersspeak.com/2021/05/16/under-keel-clearance-and-its-safe-limits-in-shallow-waters/>

Accordingly, the Tribe defines the waterward boundary of its Island Reservation as -18 MLLW.

## 5.2 Off-Island Reservation land and waters.

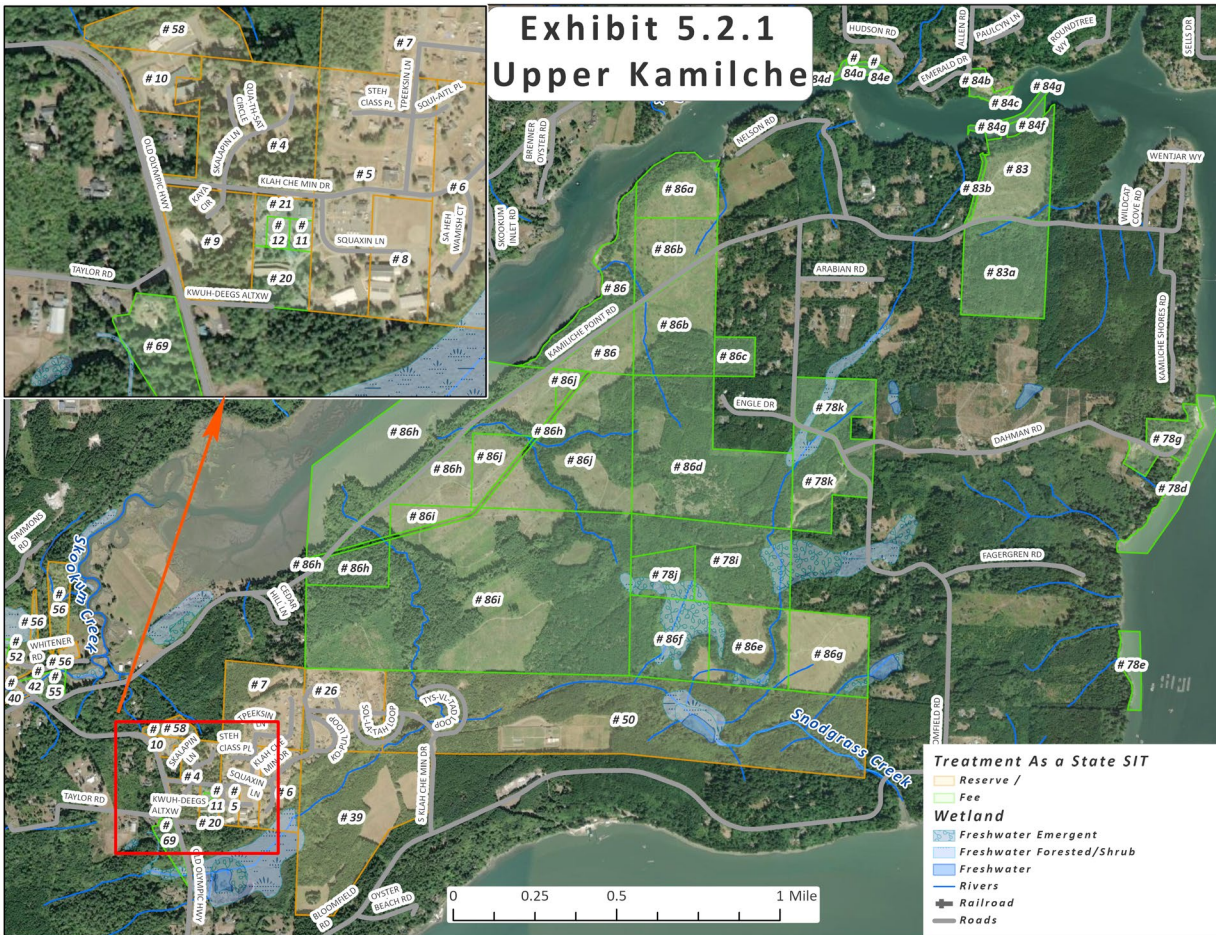
The following sections describe the Off-Island Reservation and Trust Lands of this Application. The maps illustrate Reservation and Trust Lands in orange and its fee lands in green. For its fee lands, applications for trust status are either pending or anticipated.

### Off-Island Reservation land and water Map Series Locator Map



### 5.2.1 Upper Kamilche – Snodgrass Creek

The following map illustrates Upper Kamilche and Snodgrass Creek tributary to Totten Inlet.

