Snohomish County

MEMORANDUM OF UNDERSTANDING BETWEEN THE TULALIP TRIBES AND SNOHOMISH COUNTY ESTABLISHING PROCESS FOR COORDINATED LONG-RANGE PLANNING & INFORMATION SHARING

This Memorandum of Understanding ("MOU") is made by and between the Tulalip Tribes, a federally recognized Indian tribe, and Snohomish County, a political subdivision of the State of Washington. The Tulalip Tribes and Snohomish County (collectively referred to as "Parties" or "governments") hereby acknowledge and agree as follows:

RECITALS

1. The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, Skykomish and other tribes and bands, who were signatory to the 1855 Treaty of Point Elliott. In the Treaty, the Tulalip Tribes reserved the Tulalip Indian Reservation ("Tulalip Reservation") as a permanent homeland in exchange for ceding millions of acres of land to the United States.
2. The State of Washington was established and admitted into the United States in 1889. Snohomish County is a political subdivision of the State of Washington.
3. The long history of conflicting federal policies regarding reserved Indian lands has resulted in a checkerboarding of land ownership within the Tulalip Reservation, which includes Tribal (trust and restricted fee), tribal member (trust and fee), and non-Tribal (fee) owned lands. However, the original boundaries of the Tulalip Reservation established under the Executive Order of 1873, have never been changed or diminished.
4. The Tulalip Tribes exercise governmental authority over its Reservation lands, people and reserved treaty resources in accordance with the Tulalip Constitution and the Tulalip Tribal codes.

5. The Tulalip Tribes have reserved water rights secured by the Treaty of Point Elliott of 1855. The Tulalip Tribes are water and sewer system suppliers for both tribal members and non-tribal members on the Tulalip Reservation. Both the Tulalip Tribes and Snohomish County maintain road infrastructure on the Tulalip Reservation. The Tulalip Tribes also have "treatment as a state" (TAS) status under the Clean Water Act and have promulgated water quality standards applicable to all waters of the Tulalip Reservation.
6. Snohomish County exercises governmental authority over lands and people within Snohomish County in conformity with the Snohomish County codes, the Washington State Constitution and relevant state statutes.
7. The Tulalip Tribes and Snohomish County do not agree on governmental jurisdiction over land use within the exterior boundaries on the Tulalip Reservation. The Tulalip Tribes asserts land use regulatory jurisdiction over all lands within the exterior boundaries of the Tulalip Reservation, regardless of ownership type. Snohomish County asserts land use regulatory jurisdiction for deeded lands held in fee simple title owned by non-Tulalip tribal members lying within the exterior boundaries of the Tulalip Indian Reservation. The Tulalip Tribes and Snohomish County have separate comprehensive land use planning codes, plans and programs. These separate land use planning schemes and jurisdictional conflicts have undermined comprehensive land use planning on the Tulalip Reservation to the detriment of all.
8. Without either party conceding its position with regard to land use planning jurisdiction, the Tulalip Tribes and Snohomish County have determined it is in each Party's interest to enter into this MOU to create a cooperative comprehensive planning framework to reduce conflicts and facilitate more effective and consistent land use planning within the Tulalip Reservation for the benefit of all Tulalip Reservation residents.
9. A coordinated planning approach would be consistent with provisions of the Centennial Accord recognizing a government-to government relationship between the state and Indian tribes, and State laws and regulations encouraging counties to coordinate with other jurisdictions, including Indian Tribes, in adopting planning policies.
10. The Tulalip Tribes and Snohomish County have previously entered into certain cooperative relationships to provide other types of governmental services, such as public safety, for the benefit of all citizens residing on the Tulalip Reservation and in Snohomish County. The Parties wish to build upon these existing cooperative relationships through development of a coordinated land use planning framework.
11. Both the Tulalip Tribes and Snohomish County are committed to the principles of due process and fundamental fairness in the application of land use regulatory laws for all residents.

12. In order to ensure overlapping comprehensive planning efforts reflect the unique purposes and status of the Tulalip Reservation, the Parties agree to establish a coordinated long-range planning program with the goal of reducing conflicts and achieving better consistency between the Tulalip Tribes Comprehensive Plan for the Tulalip Reservation and the Snohomish County Comprehensive Plan; and for the Tulalip Tribes and Snohomish County to share relevant land use data and information to facilitate better land use coordination in land use planning and permitting.
13. The Tulalip Tribes and Snohomish County respect the sovereignty and political integrity of each other and the values and culture represented by the Tulalip Tribes, and each desires to have an agreement reflecting a full government-to-government relationship.
14. Both parties recognize interests in promoting the Tulalip Reservation public good, and developing a mutual understanding of the differences in the Tulalip Tribes and Snohomish County's land use planning and development objectives.
15. This MOU is entered into as a step toward implementation of the Tulalip Tribes-Snohomish County Joint Resolution No. 10-010. This MOU is intended to cover coordinated long range planning and sharing of land use related information between the Parties. It is anticipated that this is the first in a series of agreements to implement Joint Resolution No. 10-010.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below, the receipt and sufficiency of which is hereby acknowledged, the Tulalip Tribes and Snohomish County agree as follows:

