

EXHIBIT

A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLARK COUNTY, WASHINGTON *et al.*,

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
THE INTERIOR *et al.*,**

Defendants,

and

COWLITZ INDIAN TRIBE,

Intervenor-Defendant.

**Case No. 1:11-cv-00278-RWR
Judge Richard W. Roberts**

AMICUS CURIAE BRIEF OF THE CITY OF LA CENTER, WASHINGTON

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST.....	1
ARGUMENT	
I. <u>Land Use and Zoning Considerations</u>	2
II. <u>Water Quality and Sewer Discharges</u>	7
III. <u>Conclusion</u>	11

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Alexanderson v. City of La Center</i> , Case No. 12-2-0004 (W. Wash. Groth Mgmt. Hearings Bd. May 4, 2012), available at http://www.gmhb.wa.gov/LoadDocument.aspx?did=2853	5, 6, 9, 10
<i>Clark Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.</i> , 254 P.3d 862 (Wash. Ct. App. 2011)	2
<i>Karpinski v. Clark Cnty.</i> , Case No. 07-2-0027 (W. Wash. Growth Mgmt. Hearings Bd. June 3, 2008) (Final Decision & Order), available at http://www.gmhb.wa.gov/LoadDocument.aspx?did=145	2, 4
ORDINANCES AND RESOLUTIONS	
City Ordinance No. 2011-03, Approving the Annexation of Certain Property to the City of La Center (La Center Rd. et al.) (Sept. 14, 2011), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/Ord%202011-340%20Junction%20Annexation.pdf	5
City Resolution No. 11-340 (adopted Mar. 9, 2011), available at http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20(Cowlitz).PDF	7, 9, 10
City Resolution No. 11-347 Authorizing And Approving the Execution of the Sewer Development Agreement (adopted Dec. 14, 2011) -, available at http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-347%20Cowlitz%20Sewer%20Agreement.pdf	9
City Resolution No. 12-351 (adopted Mar. 9, 2012) available at http://www.ci.lacenter.wa.us/community/cowlitz/Res%2012-351%20Rescinding%20Res%2011-340%20(Cowlitz)	10
CODE OF FEDERAL REGULATIONS	
40 CFR 122.4(i)	8, 10

INTERNET

City’s Decl. Of Construction of Water Pollution Control Facility, filed with Washington Department of Ecology (“DOE”) (Oct. 11, 2011), *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/Declaration%20of%20Construction%209.28.11.pdf>.....7

City’s Waste Water Treatment Plant Design Criteria O&M Manual, *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/City%20of%20La%20Center,%20Washington%20STP%20design%20criteria.pdf> (last visited Oct. 3, 2012).....7

Clark County’s On-line Maps, http://maps.clark.wa.gov/imfmol/imf.jsp?site=pub_mapsonline.....5

Comprehensive Plan Amendment (2012) Summary of Proposal (June 11, 2012), *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/CP%20Amend%202012%20Sewer%20policies.pdf>11

DOE Water Quality Permitting and Reporting Information System database, La Center Permit No. WA0023230, *available at* https://fortress.wa.gov/ecy/wqreports/public/f?p=110:1000:2121549660374154::NO:RP:P1000_FACILITY_ID,P1000_FACILITY_NAME:21317,LA%20CENTER%20STP (last visited Oct. 3, 2012)8

Draft of Sanitary Sewer Service Development Agreement between the Cowlitz Indian Tribe and the City of La Center, Washington, *available at* http://www.ci.lacenter.wa.us/city_council/pdfs/12142011SewerAgreement.pdf (last visited Oct. 3, 2012).....9

La Center City Limits Map, *available at* http://www.ci.lacenter.wa.us/city_departments/pdfs/City%20Limits.pdf (last visited Oct. 3, 2012)6

La Center Junction Draft Subarea Plan (2010), *available at* http://www.ci.lacenter.wa.us/city_departments/pdfs/subarea/La%20Center%20Junction%20Subarea%20Plan%20v5.pdf3, 11

La Center Sewer Plan (July 2006), *available at* http://www.ci.lacenter.wa.us/pdfs/Sewer_plan.pdf7

La Center Urban Area Capital Facilities Plan (May 14, 2008), *available at* http://www.ci.lacenter.wa.us/city_departments/pdfs/CAP%20FAC%20TEXT%202008%20-%20ADOPTED.pdf.....7

La Center Urban Area Comprehensive Plan (May 14, 2008), *available at*
http://www.ci.lacenter.wa.us/city_departments/pdfs/1.ComprehensivePlan%202008.pdf. 2-3, 6