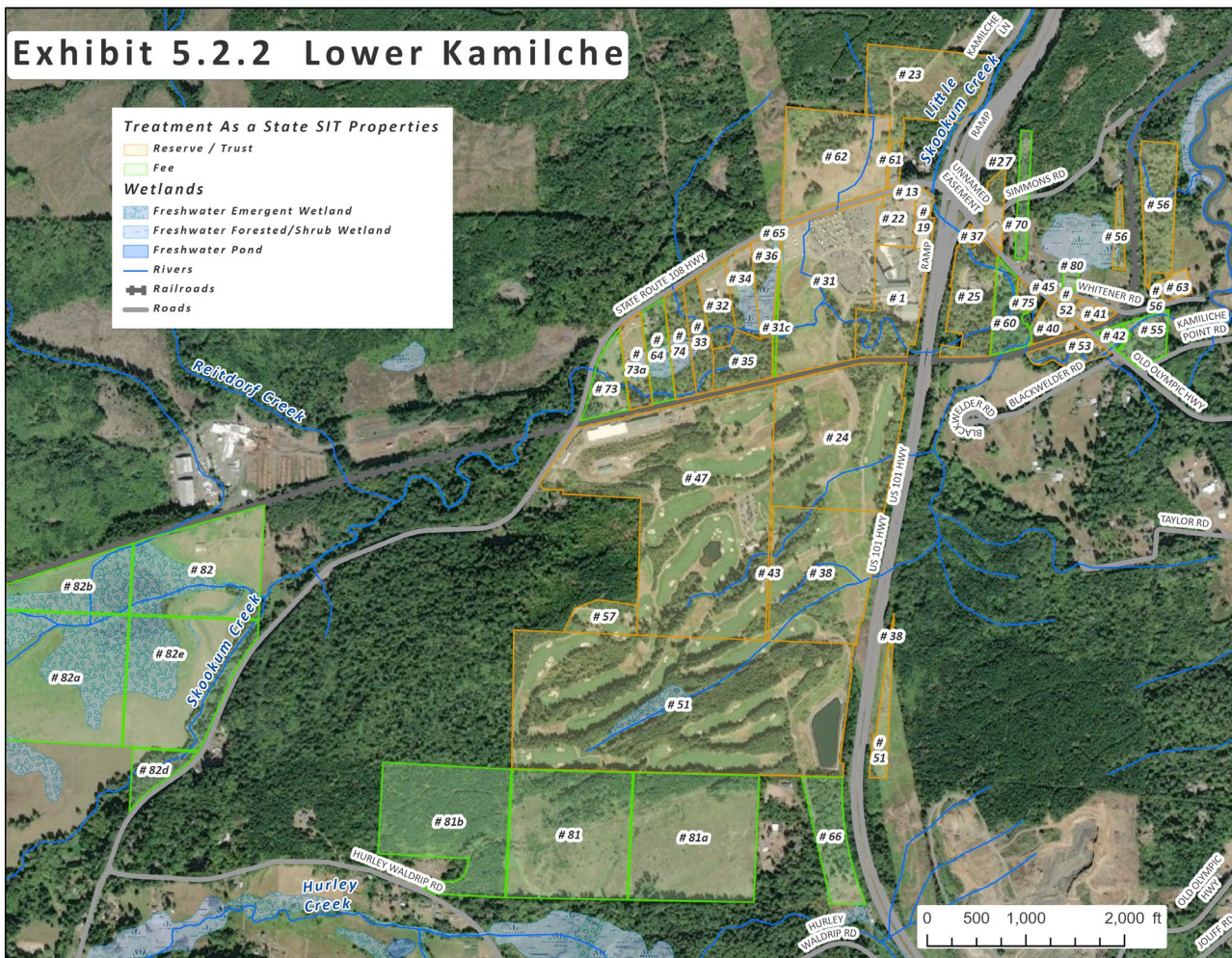


Please see Exhibit 5 for the descriptors for each numbered parcel.



### 5.2.2 Kamilche Lower.

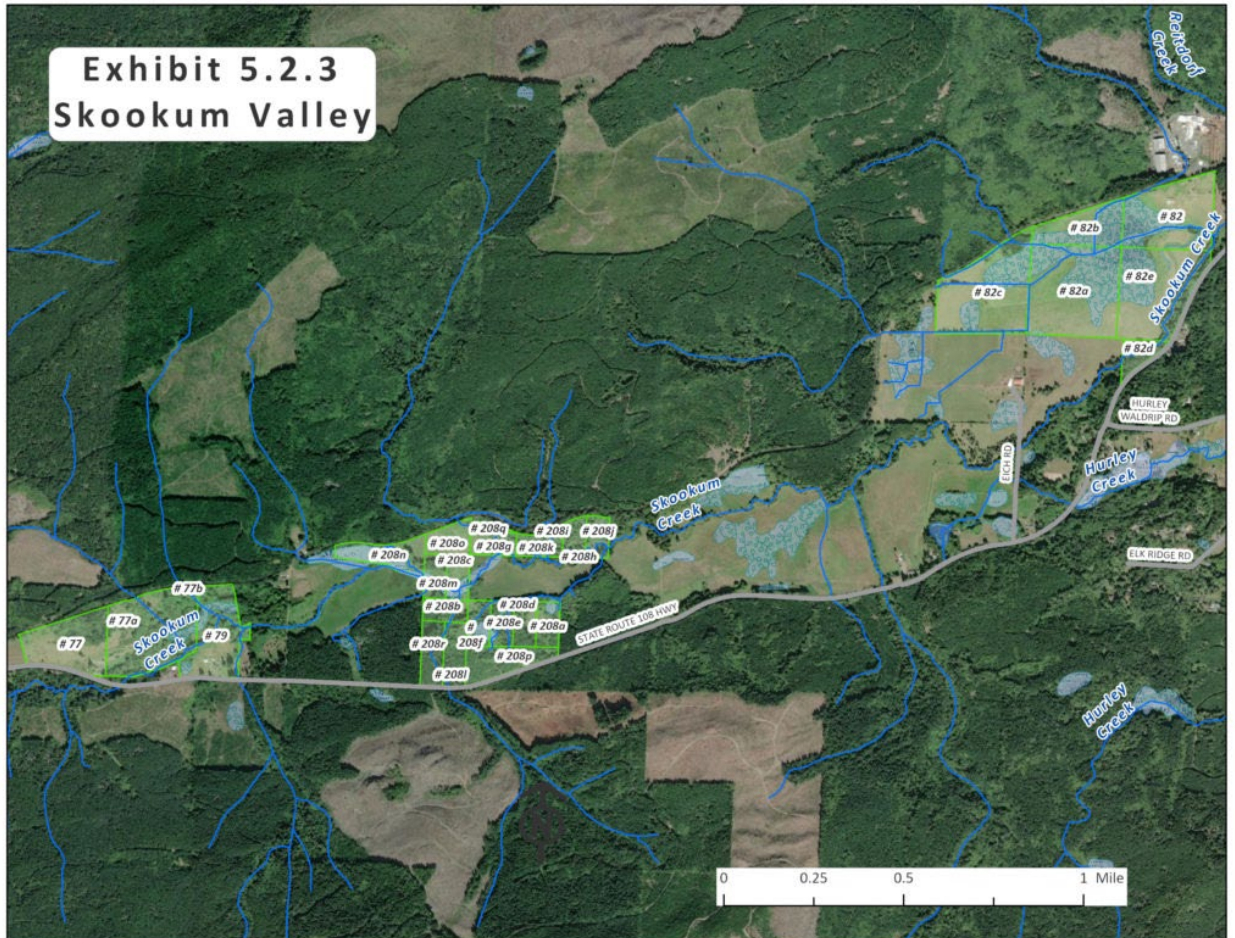
The following map illustrates Lower Kamilche and the freshwater courses Little Creek and Skookum Creek.



Please see Exhibit 5 for descriptors for each numbered parcel.

### 5.2.3 Skookum Valley

The following map illustrates Skookum Valley, including Skookum Creek.



Please see Exhibit 5 for descriptor for each numbered parcel.

***The fee parcels in the Skookum Valley have been or are soon to be submitted to the federal government to be designated trust lands. When, and if, trust status is granted, the Tribe will supplement this Application to include those lands designated as trust. For the purposes of this Application, the identification of the Tribe's fee properties is for information only. The Tribe makes no assertion of jurisdiction for those fee lands under this Application.***

## 5.2.4 Arcadia Point

The following map illustrates Arcadia Point, at the mouth of Skookum Inlet.



Please see Exhibit 5 for descriptor for each numbered parcel.

## 6.0 TRIBAL LEGAL COUNSEL STATEMENT

### 6.1 Documents Establishing the Reservation and the Basis of Assertion of Authority (40 CFR 131.8(b)(3)(ii))

A statement by the Tribe's legal counsel providing references to the documents that established the Tribe's reservation lands and describing the basis of the Tribe's assertion of authority, was provided separately in the 1997 and 2000 applications.<sup>54</sup>

The Tribe's Reservation described in § 5 was established in the following documents:

- Treaty of Medicine Creek. 10 Stat 1132. See also *United States v. Washington*, 384 F. Supp. 312, 377. (Island reservation established)
- 42 FR 55497-07 October 17, 1977, Proclaiming Certain Lands as Port of Indian Reservation.
- 49 FR 50116-01 December 26, 1984 Proclaiming Certain Lands as Part of the Squaxin Island Reservation (six additional parcels numerated)
- 64 FR 2499-01 January 14, 1999, Proclaiming Certain Lands as Reservation for the Squaxin Island Tribe (adding approximately 16.80 acres)

The Tribe's constitution, codes and regulations demonstrate the Tribe's exercise of authority in general over the reservation. See [https://library.municode.com/tribes\\_and\\_tribal\\_nations/squaxin\\_island\\_tribe/codes/code\\_of\\_ordinances](https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances) (last accessed July 24, 2022)

The basis for the Tribe's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in § 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 FR 30183, May 16, 2016.

