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Organization: The Tulalip Tribes

Title: Treaty Rights Policy Analyst

Comments: EA Comments:

Thank you for the opportunity to provide our comments to the draft EA for the PNT Comprehensive Plan. The Tulalip Tribes of Washington is a sovereign Indian government, successor in interest to the Snohomish, Snoqualmie, and Skykomish tribes as well as other allied tribes and bands signatory to the 1855 Treaty of Point Elliott. We have treaty-reserved rights and resources, as well as historical/archaeological resources in national forest lands and other public federal and state lands, and other areas through which the Pacific Northwest Trail (PNT) traverses.

The PNT passes through the Point Elliott Treaty ceded territory, thereby having an impact on Tulalip's treaty reserved rights and resources. The draft EA fails to adequately consider the impacts from the development of this trail to the environment, and in turn to our treaty rights and resources, and our exercise of those rights. In that regard, the EA fails to meet the trust obligation of the federal government to ensure the rights to hunt and gather on all open and unclaimed lands are upheld.

* Trust Responsibility to Tribes as pertains to the PNT: As outlined in the Forest Service Manual, [Idquo]the Federal Indian trust responsibility is defined as a legally enforceable fiduciary obligation, on the part of the United States; to protect tribal lands, assets, resources, and reserved rights[hellip]This responsibility requires that the Federal Government consider the best interests of the Indian tribes[hellip]when taking actions that may affect them.[rdquo] (FSM 1563.8b, heading 2 [ndash] Trust Responsibility). We wish to see treaty rights and the federal trust responsibility acknowledged in the beginning of the plan, and the protections of treaty rights and cultural resources demonstrated, and impacts to them evaluated throughout the Comprehensive Plan.

* Baseline Information enabling future evaluation of impacts: The EA does not include adequate baseline data on current fish and wildlife presence, abundance and habitat conditions. The EA does not include any data on current impacts from recreation in the area, current impacts to tribal treaty uses, and other impacts to the environment. This baseline data must be collected and included to track impacts as trail use grows over time.

* Trail Capacity: It appears that user capacities were tied more to trail user abilities and preferences, as well as impacts on trail enjoyment, solitude and aesthetics. The determination of user capacity is devoid any scientific analysis of ecosystem resilience, protection of natural resources, or ecological services. The capacity does not account for treaty rights or cultural and archeological resources and activities.

* Wildlife Impacts: We appreciate the inclusion of our language [Idquo]Wildlife constitutes critical treaty and cultural resources in the planning area.[rdquo] However, wildlife will be affected in areas not only on the trail and immediately adjacent areas, but well beyond it, leading to fragmentation of wildlife habitat and affecting their behaviors. The EA continues to lack analysis of:

1. How this trail will affect or intersect with important wildlife corridors, reproductive areas, summer/winter range, wilderness areas? How use will be monitored specifically for impacts to wildlife?
2. Existing impacts to wildlife when user capacity numbers were estimated? How users would impact wildlife and their habitats. Why was the carrying capacity raised from the original annual user numbers (went from 80 users in 2021 to a capacity setting of 552- 1748)?
3. How this trail will intersect with hunting and gathering areas for Tribal members?

* Ongoing Monitoring, Mitigation and Enforcement: Who will be responsible for managing permits and conducting monitoring? Who will be responsible for monitoring impacts from trash/waste on and around the trail? Erosion, invasive species, diminished water quality? User numbers, types, seasonal patterns, dogs on trails, etc.? The EA does not address what mitigation measures will be considered and implemented to offset the impacts that this

trail and it[rsquo]s users will inevitably have.

We again ask that the USFS review and integrate further the findings that are part of the recently published Tulalip report on wildlife impacts from recreation. (Referenced below and attached)

The [ldquo]Recreation Boom[rdquo] on Public Lands in Western Washington: Impacts to Wildlife and Implications for Treaty Tribes A Summary of Current Literature <https://nr.tulaliptribes.com/Base/File/NR-Tulalip-Recreation-Impacts-to-Wildlife-2-28-21-v2>

Again, we appreciate the opportunity to share our comments. In addition to our above summary, we have included some specific comments and examples of the concerns we raise above in the attached table. Ultimately our hope is to see Forest Service ensure, first and foremost, conservation of public lands. The PNT must be ecologically sustainable and meet federal obligations to treaty tribes like Tulalip, consistent with the agency[rsquo]s trust responsibility to tribes. Thank you and we look forward to engaging with you further going forward.