Plaintiff Clark County’s On-line Maps,
http://maps.clark.wa.gov/imfmol/imf.jsp?site=pub_mapsonline (last visited Oct. 3, 2012) 2

Sewer Development Agreement (adopted Dec. 14, 2011) , *available at*
<http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-347%20Cowlitz%20Sewer%20Agreement.pdf>..... 9

Cowlitz Indian Tribe and the City of La Center, Washington, *available at*
http://www.ci.lacenter.wa.us/city_council/pdfs/12142011SewerAgreement.pdf (last visited Oct. 3, 2012)..... 8

OTHER AUTHORITIES

AR 064689 2, 5

AR 076208-213..... 2

AR 000065-66..... 8

AR 064684-84..... 5

AR 064688-89..... 5

AR 075916..... 7

AR 076012-06..... 2

AR 076405 8

STATEMENT OF INTEREST

The City of La Center, Washington (“City”) is located east of Interstate 5 at Exit 16 in north Clark County, Washington, near the foothills of the Cascade Mountain Range. The East Fork of the Lewis River runs through the City. The City is the closest local government to certain lands acquired in trust by the United States for the benefit of the Cowlitz Indian Tribe (“Proposed Reservation”) that is subject of the above-captioned litigation. The City has long been involved in the federal administrative processes that led to the Proposed Reservation and offers in this brief certain facts surrounding land use and wastewater issues that may assist this Court in the adjudication of this matter.

The City Limits abut the Proposed Reservation. Thus, any development of a casino, hotel, restaurants, retail complex or any other venues on the Proposed Reservation likely will affect the City significantly. The City has already done fairly extensive land use planning for the area of the La Center Interstate 5 Junction, which is near the Proposed Reservation. Those plans will be affected by whether this Court upholds DOI’s decision to approve the Proposed Reservation. Further, the City is likely to be affected financially by the outcome of this litigation as the City’s sewer system may be called upon to manage the wastewater from development that will be sited on the Proposed Reservation. The City files this brief concurrent with the filings by Defendants and Intervenor-Defendant, in an effort to provide helpful information to the Court. The City hopes this will help clarify some land use and water quality related issues that have been raised by the parties.

ARGUMENT

I. Land Use and Zoning Considerations

There appears to have been (and possibly still is) some confusion about the zoning and land use relating to the Proposed Reservation. Indeed, Plaintiffs raise this issue as a concern. They correctly point out that the Final Environmental Impact Statement (“FEIS”) issued by the Department of the Interior identified the land at issue as zoned “Light Industrial” when it is actually currently zoned “Agricultural.”¹