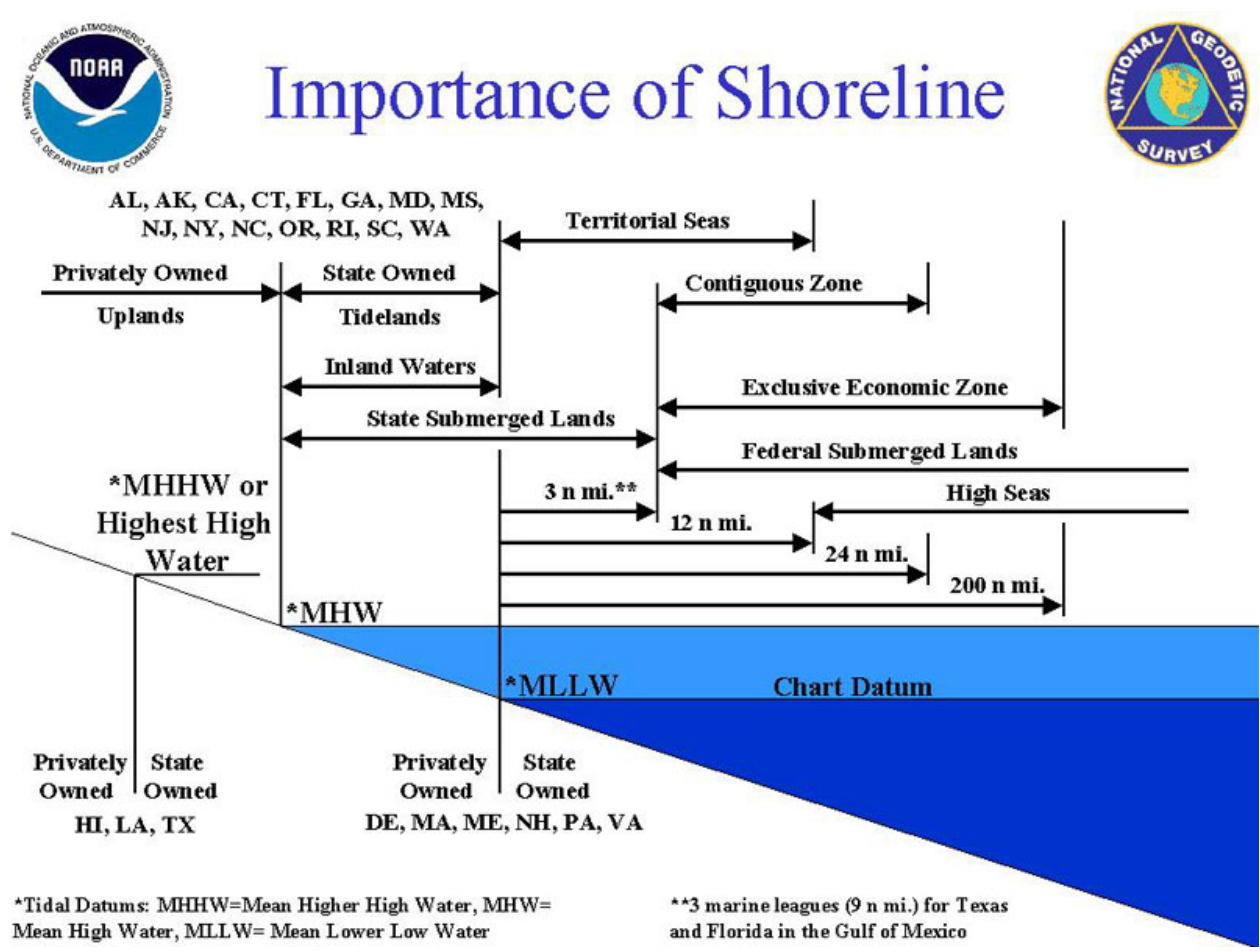
There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress as described in this application.

To our knowledge there are not any "special circumstances" which act to "limit or preclude "the Squaxin Island Tribe's ability to "accept or effectuate the congressional delegation of authority over its reservation." 81 Fed. Reg. 30192-30193 (May 16, 2016). The EPA has stated there is not a limitation on EPA delegating authority unless there is a limitation applicable to only specific tribes or states. The Tribe is not aware of any statute or act of Congress that limits the Tribe's right to regulate waters within its boundaries by exercising the delegation of Clean Water Act authority.

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<sup>54</sup> Infra FN 2.

The Tribe is aware that the water-ward extent of its Island reservation may raise concerns regarding the Tribe's authority as to those waters water-ward of mean higher high or mean high water.<sup>55</sup> The mean higher high water is the boundary most commonly used in defining the line between privately owned uplands and state-owned tidelands in Washington. Here, the Tribe owns the tidelands, not the state. The interest extends at least as far as that held by the state, to mean lower low water. The Tribe defines its Reservation boundary and asserts an interest in the submerged lands water-ward of MLLW to -18 MLLW.



However, any concern regarding the water-ward boundary will not impede the Tribe's authority or ability to effectuate the delegation of authority.

<sup>55</sup> [https://www.dnr.wa.gov/publications/eng\\_plso\\_aquatic\\_land\\_boundaries.pdf](https://www.dnr.wa.gov/publications/eng_plso_aquatic_land_boundaries.pdf)

**6.2 The Tribe Has Identified Surface Waters Over Which It Proposes to Establish Water Quality Standards. 40 CFR 131(8)(b)(3) (iii).**

The Reservation and Trust Lands include wetlands, portions of rivers, streams, creeks, tidelands and submerged lands.

Please see the map titled Watercourses Within the Skookum Creek Basin & Kamilche Point and the map Squaxin Island Reservation and Waterward Boundary at pp. 26 and 28 above.

The surface waters over which the Tribe proposes to implement the WQS, and certification programs are:

Squaxin Island	Marine waters to -18 MLLW
Upper Kamilche	Snodgrass Creek and all its tributaries, unnamed freshwater courses, and wetlands
Lower Kamilche	Little Skookum Creek and all its tributaries, unnamed freshwater courses, and wetlands
Arcadia Point	Unnamed freshwater courses

## 7.0 TRIBAL CAPABILITY

The Tribe is capable of administering effective water quality standards and water quality certification programs, as described below.

In 1993, the Squaxin Island Tribe was one of the first seven tribes in the nation to achieve self-governance status. The same year the Tribe received a State of Washington Freshwater Resource Planning Grant to manage water quality.