SECTION 1: AREA OF INTEREST

The lands covered by this MOU are shown as the Tulalip Reservation on the attached map (Attachment A). The sharing of information and resources, provided for in Section 3 of this MOU, may extend beyond the exterior boundaries of the Tulalip Reservation to unincorporated Snohomish County where the Tulalip Tribes has reserved off-Reservation treaty rights.

SECTION 2: SCOPE OF COORDINATED LONG-RANGE PLANNING

2.1 The Tulalip Tribes and Snohomish County agree to engage in a coordinated long-range planning process that seeks to reduce conflicts and achieve consistency between the Tulalip Tribes Comprehensive Plan, and that part of Snohomish County's Comprehensive Plan that refers to non-Tulalip tribal member fee lands within the Tulalip Reservation. The coordinated land use planning process shall be

informed and guided by the following goals and principles: (1) recognition of the unique status and purposes of the Tulalip Indian Reservation as the permanent homeland for the Tulalip Tribes reserved under treaty with the United States; (2) reduction of conflicts between the governments in land use policies, zoning and processes; (3) increased protection of public health, safety and general welfare; (4) improved protection of natural and cultural resources; (5) strengthened political integrity and economic security of each government; (6) improved coordination of infrastructure improvements to support future development; (7) improvements to the provision of public facilities and services; (8) public engagement of all Reservation residents; (9) public visibility of coordinated long-range planning efforts by decision-makers and members of the public; and (10) compliance with applicable tribal, local, state and federal laws.

2.2 Within 45 days of executing this MOU, the Parties shall establish a Tribal-County Coordinated Planning Workgroup (hereinafter "Workgroup") made up of four members appointed by the Tulalip Tribes and four members appointed by Snohomish County. The members shall have knowledge, experience and responsibilities for comprehensive planning in their respective governments. The Workgroup shall have regular meetings of no less than once each quarter.

2.3 The Workgroup shall develop and implement a work plan and recommendations with the chief objective of aligning the Snohomish County Comprehensive Plan as it relates to non-Indian fee lands on the Tulalip Reservation, with the Tulalip Tribes Comprehensive Plan for the Tulalip Reservation, to the extent possible within the requirements of federal, state, and local law, and regional planning guidance, e.g. *Vision 2040*. The Workgroup shall establish a schedule which will coincide with requirements for updating or revising each government's comprehensive plan. The Workgroup's work plan and recommendations shall be guided by the goals and principles stated in Section 2.1 above. Each government shall be responsible for its own expenses incurred in fulfillment of this MOU. The Workgroup may utilize consultants to help facilitate development and implementation of its work plan, upon proper authorization and shared funding by each Party. Specific responsibilities for each government associated with any consultant assistance, including the amount and/or required share of funding, shall be detailed in a separate contract.

2.4 The Workgroup's work plan will include the following elements: (1) a comparison review of the existing comprehensive plans of both governments and identification of material inconsistencies or other issues which could create potential conflicts in land

use permitting and decision-making on the Tulalip Reservation; (2) identification of key planning processes and deadlines relevant to each government's comprehensive plan revisions and updates in order to identify the mechanisms and dates when recommendations to achieve better consistency can be considered and implemented; (3) recommendations for procedural and policy changes, such as changes to the County-wide Planning Policies (CPP's), which may be necessary or helpful in order to further the goals and principles in Section 2.1 and facilitate incorporation of the Workgroup's approved recommendations; (4) identification of potential revisions to comprehensive plans to further the goals in Section 2.1; (5) a public outreach plan; (6) a final set of detailed recommendations for revisions to Snohomish County and Tulalip Tribes comprehensive plans to reduce conflicts and better align the two Plans as they relate to the Tulalip Reservation; (7) follow-up work as needed to help ensure incorporation and implementation of recommendations that are approved by each government; (8) cooperative administrative strategies for plan implementation; and (9) the Workgroup may continue work with similar objectives on subsequent comprehensive plan revisions and land use code or policy amendments by either government.