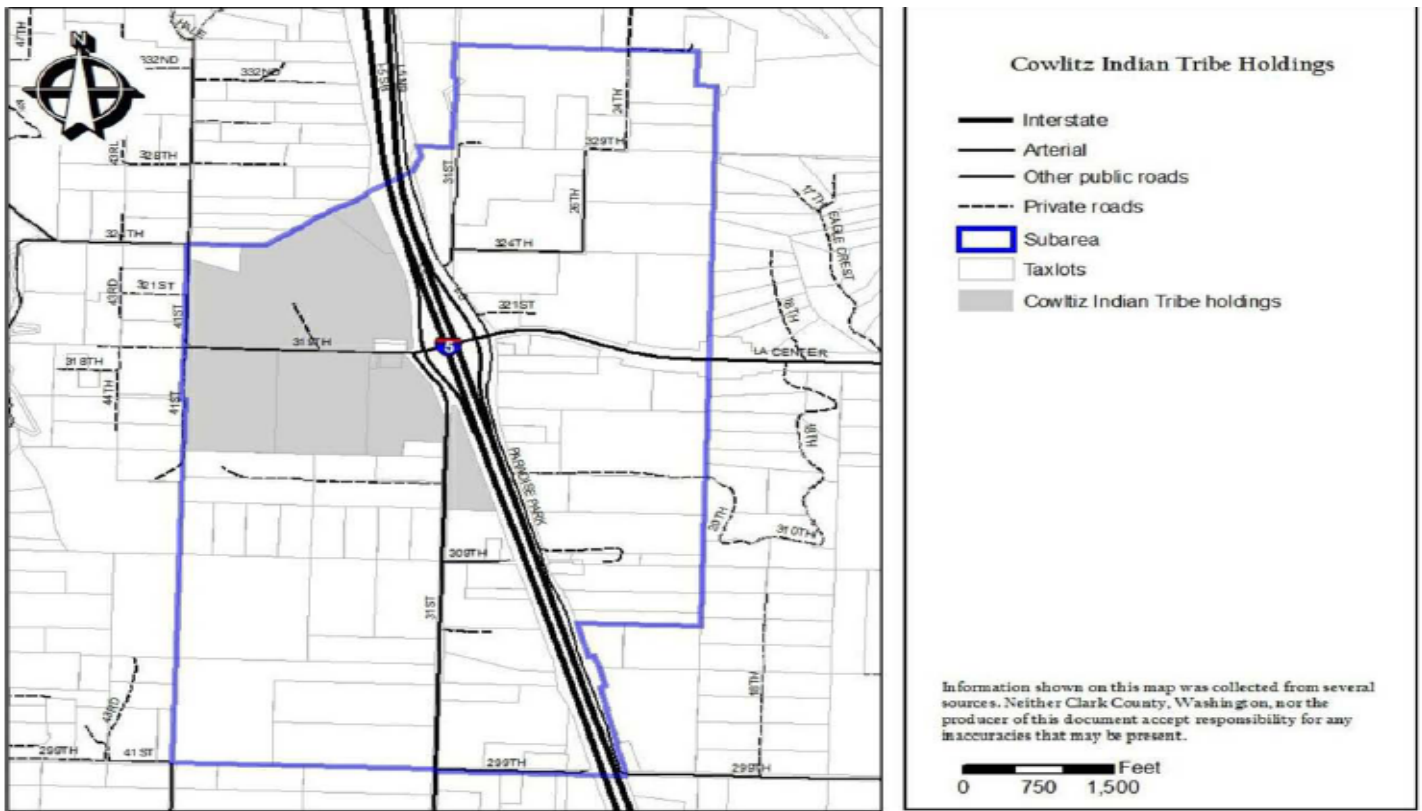
The likely reason for that confusion is that the City of La Center had previously zoned the area as Light Industrial. However, that zoning decision was subsequently reversed on appeal by the Western Washington Growth Management Hearings Board.² The City has completed an extensive amount of land use planning for the Proposed Reservation and for the land surrounding the La Center Interstate Highway 5 (“I-5”) Junction. The bulk of that planning was done by the City as part of adopting a revised Comprehensive Land Use Plan in May 2008. That 2008 Comprehensive Plan was based on a 2007 Growth Management Act update completed and legislatively adopted by Clark County, which included an expansion of City’s Urban Growth Area (“UGA”) to encompass the Proposed Reservation as well as the land surrounding all four

¹ See Plaintiffs Summ. J. Mot. at 46, n.38 (citing AR 076012-06 and AR 076208-213 (the FEIS), and AR 064689 (the original DOI Record Of Decision - “ROD”)). *But see* Plaintiff Clark County’s On-line Maps, http://maps.clark.wa.gov/imfmol/imf.jsp?site=pub_mapsonline (last visited Oct. 3, 2012), which still shows the proposed Trust property as zoned by the County as Light Industrial.

² See *Karpinski v. Clark Cnty.*, Case No. 07-2-0027 (W. Wash. Growth Mgmt. Hearings Bd. June 3, 2008) (Final Decision & Order), available at <http://www.gmhba.wa.gov/LoadDocument.aspx?did=145>, *aff’d on appeal by Clark Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 254 P.3d 862 (Wash. Ct. App. 2011).

quadrants of La Center’s I-5 Junction.³ The Comprehensive Plan included zoning the I-5 Junction area as “LI/EC” (Light Industrial and Employment Campus).⁴ There was even a draft “Subarea Plan” that was more specific, which (if adopted) would have also applied to the Proposed Reservation.⁵

Under the 2008 Comprehensive Plan and the Draft Subarea Plan, the Proposed Reservation looked like this (dark gray area):