It successfully completed and recently closed out EPA grants include PA-01J01801-0, PA-01J018-01, PA-01J01801-2, PA-01J01801-3, PA-01J01801-4, PA-01J01801-5, PA-01J276-01, RP-00J51301-0, RP-00J51302-0, and RP-00J51303-0.

The overall organization of the Tribe's government and experience in managing programs, such as environmental or public health programs, is further described in the 1997 and 2000 applications, and at: <https://squaxin-nr.org/> and <https://squaxinland.org/government/departments/natural-resources/>

The responsibilities to establish, review, implement and revise water quality standards will be assigned to the Natural Resources Department of the Squaxin Island Tribe. The Natural Resources Department is located at 200 SE Billy Frank, Jr. Way, Shelton, WA 98584, 360.432.3802, on the Squaxin Island Tribe's main campus.

The Tribal entity that will be responsible for conducting water quality certifications under CWA § 401 is also the Natural Resources Department of the Squaxin Island Tribe.

The Department's goals and objectives for 2022 follow:

### 2022 Goals and Objectives

#### **GOAL 1: Promote the Fisheries Management and Enhancement programs to ensure the opportunity to exercise the Tribe's Treaty Right (Fish Management)**

- Monitor State, Federal and international processes to ensure allocation and conservation needs for the Tribe is met.
- Develop and promulgate annual and emergency regulations based on the best available science for proper management of our fishery resource.
- Coordinate and facilitate fish committee meetings for community involvement in fishery decisions.
- Provide enhancement of fishery resources through coordination of state hatcheries and operation of Squaxin Island net pens.
- Participate in Pacific Coastal Salmon Recovery efforts for salmon habitat restoration, salmon stock enhancement, salmon research and supplemental activities.

- Enumerate and assess out-migrating smolts to provide data to estimate natural coho salmon production and to form relevant spawning escapement goals for watersheds within the tribes U&A.

**GOAL 2: Promote the Shellfish Management and Enhancement program to ensure the Tribe's Treaty Right (Shellfish Management)**

- Monitor State, Federal and Tribal processes to ensure allocation and conservation needs of the Tribe are met.
- Develop and promulgate annual and emergency regulations and appropriate health certifications based on the best available science for proper management of our shellfish resources.
- Coordinate and facilitate Aquatic and Hard-shell committee meetings for community involvement in shellfish decisions.
- Provide enhancement of beaches by planting seed.
- Survey new beds/beaches for shellfish species.
- Develop fishery opportunity for underutilized shellfish resources.
- Continue efforts to interpret and implement the *US v Washington* Shellfish court orders and decisions.
- Initiate and support marine science research as it pertains to issues and species of importance to the Tribal community.
- Monitor shellfish and other tideland species within the Squaxin Island Tribe's U&A to better understand these communities and their dynamics.
- Communicate with other programs at the Natural Resources Department (i.e., Habitat) to streamline activities and share information.
- Identify shellfish populations that are imperiled or are candidates for restoration efforts.
- Initiate restoration / enhancement projects incorporating the best science and the needs of the Squaxin Island Tribal community.

**GOAL 3: Protect and perpetuate the Wildlife Resource to ensure the opportunity to exercise the Tribe's Treaty Right (Wildlife Management)**

- Develop and promulgate annual and emergency regulations based on the best available science for proper management of our wildlife resource.
- Facilitate and coordinate wildlife committee meetings for community involvement.
- Monitor State and Federal processes to ensure management and conservation needs are met.
- Improve scientific understanding to support management decisions.
- Evaluate the legal issues supporting Tribal hunting rights.

**GOAL 4: Promote the Protection, Restoration and Enhancement of the productive capacity of the Tribe's resources and their Habitat (Environmental Management)**

- Provide policy and technical support for development and implementation of aquatic and riparian resource protection strategies.
- Coordinate and conduct environmental review of off reservation project permits and proposals.



- Document aquatic and riparian habitat conditions and track resource trends throughout the Tribe's ceded areas.
- Research, develop and implement Habitat restoration and protection projects.
- Conduct watershed scale assessments as the basis for developing resource management and restoration strategies.
- Work cooperatively with State, Federal, County, City and private agencies and individuals to ensure the protection of treaty rights and Tribal resources.
- Review NEPA documents, environmental assessments and other related documents for Tribal activities.
- Pursue legal strategies for assure protection of Tribal rights and resources.
- Develop a geographic information system to manage, analyze and present natural resource information in ways that increase efficiency, visualize relationships and trends, and sharpen decision-making.

**Goal 5: Provide Administrative and Data support to tribal resource programs (Administrative and Data Management)**

- Provide excellent customer service to the Tribal members and community.
- Maintain electronic and manual record keeping systems including database files.
- Maintain regulation systems for buyers, fishers, treaty vessel registrations and stumpage.
- Monitor and evaluating financial records and documents, develop reports and budget information.
- Provide data analysis for management of resources.
- Issue commercial treaty harvest licenses.

Experienced staff members are already on board in the Natural Resource Department and trained to administer the water quality standards and certification programs.

The Department has been a part of the organizational structure of the Tribal government for over thirty years. It is comprised of 21 employees organized under a director and three program managers with five scientists, eight technicians, and administrative staff.

The Department operates programs responsible for fishery management, shellfish management including intertidal and sub tidal species, wildlife and hunting. It also operates an environmental program including water resources, water quality, forestry, and fish and shellfish habitat components. These function as integrated elements of the Department with individual programs having multiple responsibilities across the landscape.

As an example, the Tribe successfully implemented a five-year EPA-Tribal Environmental Plan that started in 2016. This resulted in staff attending over 500 meetings to further Puget Sound recovery goals, planted Coho salmon in the Deschutes River, allowed the Natural Resources Department to obtain 22 restoration

and planning grants, and the Tribe hosted a yearly South Sound science symposium to disseminate information.

The current 2021-2026 EPA-Tribal Environmental Plan continues this work and has added the creation and maintenance of Tribal produced GIS maps and modeling for local governments and project partners. These include sea-level rise modeling and mapping, a freshwater information map, and a shellfish and finfish harvest interactive map.

The Department coordinates closely with the Law Enforcement Division of the Tribe for matters relating to enforcement of the various codes related to natural resource issues.

The Natural Resources Department reports directly to the Administrator, who in turn, reports to the Tribal Council and at least annually to the General Council of the Tribe. The Department is assisted by several advisory committees in developing policy positions for Tribal Council consideration.

The Tribe has considerable experience in receiving and performing various activities under grants and contracts with several federal agencies. The Tribe has been the recipient of multiple EPA grants and receives funding through grants, contracts and compacts, in the amount of \$12,460,000 (FY21 Budget figures) to operate a broad array of law enforcement, judicial, natural resource protection, health and sanitation services, and education and training programs. The Tribe is a Self-Governance Tribe, having met all the criteria for this classification. The Tribe also operates a Class "A" water distribution system and owns and operates its own community sewer collection and treatment system.