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Purposes:

The nature and purpose statements were developed by drawing from the basic intent of the National Trails System Act, subsequent executive orders, and elements of legislative history. They are informed by the vision for the Pacific Northwest Trail described in historic documents from Ron Strickland and the Pacific Northwest Trail Association and in the feasibility study. They are also informed by the results of public sensing that occurred prior to the development of this plan, through sensing meetings with stakeholders and the managing agencies in communities across the trail in 2012-14 and with the Pacific Northwest National Scenic Trail Advisory Council (Advisory Council) in 2015-16.

These statements lack input from all affected tribes. As we stated in our earlier scoping comments, Tulalip does not recall having been consulted in the development of the Comprehensive Plan. As a result, the nature and purpose statements do not anticipate nor consider treaty rights of tribes nor impacts to these communities that the project will have. If tribes were consulted, their input does not appear to us to have been adequately integrated.

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Significant Natural, Historical, and Cultural Resources:

1. Iconic wildlife and fish Species
2. Places of importance to Tribes

Calling out of the significance of these resources as [ldquo]treaty rights[rdquo] is not included and must be. Wildlife and fish support treaty rights, as does places of importance to tribes. However, treaty rights and geographical areas defined by the treaties, such as U&A, are legally defined and protected, with existing frameworks for management.

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Identifying Carrying Capacity

2. Review existing direction and knowledge.

This section of the IVUMC visitor capacity guidebook includes a process for reviewing existing knowledge and direction, part of which specifically calls for a review of all applicable law and policy. This should include a review of treaty rights and resources in the project area which is missing in this EA.

Identifying Carrying Capacity Limiting Factors

The limiting factors discussed are too narrow, identifying only existing management directions and policies. The guidebook allows for a broader analysis, and gives an example of visitor use and impacts to vegetation. Similar attributes should be included as limiting factors. Expanding the limiting factors to include and consider treaty rights and the trust obligations of respective agencies, impacts to wildlife, habitat, and vegetation is essential, and is currently missing entirely, or is inadequate in this EA.

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Thru-hiker capacity:

The proposed action includes an estimated carrying capacity for thru-hiking for the Pacific Northwest Trail of 552 to 1,748 thru-hikers per high use season (June 15th to September 15th). This is based on the most limiting passages of the trail, which are in the Cabinet-Yaak and Selkirk Mountains Grizzly Bear Recovery Zones and Olympic National Park's Wilderness Coast.

The determination of this carrying capacity does not follow the IVUMC visitor capacity guidebook cited as the process for determining carrying capacity. For federal lands, of which a majority of the project falls on, treaty rights exist in addition to the trust obligation of federal land managing agencies to ensure treaty rights are fulfilled. This EA is missing critical information as there is no analysis of existing or potential recreational impacts on treaty resources, nor on impacts to vegetation or wildlife. There are no thresholds identified for determining sustainable use.

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Culturally Significant Plants:

A wide variety of culturally significant plants occur along the recommended national trail planning corridor. The list of valued species varies by tribe, use, location, and ecological conditions. These species could occur in a wide range of habitats from exposed ridgelines for species such as bitterroot (*Lewisia rediviva*) in Montana to Camas (*Camasia quamash*) in valley bottoms

In order to protect the plants and the traditional knowledge associated with them, we formally request that plants termed culturally significant not be named specifically. Naming them jeopardizes treaty harvest opportunities. (see authorities to withhold sensitive tribal information under the Farm Bill). Furthermore, for tribes with treaty rights, these plants should be protected and maintained for treaty harvests.