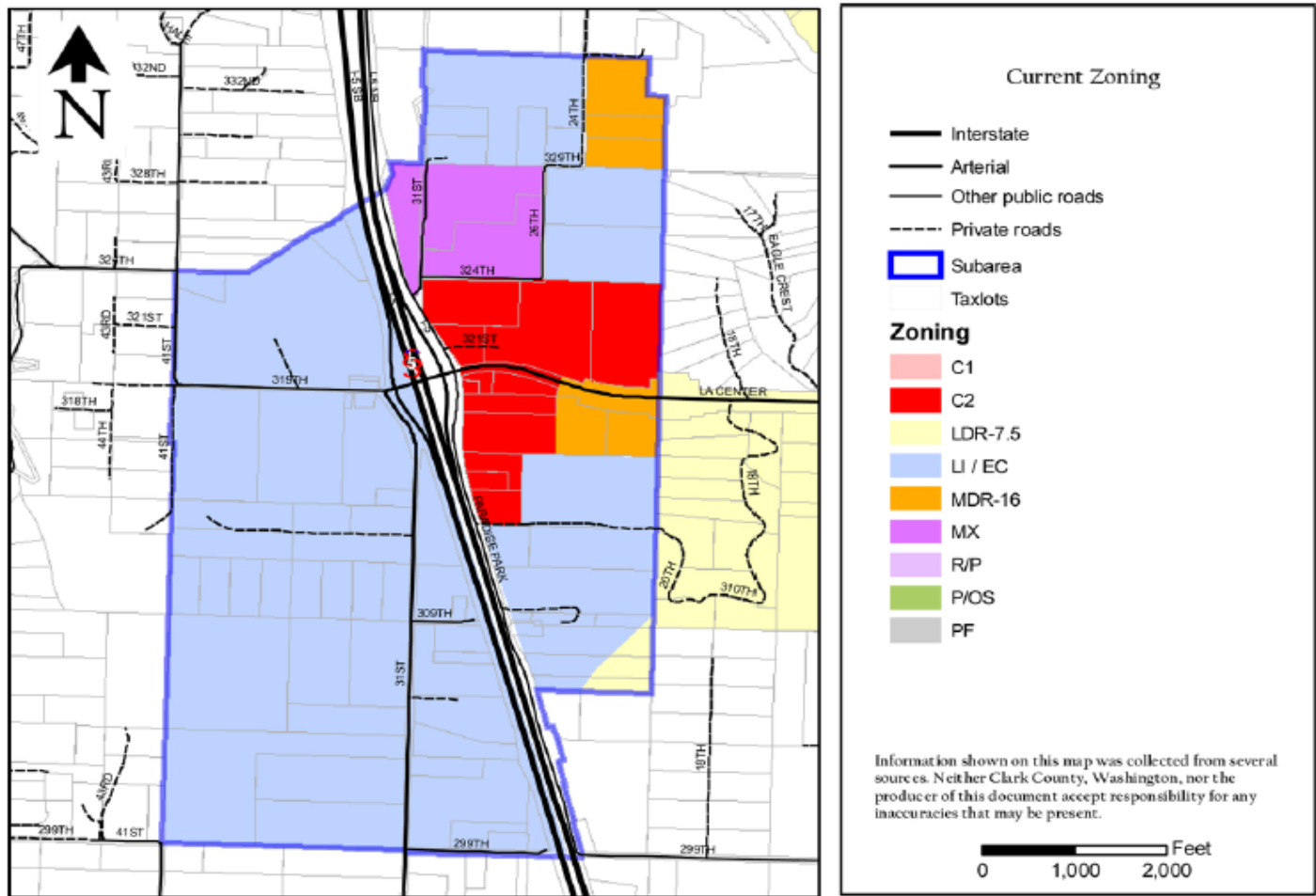


³ See La Center Urban Area Comprehensive Plan (May 14, 2008), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/1.ComprehensivePlan%202008.pdf.

⁴ Light Industrial zoning is for light manufacturing, warehousing and other land uses. Industrial zoned lands are located in areas of compatible land uses and in areas with arterial access to the regional transportation network. *Id.* at 9. Employment Campus zoning is intended to provide compatible office and attractive new non-polluting industries. Such areas are designated for more intensive job related land uses that pay family wages. *Id.*

⁵ See La Center Junction Draft Subarea Plan (2010), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/subarea/La%20Center%20Junction%20Subarea%20Plan%20v5.pdf.

The zoning for that same I-5 Junction area looked like this:



The blue color is Light Industrial zoned land.

When the FEIS indicated the area was zoned “Light Industrial” that was, in fact, how the City had zoned it. However, the Subarea Plan was never formally adopted by the City because the portions of the 2008 Comprehensive Plan that expanded the UGA to cover that land (and the portions that made those specific zoning designations for that area) were subsequently invalidated as having not been properly adopted.⁶ Consequently, the City’s Light Industrial zoning for the land that is within the Proposed Reservation area is not currently in effect.

⁶ See *Karpinski v. Clark Cnty.*, Case No. 07-2-0027.