The Tribe completes yearly water quality assessment reports for CWA 106. A 2010-2018 compilation report is included as a supporting reference (WATER QUALITY ASSESSMENT REPORT FOR THE SQUAXIN ISLAND TRIBE, Federal FY2010 to FY2018, Update 2016-2018). This document concentrates on the core Tribal reservation and includes data on 3,422 acres of upland, 3,600 acres and 16 miles of marine shoreline, 14,217 acres of watershed with 11.7 miles of streams and 130 acres of wetlands.<sup>56</sup>

The Tribe has a senior staff with considerable administrative and financial experience. The day-to-day operations of the Tribe are managed by its Tribal Administrator, Marvin Campbell. The Tribe's Chief Financial Officer is Deborah Stoehr. The Tribe's finances are audited annually by a certified public accounting firm. Ms. Stoehr has been with the Tribe since 1993. Under her leadership the Tribe has had 26 consecutive years with no material adverse findings under GAAP or IFRS. This included a closeout site visit review of the 2016-2020 Tribal Capacity Grant and a subsequent post-award review of the current grant. In both cases there were no adverse findings and no recommendations.

**Grant Administration:** Documentation included biannual performance reports, quarterly reimbursement requests, annual financial status reports, MBE/WBE reports, lobbying/litigation certifications, and final performance reports. A record of completed technical documents is included in the final performance reports. Deliverables were achieved in the closed grants and monitoring of environmental outcomes is

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<sup>56</sup><https://squaxinisland.org/wp/wp-content/uploads/2022/06/SIT-EPA-106-Up-To-2018-WQ-Assessment-FINAL-012420-1.pdf>

ongoing. Squaxin was up to date with all reporting and progress. Project and grant oversight will be done by NR staff that have been involved in the administration of the above grants.

The Tribe administers the following environmental and public health programs:

- **Fishery Management** including codes, regulations, enforcement, administration, and scientific oversight. The Tribe is vested with the authority to manage its fishery under the provisions of the *U.S. v Washington* court decisions. The BIA provides funding through the Tribe's Self-Governance contract to-accomplish this purpose.
- **Shellfish Management** including codes, regulations, enforcement, administration, scientific oversight, and coordination of National Shellfish Sanitation Program with Washington Department of Health. The Tribe is authorized through *U.S. v Washington* supplemental decisions in sub proceeding 89-3 to manage its shellfish harvests. Limited funding has been authorized from the BIA to implement these authorities. However, the Tribe considers it a priority and directs Self-Governance contract dollars to fulfilling these obligations.
- **Coordinated Tribal Water Quality** Program based on EPA grants. The Tribe has been a participant from inception in the Coordinated Tribal Water Quality Program, an effort to coordinate Tribal water quality issues with the State of Washington.
- **Forestry Management Program** in coordination with the Bureau of Indian Affairs. This program includes on-Reservation forestry management and participation in the Timber, Fish, and Wildlife program for off Reservation forestry activities which impact treaty-protected resources of the Tribe.
- **Watershed Restoration** under a Bureau of Indian Affairs Jobs-in-the-Woods contract. This project includes riparian restoration activities in the Kennedy Creek watershed as an implementation of Watershed Analysis recommendations.
- **Public Water Supply System:** Owning, operating, and regulating Reservation water system consistent with the Safe Drinking Water Act. The drinking water system also serves approximately 35 Off-Reservation residences owned predominantly by non-Indians.
- **Tribally Owned Treatment Works:** Owning, operating, and regulating a sanitary waste disposal system for Reservation housing and governmental facilities.

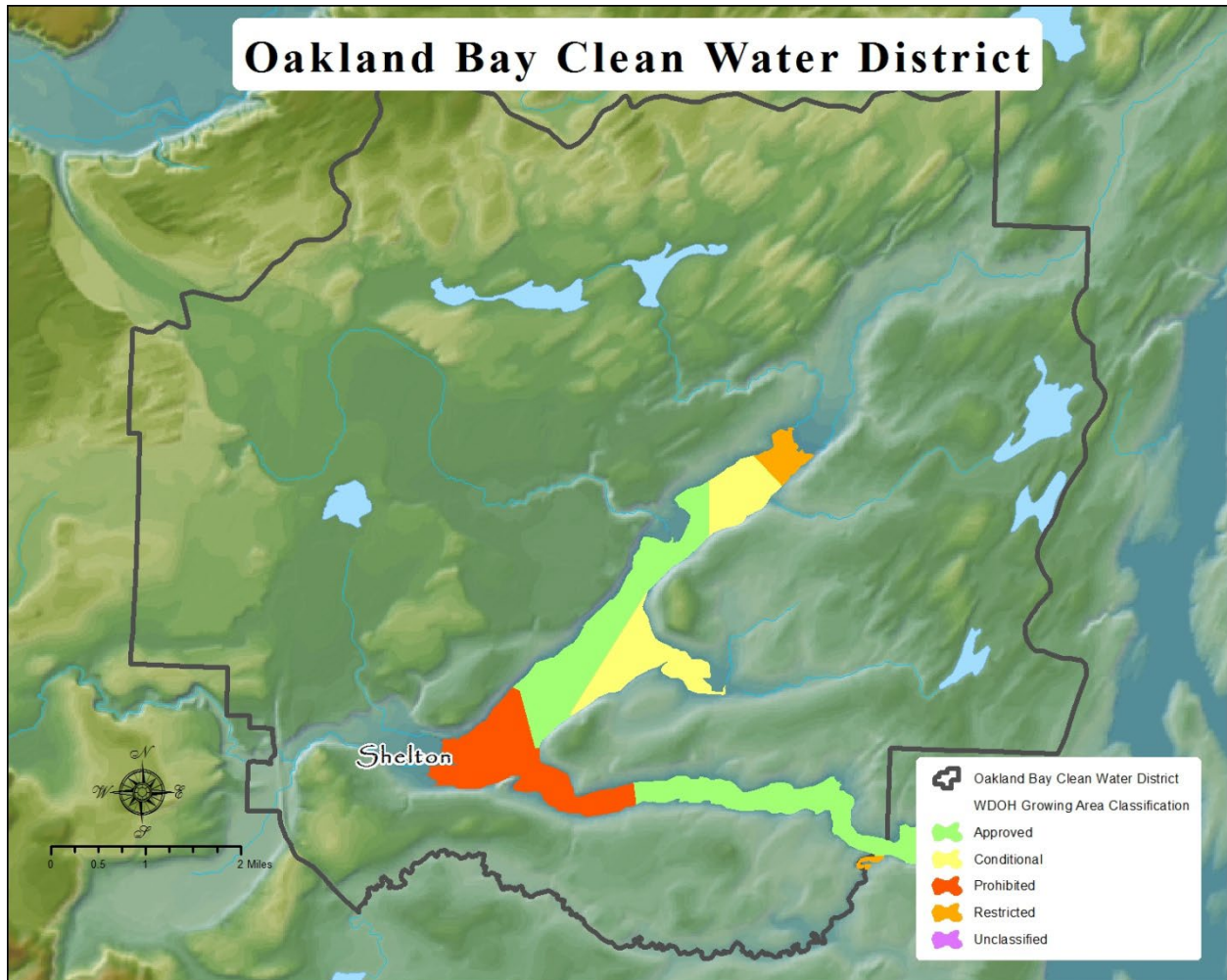
The Squaxin Island Tribe's Natural Resource Department develops and manages grant funded projects and environmental programs specifically designed to improve the quality of habitat on Reservation and Trust Lands and within Squaxin's Usual and Accustomed Area.