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Recreation

EA fails to adequately evaluate recreational impacts on the landscape. Specifically, in botany, fisheries, and wildlife, recreational use on the PNT may result in increased forage harvest, fishing, or hunting, especially by thru-hikers

CP Comments

Thank you for the opportunity to provide our comments related to scoping for the PNT Comprehensive Plan. The Tulalip Tribes of Washington is a sovereign Indian government, successor in interest to the Snohomish, Snoqualmie, and Skykomish tribes as well as other allied tribes and bands signatory to the 1855 Treaty of Point Elliott. We have treaty-reserved rights and resources, as well as historical/archaeological resources in national forest lands and other public federal and state lands, and other areas through which the Pacific Northwest Trail (PNT) traverses.

Tulalip does not recall having been consulted by our federal partners and trustees in the early consideration of this trail's designation-- assuming such discussions took place. Nor do we recall having input into the development of its proposed route and the eventual congressional designation under the National Trails Act. Our staff is just now developing some understanding of the trail, and beginning to identify those important issues and actions with tribal implications, including potential impacts to tribal treaty and cultural rights and interests. Given this as background, we offer some of our initial thoughts for consideration in scoping for the trail plan. We ask that we may be afforded the opportunity to offer additional comments as planning moves forward and we become more familiar with the trail and proposed comprehensive plan.

* Trust Responsibility to Tribes as pertains to the PNT: As outlined in the Forest Service Manual, [Idquo]the Federal Indian trust responsibility is defined as a legally enforceable fiduciary obligation, on the part of the United States; to protect tribal lands, assets, resources, and reserved rights[hellip]This responsibility requires that the Federal Government consider the best interests of the Indian tribes[hellip]when taking actions that may affect them.[rdquo] (FSM 1563.8b, heading 2 [ndash] Trust Responsibility). We wish to see treaty rights and the federal trust responsibility acknowledged in the beginning of the plan, and the protections of treaty rights and cultural resources demonstrated throughout the Comprehensive Plan. This may include

* Baseline Information enabling future evaluation of impacts: Collect data as needed to support this planning effort current and future evaluation of impacts to biodiversity, plants and vegetation communities, fish and wildlife habitat, abundance, and distribution, soils and erosion, water quantity and quality, treaty rights and cultural rights, wildfire patterns, etc.[ndash] all of which are affected by this trail and its users. Data should include, for example, current levels of trail users, Types of users, trail behaviors, baseline data on current fish and wildlife presence, abundance and habitat conditions, and current impacts from recreation in the area, current impacts to tribal treaty uses, and other. This baseline data will allow for tracking impacts as trail use grows over time.

* Trail Capacity: How was this determined? It appears that user capacities were tied more to trail user preferences and impacts on trail enjoyment, solitude and aesthetics, rather than on ecosystem resilience, and the protection of natural resources, ecological services, and what is required to sustain and protect treaty rights and cultural and archeological resources and activities .

* Permits for Trail Use and Education It appears that currently no permit system or other requirement for trail users to register is anticipated. We concur that use is likely to continue to increase as the attractiveness of this relatively little-used, long-distance trail becomes increasingly better known. How will this trail affect already overrun/high demand recreation areas along it's path? The USFS should consider developing a permit system early on in the further development of this trail, and consider opportunities to require education on trail use and etiquette, rules and regulations, recreation impacts, and ways to mitigate them. How will users be educated on Tribal history/sovereignty prior/existing tribal rights and implications for how the trail may be managed? Developing an educated user group should help to mitigate some impacts of trail use [ndash] consider several successful programs where this is currently happening on public lands (i.e., Denali NP [Idquo]Hiker Certification Program[rdquo]) .

* Wildlife Impacts: Wildlife constitutes critical treaty and cultural resources in the planning area. Wildlife will be affected in areas not only on the trail and immediately adjacent areas, but well beyond it, leading to fragmentation of wildlife habitat and affecting their behaviors.

1. How are wildlife being taken into account? Is this trail being considered on a landscape scale and not limited to

the trail and immediate areas adjacent? How will this trail affect or intersect with important wildlife corridors, reproductive areas, summer/winter range, wilderness areas? How will use be monitored specifically for impacts to wildlife? Are seasonal or diurnal closures and other means being considered to mitigate these impacts?