Instead, the land is currently zoned agricultural (with an “Industrial Urban Reserve” overlay).⁷ The original ROD acknowledged this situation, and indicates that the decision maker took that change into account.⁸

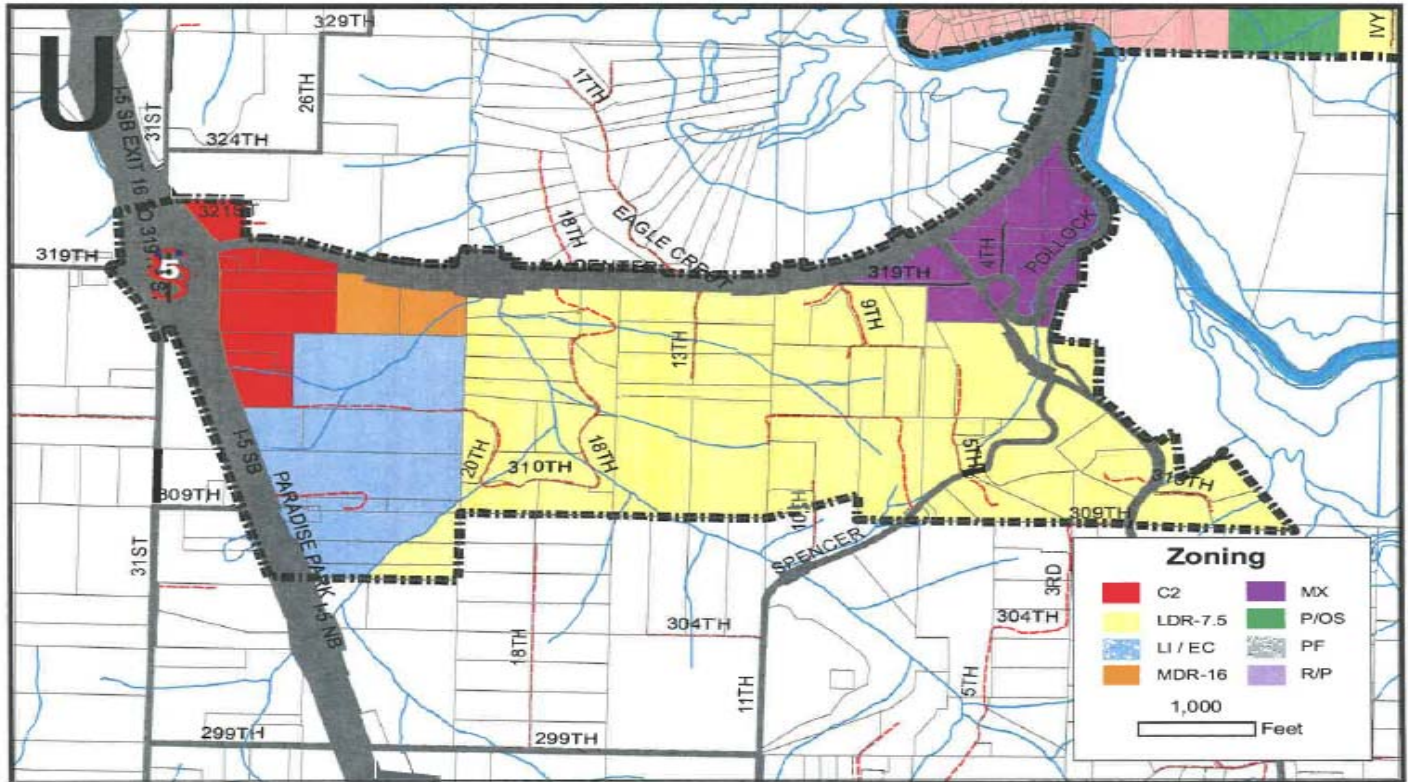
It is important to note that although the land in the Proposed Reservation is not currently within the City of La Center’s UGA (and if DOI’s decision is upheld, it will not be subject to any local land use laws), the Proposed Reservation **is still immediately adjacent** to land that is within the City **and that land is currently** zoned Light Industrial. On September 14, 2011, the City annexed the land all the way out to the Proposed Reservation (including the I-5 right-of-way).⁹ As a result, the current zoning in the area immediately across the freeway looks very similar (though not quite identical), to what was contemplated by the City and the County in the 2008 Comprehensive Plan.

⁷ See AR 064689 (Original ROD - acknowledging reverted zoning). *But see* Plaintiff Clark County’s On-line Maps, http://maps.clark.wa.gov/imfmol/imf.jsp?site=pub_mapsonline (showing the proposed Trust property as still zoned Light Industrial). The revised ROD that was recently filed with the court does not appear to have changed any of the components or addressed an issue on which the City is providing information. Thus, all references in the City’s materials are to the original ROD only.