The Tribe currently manages several EPA grants including BG-98090706-0, BG-98090706-1, BG-98090706-2, BG-98090706-3, BG-98090706-4, BG-98090706-5, BG-98090706-6, PA-01J27601-5, PA-01J64601-0, PA-01J64601-1, PA-01J82701-0, PA-01J82701-1, and RP-00J51304-0.

These represent Performance Partnership Grants totaling \$1,001,013, a 319 competitive grant for water quality remediation, \$929,300 for Puget Sound recovery implementation, and \$100,000 for Brownfield response.

Specific examples of these projects include:

**Project 1 - Oakland Bay: Western Coast Estuaries Initiative EPA Grant Funded:** Oakland Bay is located at the southernmost end of Puget Sound. In the midst of a diversity of natural resources, it hosts a rich shellfish economy and culture. Although the watershed is relatively undeveloped, its geomorphology makes it extremely sensitive to human activities. The bay itself is a small, relatively broad and shallow terminal estuary with a large intertidal zone. Only a small amount of bay water makes it out to the rest of South Sound on each tidal cycle because of the narrow constriction formed by Hammersley Inlet. Instead, the majority of Oakland Bay's water re-circulates between the bay and the inlet. This slow exchange of water allows pollution from the uplands to linger for long periods of time.



Protecting the significant commercial and tribal shellfish harvest in Oakland Bay was an important consideration when the Washington Department of Ecology initiated a water cleanup study in 2003. Starting with an evaluation of existing water quality data, Ecology, Squaxin and a technical advisory group designed a study to fill information gaps. Field work began in the fall of 2004 and continued throughout 2005. During 2006-07, the data was analyzed.

Also, in 2005 during the data collection phase, the Washington State Department of Health notified Ecology, Squaxin, Mason County and the shellfish industry that the bay was threatened by an immediate shellfish harvest classification downgrade because of a sudden increase in pathogen levels. By 2006, 55 acres at the head of the bay was downgraded from conditionally approved to restricted harvest status. In response, the Oakland Bay Clean Water Advisory District formed to address nonpoint source pollution from on-site septic systems, agriculture and storm water per developing recommendations from the Ecology clean water study.

The Squaxin Island Tribe and the local community had worked for years to restore and maintain watershed

health but realized more had to be accomplished. The Tribe took action to remediate several linked threats and was awarded a West Coast Estuaries Initiative grant from the Environmental Protection Agency to create a program that would effectively engage the community in stewardship efforts to clean up and protect Oakland Bay. The grant totaled \$625,000 in EPA funds with \$274,969 in partnership match for a total of \$899,959.

The Mason County Board of County Commissioners contributed to the project by approving \$200,000 per year for water quality work in Oakland Bay using the Washington State .09 Rural Sales Tax fund (available through December 2012). Their idea was to strengthen and improve the water quality because it is the infrastructure for the shellfish industry, supporting the aquaculture industry and associated jobs.

Partners included Mason County, Washington State University Extension, University of Washington Sea Grant, Mason County Conservation District, Washington State Department of Health, Capital Land Trust and Simpson Timber Company. This grant work has supported the overall objectives of the Tribe, the shellfish industry, the Oakland Bay Clean Water District, partner agencies and the citizens of Mason County. The Tribe and partners have been able to monitor water quality, identify and correct pollution sources, and offer educational opportunities and incentives to make routine septic system service more convenient. The Tribe created project leverage by including community partners and additional funding to build a complete program and garner community support.

The Tribe devised, wrote, and administered this EPA-funded grant. The result was that Mason County created its first shellfish protection district, and over 55 acres of high-quality shellfish beds were reopened for harvest.

**Project 2: Biological Recovery of Goldsborough Creek Basin – EPA Funded:** Beginning in October 2010, the Tribe, using \$975,000 in grant funding (PO-OOJ092-01) from EPA and adding \$287,335 matching funds employed a strategy to further advance biological recovery of the Goldsborough Creek Basin and its contributions to the health of the Oakland Bay Watershed.

The Goldsborough Creek Basin occupies 60 square miles of the ~ 150 square miles Oakland Bay Watershed in South Puget Sound near Shelton, Washington in Mason County. It comprises 40% of the uplands that drain into Oakland Bay, a shellfish growing area of national significance. Since 2001, the health of the watershed improved significantly with the removal of a dam on Goldsborough Creek and a revived effort to control fecal coliform.

To build off this success, the Tribe used the EPA grant to focus on the biological recovery of the Goldsborough Creek Basin. Projects goals included: 1) producing conceptual designs and implementation of fish passage and a large woody debris project; 2) acquisition of high-quality habitat at threat of conversion; 3) monitoring of salmon populations by enumerating coho smolts leaving the Goldsborough system; 4) development of an instream flow model Goldsborough and adjacent Johns Creek; and 5) produce conceptual designs for the restoration of Shelton Harbor. To accomplish this, the SIT subcontracted with several organizations including the South Puget Sound Salmon Enhancement Group (SPSSEG), Keta Waters, Anchor Environmental, and Capitol Land Trust.

Projects accomplishments include 1) the implementation of fish passage projects on Midway and Like's Creek that restored salmon access for the first time in over 115 years to these Goldsborough tributaries; 2) the addition of large woody debris log jams on Midway Creek; 3) the acquisition of 39.4 acres of priority property to protect 1,100 feet of spawning habitat; 4) the monitoring of coho smolts out-migrating from Goldsborough Creek; 4) the development of an in stream flow model to achieve groundwater protection for Goldsborough Creek and Johns Creek. The model encompasses the Goldsborough Creek sub-basin, which drains an area of approximately 60 mi<sup>2</sup>, and the Johns Creek sub-basin, which drains an area of approximately 11 mi<sup>2</sup>; and 5) conceptual designs for the restoration of Shelton Harbor. These designs led to the next phase of this Tribal led project which resulted in the cleanup of over 100 acres of contaminated sediment, the removal of 155 creosote pilings and 1/2 mile of shoreline armoring and the restoration of 17 acres of salt marsh.

### **Project 3: Skookum Valley Investigations and Actions**

The Tribe has done extensive water quality and habitat investigations to drive its restoration actions in Skookum Valley. Actions include property and water right acquisitions for restoration purposes, whole-valley planning, restoration designs, fully completed habitat restoration projects, and stormwater treatment retrofits.

