

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

CONFEDERATED TRIBES OF THE)	
GRAND RONDE COMMUNITY OF)	
OREGON,)	
)	
and)	
)	
CLARK COUNTY, WASHINGTON <i>et al.</i>)	Case No. 1:13-cv-00849-BJR
)	
Plaintiffs,)	
)	
v.)	
)	
SALLY JEWELL <i>et al.</i>)	
)	
)	
Defendants)	
)	
and)	
)	
COWLITZ INDIAN TRIBE,)	
)	
Intervenor-Defendant)	
_____)	

AMICUS CURIAE BRIEF OF THE CITY OF LA CENTER, WASHINGTON

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STATEMENT OF INTEREST

The City of La Center (hereafter “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 to be 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 of the land use and water quality 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 Clark County *et al* (hereafter “Local Opponents”) 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 currently zoned “Agricultural.”¹

The likely reason for that confusion is that the City of La Center **had** previously zoned that area as Light Industrial. However, that zoning decision was subsequently reversed on appeal by the Western Washington Growth Management Hearings Board.²

Prior to that reversal, the City had 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 the City’s Urban Growth Area (“UGA”) to encompass the Proposed Reservation, as well as the land surrounding all four quadrants of the I-5 Junction.³

¹ See Local Opponents Corrected Sum. Jud. Mot. at p.37, n.18 (citing AR 076012-026 and AR 076208-213 (the FEIS), and AR 064689 (the original DOI Record Of Decision - “ROD”).

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.gmh.b.wa.gov/LoadDocument.aspx?did=145> *aff’d on appeal* *Clark Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 254 P.3d 862 (Wash. Ct. App. 2011).

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 (last visited Oct. 23, 2013).

The 2008 Comprehensive Plan specifically included zoning for the I-5 Junction area. There was even a draft “Subarea Plan” that was more specific, which (if adopted) would have applied to the Proposed Reservation area.⁴ Under that Draft Subarea Plan, the area of Proposed Reservation looked like this:⁵



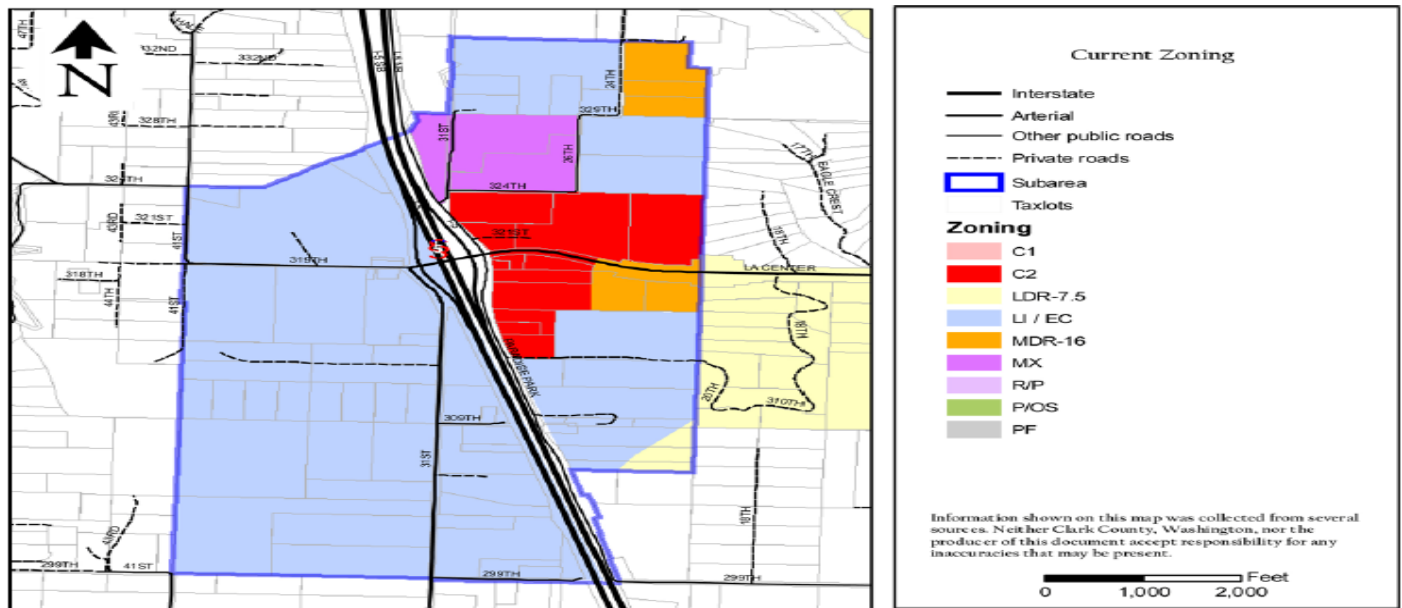
In the Draft Subarea Plan, the Proposed Reservation was included in an area that was specifically zoned as “LI/EC” (Light Industrial and Employment Campus).⁶ In that Plan, the