⁸ See AR 064688-89 (ROD - indicating original impact analysis assumed agricultural zoning so no further analysis needed), and AR 064684-84 (ROD - finding no need for Supplemental EIS on same basis).

⁹ See *Alexanderson v. City of La Center*, Case No. 12-2-0004, slip op. at 3:1-3 (W. Wash. Growth Mgmt. Hearings Bd. May 4, 2012), available at <http://www.gmhba.wa.gov/LoadDocument.aspx?did=2853> (acknowledging that City has annexed land up to the proposed Trust Land). See also City Ordinance No. 2011-03, Approving the Annexation of Certain Property to the City of La Center (La Center Rd. et al.), at 11 (PDF page) (Sept. 14, 2011), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/Ord%202011-03%20Junction%20Annexation.pdf.

The zoning currently looks like this:



As is evident, there is a Light Industrial zone that abuts the Proposed Reservation. In addition, there is land zoned C-2 Commercial adjacent to the Proposed Reservation.¹⁰ The La Center City Limits now extend out to and directly abut the Proposed Reservation.¹¹ It is the City's express plan to have more urban development in and around the La Center I-5 Junction area. That

¹⁰ Commercial-2 zoning (the red area on the map) is for land that is expected to provide land for retail and service businesses. That zoning district at the La Center Junction is intended to serve a broader semi-regional population of 10,000 to 30,000. See La Center Urban Area Comprehensive Plan, at 9 (May 14, 2008), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/1.ComprehensivePlan%202008.pdf (defining C-2 zoning).

¹¹ See *Alexanderson v. City of La Center*, Case No. 12-2-0004, and current La Center City Limits Map, available at http://www.ci.lacenter.wa.us/city_departments/pdfs/City%20Limits.pdf (last visited Oct. 3, 2012).

development will most likely occur regardless of whether the Proposed Reservation is upheld or if the Cowlitz Tribe puts a casino and related development there. It will simply occur sooner if the Proposed Reservation is present.

II. Water Quality and Sewer Discharges

The East Fork of the Lewis River has, in the past, had significant pollution issues.¹² Plaintiffs make note of this.¹³ To help address that issue, and to accommodate current and future growth (both at the I-5 Junction and elsewhere), the City adopted a Sewer Plan in 2006 that called for the City to construct a “state of the art” sewer treatment plant that uses both Membrane Biological Reactors (MBR) and Ultra-Violet sterilization units (UV) technology.¹⁴ The City also adopted a significant Capital Facilities Plan in 2008 that provides detailed plans for expanding and upgrading the City’s Wastewater collection system and the City’s sewage treatment plant, as well as methods to finance the upgrades.¹⁵

The City has now completed many of the upgrades contemplated in the 2006 and 2008 sewer-related plans. The City has expanded its sewage treatment capacity to a point where that

¹² See AR 075916 (FEIS 3.3-12, recognizing that the East Fork is listed as a Category 5 impaired water based on fecal coliform numbers, and as a Category 2 impaired water based on temperature issues).

¹³ See Plaintiffs Summ. J. Mot. at 53.

¹⁴ See La Center Sewer Plan, at 10-1 to 10-4 (July 2006), available at http://www.ci.lacenter.wa.us/pdfs/Sewer_plan.pdf (discussing recommended upgrades), and La Center Urban Area Capital Facilities Plan, at 32-36 (May 14, 2008), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/CAP%20FAC%20TEXT%202008%20-%20ADOPTED.pdf (Sanitary Sewer Discussion). See also City Resolution No. 11-340, at 1 (adopted Mar. 9, 2011), available at [http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20\(Cowlitz\).PDF](http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20(Cowlitz).PDF) (“the City upgraded its sewerage treatment facility upgrades at significant cost to accommodate current and future growth.”).