Projects accomplishments include 1) the purchase and retirement of water wells; 2) the installation of two large woody debris log jams designed to provide refuge for salmon; 3) the purchase and on-going restoration of over 160 acres of high-quality riparian and wetland properties; 4) restoration designs that have led to riparian planting and streambank rehabilitation projects and a conceptual Valley wide strategy; and 5) stormwater retrofits on two Tribal owned properties.

Project reference documents: Skookum Watershed Action Plan 2018; Skookum Programmatic Review 2018; Wellhead Protection Ordinance 2019 (and two associated Figures (jpegs)); and Water Conservation Guidelines Resolution 2018.<sup>57</sup>

### **Project 4: Ongoing Clean Water Investigations and Committees**

After the original formation of the Oakland Bay Clean Water District (Project 1), the Tribe's clean water work has only expanded. It has been collecting fecal coliform bacteria data, other general water quality data, and streamflow quantity data in Mason County for over 17 years. It shares its data as needed, annually, for target studies, and in larger multiyear reports. The Tribe participated on the Oakland Bay Clean Water District committee until it morphed into the Mason County Clean Water District in 2022. It has also embarked on continuous monitoring of fecal coliform concentrations in 2022. The Tribe has been part of the South Sound Shellfish Recovery Team since its inception in 2019. This team includes representatives from Pierce, Mason, Kitsap, and Thurston Counties, as well as Tribes, and Conservation Districts. In addition to sharing data, the Tribe participates to hold counties accountable for pollution investigation and correction (PIC) and investment in their own clean water programs.

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<sup>57</sup> See Project 3 at <https://squaxinisland.org/epa-treatment-as-a-state/>

Project 4 reference documents: Update Report for Mason County PIC Program 061016 FINAL; Update Report for Mason County PIC Program 020215\_FINAL; Squaxin Mason Co Freshwater Results 2016-2018 FINAL 032219; SIT MC PIC QAPP 2009; SIT EPA 106 Up To 2018 WQ Assessment FINAL 012420; and Mason Squaxin MOU signed 2020.<sup>58</sup>

### **Project 5: Comprehensive GIS Support**

All of the Tribe's monitoring, reporting, and engagement involves the use of Geographic Information Systems. Almost every report in this package involves maps and geodatabase analysis. We have a GIS Portal at <https://maps.squaxin.us/portal/home/>. The Tribe has an online water quality map at <http://maps.squaxin.us/portal/apps/webappviewer/index.html?id=6cf745e30f5643b5a79b60f7a7247510> which is used for interactive discussions in water quality meetings.

### **Project 6: Groundwater Investigations Lead to Groundwater Protection Interventions- Mason, Thurston, Kitsap Counties**

The Tribe knows and has communicated clearly to EPA over the years that water quantity is linked to water quality, despite the regulatory barriers that separate these two issues. It devotes as much effort, engagement, funds, investigations, and advocacy as it can muster to groundwater science and protection. This includes providing data and funding to the US Geological Survey and independent firms to develop and use groundwater models. Groundwater models show impact to aquifers, and therefore streams and wetlands, from groundwater pumping and land use change. The Tribe uses groundwater modeling results to inform counties, cities, and the State of Washington about the implications of their planned water uses to streams.

Project 6 reference documents: Johns Goldsborough Transient Model\_Feb\_2020; and Thurston County Soil Water Balance2 021.<sup>59</sup>

### **Project 7: Regional Planning**

The Tribe has engaged in regional planning for decades, including watersheds, growth management (comprehensive), shoreline master, drinking water, and wastewater. The Tribe's advocacy pushes entities towards actions that are more protective of natural resources and fisheries. This sometimes results in appeals of planning documents of counties, cities, and water purveyors, and that often leads to memoranda of agreement for actions that are protective of the Tribe's treaty resources. In 2019-2021, we were involved in the State of Washington's RCW 90.94 Watershed Restoration and Enhancement Committees.

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<sup>58</sup> See Project 4 at <https://squaxinisland.org/epa-treatment-as-a-state/>

<sup>59</sup> See Project 6 at <https://squaxinisland.org/epa-treatment-as-a-state/>



Project 7 reference documents: 2021-07-21 MOA PUD1 Squaxin Island Tribe; Squaxin to Mason Belfair Planned Action 29 Nov 2021; WRIA12 Final Draft Plan 20210128; WRIA13-WREC-Final Draft Plan-March 2021; WRIA14-WREC-Final Draft Plan-Feb 2021; and WRIA15 Final Draft 1 Mar 2021.<sup>60</sup>

### **Natural Resource Managers and Staff:**

**Jeff Dickison:** Mr. Dickison is the Assistant Director of the Squaxin Island Tribe’s Natural Resources Department and has worked for the Tribe for approximately 30 years. He oversees a diverse departmental program including fish, wildlife, shellfish, habitat and water programs that operates on a multi-million-dollar budget. Mr. Dickison supports the Natural Resource Department Director Andy Whitener in policy leadership of programs and guidance for a twenty-person staff.

Prior to his current role as Assistant Director, Mr. Dickison held several other positions in the Squaxin Island Tribe Natural Resource Department. Here is an overview of his experience:

- Policy Analyst: Jeff developed analyses for critical natural resource management programs and issues and assisted with implementation of projects within program goals. He provided expert testimony to external organizations affecting Tribal natural resource objectives.
- Program Manager of the Environmental Division and responsible for integration of Fish Habitat, Water Quality, Water Quantity, and Watershed Management programs. He was directly responsible for budgeting and contracting requirements on federal and state grants and contracts.
- Habitat Biologist /Manager responsible for a wide range of activities including department fiscal management, fisheries habitat management, TFW forestry program, water quality program, environmental review, representing the Tribe at public hearings, and assisting with Squaxin Seafarm finfish aquaculture operation, including assessment of net-pen culture impacts on the environment.

Before coming to the Squaxin Island Tribe’s Natural Resource Department, Mr. Dickison held positions with the Georgia State Senate as Assistant to the Secretary of the Senate (1986), a Hatchery Manager at Seward Park Trout Hatchery in Seattle, a field biologist on the Skagit River for Seattle City Light and a research assistant at the University of Washington.

Mr. Dickison served as a Port of Olympia Commissioner for two terms from 1992 to 2001. In this elected position, he was responsible for establishing all policy for Port operations, management, and investment. Port facilities include an airport, industrial and commercial development properties, shipping terminal and a marina.

Mr. Dickison’s education degrees are the following:

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<sup>60</sup> See Project 7 at <https://squaxinland.org/epa-treatment-as-a-state/>

- Master of Science, Fishery Biology, School of Fisheries, University of Washington, Seattle, WA, 1985. Cobb Scholarship, 1984; Egtvedt Scholarship, 1983.
- Bachelor of Science, Cum Laude, Environmental Science, Nason College, Springvale, ME, 1980. George Nason Scholar, 1979.
- Sea Education Association Sea Semester, Boston University, Woods Hole, MA, and aboard the R/V Westward, 1980.