2.5 The main responsibility of the Workgroup shall be to develop detailed, written recommendations for comprehensive plan revisions to further the goals and principles in Section 2.1. The Workgroup's written recommendations shall be submitted to each government for approval in accordance with each government's review and approval process. The recommendations shall be submitted in a timely manner for approval and incorporation into each government's comprehensive plan revision process as detailed in Section 2.7. The Workgroup shall work to adjust any of its recommendations in response to objections by the Parties in order to obtain necessary approvals.

2.6 By entering into this MOU, the Parties commit to work in good faith to achieve timely consensus on comprehensive plan revision recommendations in accordance with the goals and principles in Section 2.1, and to take all necessary steps to forward those recommendations to the County Executive and County Council for consideration.

2.7 It is anticipated that the first set of Workgroup recommendations will be developed by May 31, 2015, to allow for proper consideration, approval and inclusion in the Snohomish County-Initiated Comprehensive Plan Amendment Cycle, which is scheduled for final adoption in 2016. Approved Workgroup recommended revisions

to the Tulalip Tribes Comprehensive Plan will proceed through the Tulalip Tribes Comprehensive Plan revision process.

SECTION 3: SCOPE OF INFORMATION AND RESOURCE SHARING PROGRAM

3.1 The Tulalip Tribes and Snohomish County shall each designate not less than one position to act as the point-of-contact for all requests of: (a) geographic information systems (GIS) data; (b) land use permit records; and (c) code enforcement records. Each Party shall keep the other promptly apprised of any change in primary point(s)-of-contact. Points-of-contact information for each Party is listed in Attachment B.

3.2 The Tulalip Tribes maintain the sovereign right to disclose only that data which is deemed releasable by the tribal government. The Tulalip Tribes understand that Snohomish County is a local government subject to state law and bound by provisions of the State Public Records Act and thus required to make all public records, data and correspondence available for inspection and copying by the public in accordance with the Act. Therefore, all records, data and correspondence supplied to Snohomish County by the Tulalip Tribes will be subject to Chapter 42.56 RCW - Public Records Act. Both Parties agree that the Tulalip Tribes will not supply the County with confidential, proprietary or highly sensitive information.

3.3 Each government shall determine which of its own GIS data is available to share with the other government. Each government shall maintain a file transfer system for the exchange of releasable GIS data and make accessible to appropriate staff of the other respective Party. Each government is responsible for the maintenance of the GIS data it generates and should update geographically referenced data in the normal course of its business. Costs for GIS projects with mutual benefits to each government may be shared whenever practicable. Each government is encouraged to collaborate on local and/or regional GIS projects. If deemed necessary by the Parties, licensing agreements or other agreements may be entered into by the governments to limit the use of GIS data.

3.4 On a weekly and quarterly basis, Snohomish County shall email permit summaries to the Tulalip Tribes point-of-contact for land use permitting records, listing all new permit applications, and pending and recently issued permits, for properties within the exterior boundaries of the Tulalip Reservation and any other properties requested. Each government understands that permit summaries provided under this MOU are not otherwise legally required or intended to substitute for official notification

procedures. Snohomish County reserves the right to request permitting data from the Tulalip Tribes on a case-by-case basis. Each government shall have access to all requested permit materials – except for those materials deemed confidential, proprietary or highly sensitive by the Tulalip Tribes – when any such request is made by the respective point-of-contact. The exchange of information shall be specific to this MOU and shall not be subject to the protocols for general public requests for public records. Any expenses for copying requested materials shall be incurred by the requesting Party.

3.5 On a weekly basis, Snohomish County shall email reports to the Tulalip Tribes point-of-contact for code enforcement records, for all complaints received regarding code enforcement actions for properties within the exterior boundaries of the Tulalip Reservation and any other properties requested. Each government understands that email reports provided under this MOU are not otherwise legally required or intended to substitute for official notification procedures. Snohomish County reserves the right to request code enforcement data from the Tulalip Tribes on a case-by-case basis. Each government shall have access to all requested code enforcement materials – except for those materials deemed confidential, proprietary or highly sensitive by the Tulalip Tribes – when any such request is made by the respective point-of-contact. The exchange of information shall be specific to this MOU and shall not be subject to the protocols for general public requests for public records. Any expenses for copying requested materials shall be incurred by the requesting government.

3.6 Long-range population and employment growth forecasts provide a key foundation for establishing and updating the comprehensive plans of both Snohomish County and the Tulalip Tribes. To help ensure that the underlying growth forecast assumptions are transparent to future comprehensive plan update efforts by both Snohomish County and the Tulalip Tribes, both governments agree to share with one another their current population and employment forecasts for the geographic areas covered by this MOU as needed to support the periodic updating of each Party's comprehensive plan.

SECTION 4: DESIGNATION OF ADMINISTRATORS

The Director of the Department of Planning and Development Services or his/her designee is Snohomish County's administrator of this MOU. The Executive Director of the Public Works Division or his/her designee is the administrator of this MOU for the Tulalip Tribes.