¹⁵ See La Center Urban Area Capital Facilities Plan (May 14, 2008), available at http://www.ci.lacenter.wa.us/city_departments/pdfs/CAP%20FAC%20TEXT%202008%20-%20ADOPTED.pdf.

capacity is sufficient to treat the first phases of a Cowlitz casino development.¹⁶ The City has a 2004 discharge permit that allows increased discharge, and also a revised discharge permit in draft form that provides for even more capacity that is pending for approval at DOE.¹⁷

As Plaintiffs note in their papers, the East Fork is currently Water Quality Limited. No Total Maximum Daily Load (TMDL) has been adopted by the Washington Department of Ecology (DOE) for the East Fork, nor has a TMDL for the East Fork been approved by the Environmental Protection Agency (EPA).¹⁸ Consequently, pursuant to federal law – specifically 40 CFR 122.4(i) – no new discharge permits can be issued on the East Fork at this time.¹⁹

As Plaintiffs recognize, however, there is an alternative to a Cowlitz casino obtaining a discharge permit to the East Fork. Specifically, the Cowlitz Tribe could send its casino waste water to the City of La Center municipal treatment facilities.²⁰ The FEIS and the ROD both

¹⁶ See City Resolution No. 11-340 (adopted Mar. 9, 2011), *available at* [http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20\(Cowlitz\).PDF](http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20(Cowlitz).PDF). See also City's Decl. Of Construction of Water Pollution Control Facility, filed with Washington Department of Ecology ("DOE") (Oct. 11, 2011), *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/Declaration%20of%20Construction%209.28.11.pdf>, and City's Waste Water Treatment Plant Design Criteria O&M Manual, *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/City%20of%20La%20Center.%20Washington%20STP%20design%20criteria.pdf> (last visited Oct. 3, 2012).

¹⁷ See DOE Water Quality Permitting and Reporting Information System database, La Center Permit No. WA0023230, *available at* https://fortress.wa.gov/ecy/wqreports/public/f?p=110:1000:2121549660374154::NO:RP:P1000_FACILITY_ID,P1000_FACILITY_NAME:21317,LA%20CENTER%20STP (last visited Oct. 3, 2012) (which includes both the City's 2004 discharge permit and the draft of a revised permit that was published for comment in 2011).

¹⁸ See Plaintiffs Summ. J. Mot. at 53.

¹⁹ *Id.*

²⁰ See Plaintiffs Summ. J. Mot. at 54 n.42 (referencing the Sewer Agreement that was signed between the City and the Tribe). See also Draft of Sanitary Sewer Service Development Agreement between the Cowlitz Indian Tribe and the City of La Center, Washington, *available at* http://www.ci.lacenter.wa.us/city_council/pdfs/12142011SewerAgreement.pdf (last visited Oct. 3, 2012).

specifically recognized this option, and recommended such an approach as an alternative form of mitigation.²¹ In fact, the Cowlitz Tribe and the City executed a detailed Sewer Service Development Agreement (“Sewer Agreement”) in December 2011 that provided exactly that option.²² The permits authorized in the Sewer Agreement were issued on December 20, 2011.²³

The Sewer Agreement between the City and the Cowlitz Tribe was entered into because the City came to the realization that the City was (and is) best situated to be the exclusive sewage service provider for the Proposed Reservation.²⁴ Moreover, providing such service makes sense for the City and for the East Fork of the Lewis River for a number of reasons. The Sewer Agreement will ensure substantial additional revenue to the City. The Sewer Agreement will also help provide financial stability by significantly broadening the City’s sewer rate base. This

²¹ See AR 076405 (FEIS at 5-18, Mitigation Measure 5.2.8(H) discussing the alternative of the Tribe seeking “to obtain a services agreement with the City of La Center to provide municipal sewer service.”) and AR 000065-66 (ROD at 36-37, acknowledging the possibility that the City might reach an agreement with the Cowlitz Tribe for “the provision of sewage service,” even though at the time of the ROD that possibility was considered remote or not reasonably foreseeable).

²² See City Resolution No. 11-347 Authorizing And Approving the Execution of the Sewer Development Agreement (adopted Dec. 14, 2011) , *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-347%20Cowlitz%20Sewer%20Agreement.pdf>, and Draft of Sanitary Sewer Service Development Agreement between the Cowlitz Indian Tribe and the City of La Center, Washington, *available at* http://www.ci.lacenter.wa.us/city_council/pdfs/12142011SewerAgreement.pdf (last visited Oct. 3, 2012).