### **Scott Steltzner**

Scott Steltzner is a research fisheries biologist for the Squaxin Island Tribe Natural Resource Department. Scott spent 5 years with the U.S. Forest, U.S. Fish and Wildlife Service, and the Yurok Tribe working on salmon ecology issues in northern California. At Squaxin for the past 19 years, Mr. Steltzner's efforts have included research into early marine survival of salmonids and assessment and prioritization of marine and freshwater habitats. Mr. Steltzner has B.S. in marine biology from San Diego State University.

Mr. Steltzner's education degrees are the following:

- Bachelor of Science, Marine Biology, San Diego State University, 1997.

### **Brian McTeague**

As Quantitative Services Manager for the Squaxin Island Tribe, Mr. McTeague will be a key player in developing and keeping data necessary to set Tribal Water Quality Standards. Mr. McTeague manages various tabular & spatial databases in support of tribal and department priorities and objectives. He designs database schema, conducts data analysis, and generates data reports and map products. Brian fulfills requests for data and map products to various external agencies and entities and maintains GIS database services while developing, publishing and maintaining multiple online map application viewers. He also provides GIS, SQL, MS Access support to Natural Resources staff. As the Quantitative Service Manager, Mr. McTeague reports to the Assistant Director of Natural Resources and maintains Tribal Water Quality database and supervises GIS data entry personnel.

### **Erica Marbet**

Erica Marbet is the Water Resource Specialist for the Squaxin Island Tribe Natural Resource Department. Ms. Marbet is a hydrologist with 20 years of experience that spans statistical analysis and model development in hydrology, design and implementation of hydrology, fisheries, and wildlife field research, and work experience as a fisheries and wildlife technician. She can handle confidently all required tools from field equipment to statistical software. Ms. Marbet holds thorough knowledge of the intersection of Treaty resources with the forest industry, land development, agriculture, groundwater pumping and wastewater management in Western Washington.

Ms. Marbet's education includes the following:

- Master of Science, in Forest Hydrology, Minor in Statistics, Oregon State University 2003.
- Bachelor of Science, in Wildlife Science, Minor in Fisheries, University of Washington 1997.

### **Joe Puhn**

Joe Puhn is a Biological Technician and Hydrographer with 17 years of experience in the Squaxin Island Tribe Natural Resource Department. Mr. Puhn has worked on a number of projects and programs over the years. He is the Tribe's primary hydrographer, taking regular discharge measurements that form the basis of stream flow records for seven gaging stations. His other projects include:

- Water sampling: fecal coliform, Nitrate, Nitrite, Ammonia, Total Phosphorus, Total suspended solids, pH, conductivity, temperature, Salinity, Specific conductance, Chlorophyll, Dissolved Oxygen, Klebsiella
- Sediment sampling: Fecal coliform
- Experiments with mycelium feeding on fecal coliform to reduce FC counts
- Air and water temperature studies
- Algae sampling
- Salmon spawning surveys
- Gravel sampling and sieve processing: Fines in spawning reaches: Deschutes River, Goldsborough Creek, Sherwood Creek
- Trapping out-migrating salmon smolts
- Trapping adult salmon
- Well monitoring
- Fish habitat surveys
- Restoration projects: Goldsborough Creek and Skookum Creek
- Sea level monitoring
- Permanent monitoring station design and construction

### **Overview of Career Publications and Presentations by Squaxin Island Tribe Natural Resource Department Staff:**

#### **Jeff Dickison Publications**

Dickison, J.A., 1993, Coordinating Toxic Cleanup with Future Site Utilization, In: Coastal Zone '93, Proceedings of the Eighth Symposium on Coastal and Ocean Management, Volume 3, American Society of Civil Engineers, New York, N.Y.

Dickison, J.A. and J. Walton, 1991, Beyond Mitigation--Achieving Habitat Restoration and Enhancement at the Local Level, In: Coastal Zone '91, Proceedings of the Seventh Symposium on Coastal and Ocean Management. American Society of Civil Engineers, New York, N.Y.

Dickison, J.A., 1989, Net-pen Aquaculture and Resource Management, In: Coastal Zone '89, Proceedings of the Sixth Symposium on Coastal and Ocean Management, Volume 2, American Society of Civil Engineers, New York, N.Y.

Dickison, J.A., 1985, Some effects of 17 a - methyl - testosterone on Rainbow trout (*Salmo gairdneri*) sex differentiation and growth, Master's Thesis, May 1985, University Publications, University of Washington

Brannon, E., Nevissi, A., Nakatani, R., Dickison, J., Linley, T., McClain, R., and Setter, A., 1984, Effects of crude oil on homing behavior of Pacific salmon, School of Fisheries, University of Washington, Seattle, Washington.

### **Erica Marbet Publications**

Golliet, M.A., C.E. Marbet, and E. Beach. 2006. Effects of Timber Harvest on Stream Temperature in the Southern Olympic Foothills. American Water Resources Association Summer Specialty Conference, Missoula, MT. June 26-28, 2006.

Marbet, C.E. 2003. Hydrology of Five Forest Roads in the Oregon Coast Range. M.S. Thesis, Oregon State University, Corvallis. pp. 94.

Marbet, C.E., A. Skaugset, and E. Gilbert. 2002. Hydrology of Forest Roads in the Oregon Coast Range. Council on Forest Engineering Annual Conference, Auburn, AL. June 16-20, 2002.

### **Technical Reports**

Rainfall Frequency Analysis for Sanderson Field, 2005.

Road Sediment Analysis Green Diamond Olympic Tree Farm 2008.

8000 Road Surfacing Experiment on Green Diamond Olympic Tree Farm 2012.

Quality Assurance Project Plan for TMDL Effectiveness Monitoring (co-written with others at GDRCo).

Mill Creek Water Temperatures & Lake Isabella Water Quality Investigations, Erica Marbet and Jean Caldwell, 2015.

Shellfish Early Warning System- Annual South Sound Freshwater Tributary Water Quality Reports 2014-2018.

Annual Synoptic Streamflow Surveys in Creeks of South Puget Sound- 2013- Present. Done collaboratively with USGS and independently.

Annual Reports for Seven Streamflow Gaging Stations of the Squaxin Island Tribe 2009 -Present

## 8.0 APPLICANT'S REPRESENTATIVES:

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## 9.0 CONCLUSION

Based upon the foregoing, the Tribe respectfully requests that the Environmental Protection Agency approve the Tribe's application for treatment in a manner similar to a state pursuant to § 518 of the Clean Water Act, 33 U.S.C. § 1251 et seq. as amended by the Water Quality Act of 1987 (P.L. 100-4, February 4, 1987) to administer programs under CWA §§ 303 (c) and 401.

The Tribe is immediately available to supplement its application upon request. Please direct any requests to Kevin R. Lyon [klyon@squaxin.us](mailto:klyon@squaxin.us) or 360.432.1771 x 1.