



Nooksack Tribal Council

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Whatcom County Planning & Development Services
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Thank you for inviting the Nooksack Indian Tribe to provide feedback on the proposed amended Countywide Planning Policies (December 19, 2024 version). As indicated in our letter to Executive Sidhu dated May 9, 2024, the Nooksack Tribal Council has determined that it is in the best interests of the Tribe to participate in the update of the Whatcom County Comprehensive Plan, and we recognize the importance of the Countywide Planning Policies to guide the update.

Understanding treaty rights is essential to recognizing and supporting Tribal sovereignty and the enduring rights of Native peoples. The Treaty of Point Elliott, to which the Nooksack Indian Tribe is a party, like all ratified treaties with Indian nations, is the supreme law of the United States. Treaties and treaty rights affect all citizens, Native and non-Native alike, by shaping legal frameworks, influencing land and resource management, impacting economic activities, fostering cultural awareness, and contributing to social justice efforts.

Understanding and respecting these rights is crucial for building equitable and sustainable relationships between Native and non-Native communities. We are mindful that treaties, including the Treaty of Point Elliott, have a history of being broken or ignored by the United States. As a result, Native nations, including the Nooksack Tribe, are constantly working to have their treaty rights affirmed, restored, and respected. In general, we respectfully request that the Countywide Planning Policies acknowledge both the importance of protecting our treaty resources and our interest in meaningful consultation on growth management.

Our specific comments (with suggested language revisions indicated in red and underlined or strike-through text) are provided by section below:

C. Urban Growth Areas

- 3a: We request that the Nooksack Tribe be consulted on growth projections and associated allocations to UGAs, as amount and distribution of population growth impacts treaty resources.
- 3b: Please incorporate consideration of water availability, i.e.

- *The County and Cities shall develop a Land Capacity Analysis Methodology, which is a consistent approach to calculating the land and water supply needed within an urban growth area. The Land Capacity Analysis Methodology will consider limitations imposed by critical area regulations, legal and physical water availability, infrastructure needs, open space, existing uses, local market factors and the ability of the jurisdiction to provide services. It is recognized that the above limitations may vary by jurisdiction, but the method for applying them shall be consistent. Urban growth areas shall permit a range of densities and uses; however, these uses and densities may vary among jurisdictions.*
- 4: Please incorporate consideration of water availability, i.e.
 - *Urban Growth Areas shall be evaluated in the timeframes set forth in the Growth Management Act to determine if they contain sufficient land capacity and water availability to accommodate the urban growth that is projected for the succeeding twenty-year period. The market factor for each Urban Growth Area shall also be evaluated. The Land Capacity Analysis will be used to determine whether the land supply is adequate to meet the needs of the community or whether the land supply is excessive.*
- 5: Please incorporate consideration of tribal resources, i.e.
 - *Urban Growth Areas should be established in a way that preserves agricultural land, forestry, mineral resources, treaty natural resources (e.g. salmon, wildlife, traditional foods), tribal cultural resources, water resources, and critical areas. Urban growth shall maintain proper buffers from natural resource areas to minimize conflicts with natural resources and industries based on them.*

D. City Urban Growth Areas

- 1: We are concerned with the bias towards growth and economic development over environmental protection implicit in this statement. We suggest the following:
 - *The Urban Growth Areas for the small cities shall be of an adequate size to allow them to ~~become viable~~ maintain viability as economic centers with a balance of jobs and housing and quality of life. The small cities shall do appropriate planning to ensure adequate distribution of land uses and services at a range of urban densities and zoning classifications.*
- 2: From our perspective, the Nooksack River floodplain and Sumas Overflow Corridor should be included as another area where additional urban development is not desirable. We are opposed to expansion of UGAs, upzones or subplats in the Nooksack River floodplain and strongly support targeting these areas for density reductions to allow natural flood control.
- 4: The Nooksack Tribe has suffered the environmental injustice of over a century of growth that has degraded and otherwise negatively impacted tribal treaty resources. We are concerned that “achieving the desired vision of the city” is acceptable as a reason to further degrade treaty resources. We request stronger protection of treaty resources when determining how to balance infill with expansion.
- 12: We request that growth allocations ensure consistency with estimates of amount and distribution of new domestic permit-exempt wells that are presented in Table 4.2 of the *Chapter 173-501 WAC (IRPP – WRIA 1) Final Rule Supporting Doc*¹. We note that the Tribe did not agree with the assertion that there was a net

¹ <https://apps.ecology.wa.gov/publications/documents/2011077.pdf>

ecological benefit of proposed offset projects and projected new permit-exempt groundwater withdrawals.

K. Siting of Public Facilities

- Siting of public facilities should incorporate consideration of current and future climate risk.

M. Intergovernmental Cooperation

- 1: Please add Nooksack Tribe to the list of jurisdictions participating on the Growth Management Planning Committee.
- 2: Please add consultation with the Nooksack Tribe to this statement, i.e.
 - *To adequately plan for growth and implement the policies of the Growth Management Act, the County and Cities will consult with the Lummi Nation and Nooksack Tribe and work with other governmental jurisdictions in Whatcom County, including the ~~Lummi Nation, and Nooksack Tribe,~~ Port of Bellingham to establish on-going mechanisms to improve communication, information sharing and coordinated approaches to common issues and concerns.*

N. Water Quality and Quantity

- 1 or 5: Please add a statement about working through the WRIA 1 Watershed Management Board (or successor entity) to offset negative impacts of growth on instream flow.
- 3: Please acknowledge the importance of protecting treaty natural resources, i.e.
 - *Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health and protect treaty natural resources in Whatcom County.*

S. Tribal Cultural Resources

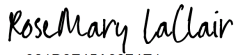
- Please add the following statement:
 - *Nooksack Tribal Cultural Resources include sites, features, places, cultural landscapes, sacred places and objects with cultural value to past, present, and future members of the Nooksack Tribe.*
- We support and encourage you to accept the revisions proposed by the Lummi Nation Tribal Historic Preservation Office, specifically:
 - *The County and cities shall work individually and cooperatively with participating the affected tribe(s) to protect natural and cultural resources through individual and joint efforts. Opportunities for open communication and early government-to-government consultation regarding resource identification, management and protection protocols should be established.*
 - *Federal, state, and local laws pertaining to cultural resources and human remains should be followed.*
 - *The County and cities should establish a clear and fair process for resolving any disagreements regarding the identification, protection, or management of tribal cultural resources. This process should involve mediation and conflict resolution techniques that respect and affirm tribal sovereignty, treaty rights and traditional practices.*
 - *The County and cities will work with the Washington State Department of Archaeology and Historic Preservation (DAHP) and the affected tribes, Lummi Nation and Nooksack Tribe to identify, protect and manage the presence of historic,*

archaeological, and cultural sites, as well as sites and structures of significance ~~within their boundaries consistent with~~ in compliance with applicable federal, state, and local, ~~state, and federal~~ laws.

- Please add the following policy:
 - Recreation will be managed to avoid areas of cultural use.

Thank you again for considering this feedback. We look forward to continuing to review and provide feedback on elements of the Whatcom County Comprehensive Plan update. Please reach out to me or to our Natural Resources Director Gary Kentner at GaryK@nooksack-nsn.gov should you have any questions or concerns.

Sincerely,

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RoseMary LaClair, Chair