SECTION 5: FINANCING

In execution of this MOU, expenses for copying of materials for Section 3 shall be the responsibility of the requesting government, and expenses for development of the coordinated long-range planning program in Section 2 shall be divided between the Parties and subject to appropriations through the respective budgetary process of each government.

SECTION 6: CONTRACTING

Any contracting in fulfillment of this MOU including, but not limited to, public notice(s), bid(s), proposal(s) and awarding of contract(s) shall follow statutory requirements of both governments. Contracts must be authorized by the governing bodies of the Parties before contract execution. The Parties may agree that one Party may enter into a contract in furtherance of this MOU, with the other Party sharing costs though approved cost sharing mechanisms.

SECTION 7: PROPERTY

Except as expressly provided to the contrary elsewhere in this MOU, any real or personal property used, acquired or purchased by either Party in connection with the performance of this MOU will remain the sole property of such Party, and the other Party shall have no interest therein.

SECTION 8: DURATION AND TERMINATION

This MOU will become effective upon execution by the Parties, indicated by the signatures and date on the signature page of this MOU, and shall remain in effect until terminated by the Parties, PROVIDED HOWEVER, that the County's obligations under this MOU after December 31, 2013, are contingent upon legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

8.1 Either Party may terminate this MOU, for any reason, upon providing thirty (30) days written notice to the other Party.

8.2 Notices of termination shall be delivered to the following:

County: Snohomish County
Planning and Development Services, Director
M/S 604, 3000 Rockefeller Avenue
Everett, WA 98201

Tribes: The Tulalip Tribes
Public Works Executive Director
6406 Marine Drive
Tulalip, WA 98271

SECTION 9: RIGHTS, JURISDICTION, SOVEREIGN IMMUNITY AND APPLICABLE LAWS

This MOU is for the sole benefit of the Parties hereto and confers no rights to third parties, and is not intended to modify, impair, or waive: (1) the jurisdiction of either government; (2) the sovereign immunity of the Tribes or its treaty rights; or (3) the application of applicable federal, tribal or state laws. Nothing is this MOU shall be construed to be an admission regarding any Party's claims to land use regulatory jurisdiction, or affect or impair any lawful exercise of land use permitting or enforcement authority by the Parties.

SECTION 10: AMENDMENTS

The provisions of this MOU may be amended by parallel resolution of the Parties.

SECTION 11: SEVERABILITY

If any provision of this MOU or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this MOU and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

IN WITNESS WHEREOF, the Parties have signed this MOU, effective on the date indicated below.

The Tulalip Tribes

By: Melvin Sheldon Jr

Melvin Sheldon, Jr., Chairman

By: Sheryl Fryberg

Sheryl Fryberg, General Manager

Date: 5/30/13

Attest:

Marie Zackuse

Snohomish County

By: Aaron G. Reardon

Aaron G. Reardon, County Executive

Date: 5/30/13

Attest:

Linda Carl

ATTACHMENT A: AREA OF INTEREST

Disclaimer:
Tulalip Data Services (TDS) provides this data "as is."
TDS does not make any guarantees or warranties concerning
the accuracy of the information contained in the geographic data.
TDS assumes no liability or responsibility for errors or inaccuracies.

October 2, 2012

Data Sources:
Tulalip Bay Vision Plan by Salmon Nation,
Fish, and Our Common Home,
Wolf & Zuckerman, Original Map, Dorie Roth
Tulalip Data Services GIS

ATTACHMENT B: PRIMARY POINTS OF CONTACT

	Information	Title	Division	Phone	Backup
Tulalip	GIS Data	GIS Manager	GIS	360.716.5157	GIS Analyst
County		GIS Analyst, Senior	Cartography-GIS	425.388.3311 ext. 2621	GIS Analyst, Principal
Tulalip	Land Use Permitting Records	Associate Planner I	Planning	360.716.4214	Associate Planner II
County		Records Specialist	File Room-Records	425.388.3311 ext. 2248	Division Manager
Tulalip	Code Enforcement Records	Code Enforcement Specialist	Planning	360.716.4215	Associate Planner I
County		Supervisor	Code Enforcement	425.388.3311 ext. 2489	Division Manager
Tulalip	Comprehensive Planning Data	Associate Planner II	Planning	360.716.4213	Planning Supervisor
County		Senior Planner	Planning - Urban	425.388.3411 ext. 2944	Principal Demographer
Tulalip	Other	Associate Planner II	Planning	360.716.4208	Planning Supervisor
County		Planner	Planning – Rural	425.388.3311 ext. 2975	Planner

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