2. How were impacts to wildlife considered when user capacity numbers were estimated? It appears that user capacities are based more on aesthetic values to trail users, and not how users would impact wildlife and their habitats. Why was the carrying capacity raised from the original annual users number (went from 80 users in 2021 to a capacity setting of 552-1748)?

3. How will this trail intersect with hunting and gathering areas for Tribal members?

4. Can this exercise be a way in which neighboring landowners can work together to create wildlife management decisions on a landscape scale rather than at the property ownership scale?

5. Specific Wildlife Impacts West Cascades: This trail will pass through GMU 418 of The North Cascades Elk Herd. Tulalip and other Point Elliot Treaty tribes and WDFW worked hard to rebuild this elk herd. How will use be monitored so elk will not be negatively impacted by more visitors being drawn to this recovering elk herd?

* Impacts generally and to treaty rights and tribal cultural properties and uses:: What measures are being considered to keep the footprint of this trail as small as possible? What measure are being consider specifically to address treaty rights exercise and protection of tribal member access, privacy, and resource abundance needed?

* Ongoing Monitoring, Mitigation and Enforcement: Who will be responsible for managing permits and conducting monitoring? Who will be responsible for monitoring impacts from trash/waste on and around the trail? Erosion, invasive species, diminished water quality? User numbers, types, seasonal patterns, dogs on trails, etc.? What mitigation measures will be considered and implemented to offset the impacts that this trail and it[rsquo]s users will inevitably have?

* Unscheduled Trails Impacts: For the North Cascades Grizzly Bear Recovery Zone [ndash] It is mentioned that [ldquo]interim guidance for no net loss of core habitat[rdquo] and that (pg 10 of the DRAFT Carrying Capacity Report) [ldquo]Where the PNT is currently located on roads, the use is not influencing the calculation of core habitat, however if the trail were to be moved off the roads, impacts of trail use on core acres would need to be considered,[hellip][rdquo]. How will the USFS make sure that unscheduled trail networks do not branch off the main trail and start to negatively impact the Grizzly Bear Recovery Zone? How will this type of illegal activity be addressed and monitored? USFS may wish to consider monitoring off trail use such as is done currently in the Mt Rainier National Park using volunteer [ldquo]Meadow rovers[rdquo] to ensure

* Direct Tribal Educational Messaging to Users: In partnership with affected tribes, develop appropriate signage and social media messaging that promotes trail user understanding of tribal history, rights and tribes[rsquo] current roles in land stewardship, and tribal concerns. Toward that end, consider for different trail areas supporting/funding tribal capacity to develop direct messaging , such as [ldquo]What Tribes want you to Know[rdquo] as trail passes through different tribal ancestral and/or treaty-protected areas.

* Funding and Enforcement: What sustained funding is available for ongoing management and enforcement needs associated with the PNT? What are these sources of funding? How will the variety of landowners this trail passes through afford its upkeep, management, and enforcement?

We ask that the USFS review and integrate findings that are part of the recently published Tulalip report on wildlife impacts from recreation, as well as two additional reports listed below and attached to this comment letter.

1. The [ldquo]Recreation Boom[rdquo] on Public Lands in Western Washington: Impacts to Wildlife and Implications for Treaty Tribes A Summary of Current Literature <https://nr.tulaliptribes.com/Base/File/NR-Tulalip-Recreation-Impacts-to-Wildlife-2-28-21-v2>

2. RECREATION AND WILDLIFE IN WASHINGTON: CONSIDERATIONS FOR CONSERVATION A REPORT ON CURRENT KNOWLEDGE https://conservationnw.org/wp-content/uploads/2022/09/Recreation-and-wildlife-in-Washington-Considerations-for-conservation_FINALreduced.pdf

1. Low levels of outdoor recreation alter wildlife behavior (publication attached)

Again, we appreciate the opportunity to share our scoping comments for this PNT planning process. Ultimately our hope is to see an ecologically sustainable trail that meets federal obligations to treaty tribes like Tulalip, and is consistent with the agency's trust responsibility to tribes. Thank you and we look forward to engaging with you as possible going forward.