²³ See *Alexanderson v. City of La Center*, Case No. 12-2-0004, slip op. at 2:4-10 (acknowledging that City issued sewer permits to the Cowlitz Tribe on 12/20/11)

²⁴ See City Resolution No. 11-340 (adopted Mar. 9, 2011), *available at* [http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20\(Cowlitz\).PDF](http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20(Cowlitz).PDF) (outlining City’s recognition of the economic importance of working with the Tribe and having them coordinate on any development and sewerage at the Junction) City Resolution No. 11-347 authorizing and approving the execution of the Sewer Development Agreement (adopted Dec. 14, 2011) , *available at* <http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-347%20Cowlitz%20Sewer%20Agreement.pdf> – (outlining how both the City and the Tribe would benefit from such an Agreement)

will help reduce sewer system-related expenses and monthly charges for other City residents.²⁵ Similarly, a discharge through the City's "state of the art" treatment system (which now produces even cleaner effluent) will also help protect the water quality in the East Fork of the Lewis River. Having all sewer waste from the Proposed Reservation go to the City's treatment plant rather than directly into or through some less sophisticated facility should help prevent further sewage-related water quality degradation on the East Fork.²⁶

In addition, as the closest local government (and one whose City Limits abut the Proposed Reservation), it makes both economic and policy sense for the City to try to integrate all development at La Center's I-5 Junction into the economic fabric of the City and the region. Finally, the Sewer Agreement provides an appropriate mechanism for the City and the Tribe to begin the process of mitigating potential impacts arising out of development planned for the Proposed Reservation.²⁷

Plaintiffs correctly observe that the Sewer Agreement signed by the City with the Tribe was recently held to be an unlawful "defacto" amendment to the City's Comprehensive Land Use Plan.²⁸ As a result, the City has rescinded the Sewer Agreement.²⁹ This was done in order

²⁵ See City Resolution No. 11-340 (adopted Mar. 9, 2011), available at [http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20\(Cowlitz\).PDF](http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20(Cowlitz).PDF).

²⁶ Since such a discharge is through an already existing discharge permit, it should not run afoul of the regulatory proscriptions against issuance of new permits when no TMDL is in place. See 40 CFR 122.4(I).

²⁷ See City Resolution No. 11-340 (adopted Mar. 9, 2011), available at [http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20\(Cowlitz\).PDF](http://www.ci.lacenter.wa.us/community/cowlitz/Res%2011-340%20Rescinding%20Res%207-279%20(Cowlitz).PDF) (making finding on that issue).

²⁸ See Plaintiffs Summ. J. Mot. at 54 n.42 (citing *Alexanderson v. City of La Center*, Case No. 12-2-0004 (W. Wash. Growth Mgmt. Hearings Bd. May 4, 2012), available at <http://www.gmhb.wa.gov/LoadDocument.aspx?did=2853>).

to respond to the Western Washington Growth Management Hearing Board's ("Growth Board") decision and to try to correct any and all inconsistencies between the Sewer Agreement and the City's Comprehensive Plan.

The City is currently in the midst of an annual Comprehensive Plan Amendment process. As part of that process, a series of amendments have been proposed that would correct the inconsistencies identified by the Growth Board decision.³⁰ If adopted, those amendments will allow the City to provide sewer services for the Proposed Reservation and execute a revised Sewer Agreement with the Cowlitz Tribe.

A preliminary plan for the extension of the City's sewer collection system out to the La Center I-5 Junction area already exists.³¹ If the new Comprehensive Plan Amendments are adopted and are deemed to be legally sufficient, then the City would most likely again offer to help protect the East Fork and to help keep local sewer rates low by re-signing a Sewer Agreement with the Cowlitz Tribe.

III. Conclusion

The Proposed Reservation currently abuts the City Limits of the City of La Center. The City has recognized that it potentially has an important role to play, if the Proposed Reservation

²⁹ See City Resolution No. 12-351 (adopted Mar. 9, 2012) available at [\(http://www.ci.lacenter.wa.us/community/cowlitz/Res%2012-351%20Rescinding%20Res%2011-340%20\(Cowlitz\)\)](http://www.ci.lacenter.wa.us/community/cowlitz/Res%2012-351%20Rescinding%20Res%2011-340%20(Cowlitz)) (repealing Resolution No. 11-347 -the authorization to execute the Sewer Agreement with the Tribe).

³⁰ See Comprehensive Plan Amendment (2012) Summary of Proposal (June 11, 2012), available at <http://www.ci.lacenter.wa.us/community/cowlitz/CP%20Amend%202012%20Sewer%20policies.pdf>.

³¹ See La Center Junction Draft Subarea Plan, Sewer System Map - Figure 17, at 5-18 (2010), available at: http://www.ci.lacenter.wa.us/city_departments/pdfs/subarea/La%20Center%20Junction%20Subarea%20Plan%20v5.pdf.

is upheld. That role would potentially benefit the City, the Tribe, and the East Fork of the Lewis River. The City believes it is important for the court to consider the information presented in this brief, and hopes that this information is helpful to the Court's understanding of the issues.

Dated: October 5, 2012

Respectfully submitted,

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