⁴ See La Center Junction Draft Subarea Plan (2010), available at: http://www.ci.lacenter.wa.us/city_departments/subarea_plan.html (last visited Oct. 23, 2013).

⁵ See Figure 6 of Draft Subarea Plan at p.4-13 (on-line PDF p.55), available at: http://www.ci.lacenter.wa.us/city_departments/subarea_plan.html (last visited Oct. 23, 2013).

⁶ 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. See 2008 Comp. Plan at p.9 available at: http://www.ci.lacenter.wa.us/city_departments/pdfs/1.ComprehensivePlan%202008.pdf (last visited Oct. 23, 2013). (online PDF p.17). 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.*

Light Industrial zoning is represented in a light blue color. So ,the zoning for that I-5 Junction area was proposed to look like this:⁷



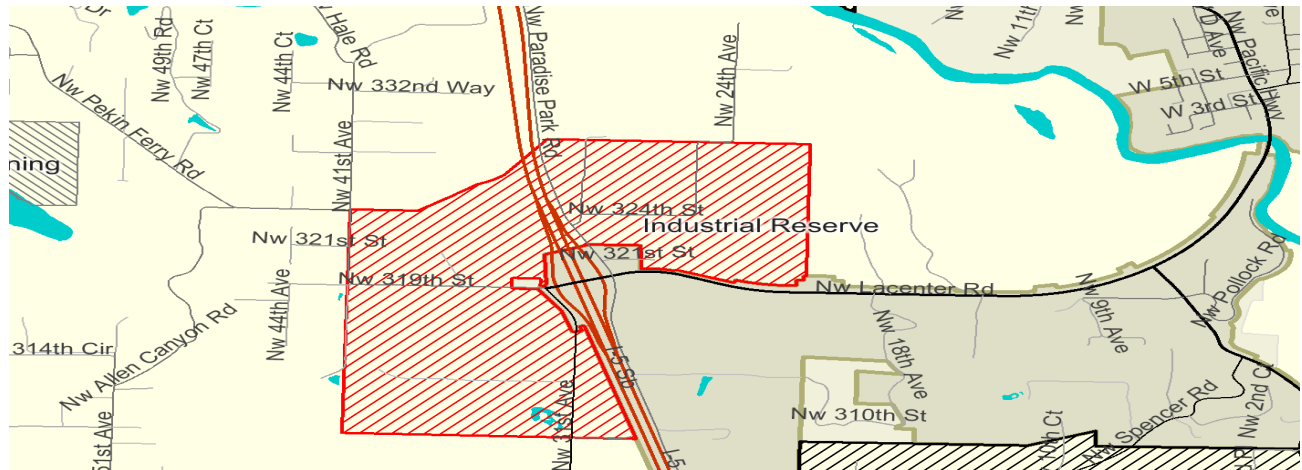
In short, when the FEIS indicated the area was zoned “Light Industrial” that **was**, in fact, how the City had zoned it. However, because the portions of the 2008 Comprehensive Plan that expanded the UGA to cover that land (and the portions that made those specific zoning designations for that area) were subsequently invalidated,⁸ the Subarea Plan was never formally adopted by the City. Consequently, the Light Industrial zoning for the land that is within the Proposed Reservation area is not currently in effect.

Instead, the land is currently zoned agricultural.⁹ That land also has an “Industrial Reserve” zoning overlay.¹⁰ That means that the current County Zoning Overlay map looks like this:

⁷ See Figure 7 of Draft Subarea Plan at p.4-14 (on-line PDF p.56), available at: http://www.ci.lacenter.wa.us/city_departments/subarea_plan.html (last visited Oct. 23, 2013).

⁸ See *Karpinski v. Clark Cnty.*, Case No. 07-2-0027, *supra*. (full citation previously provided in footnote 2).

⁹ See AR 064689 (Original ROD - acknowledging reverted zoning).



The original ROD acknowledged this situation, and indicates that the decision maker took that change into account.¹¹

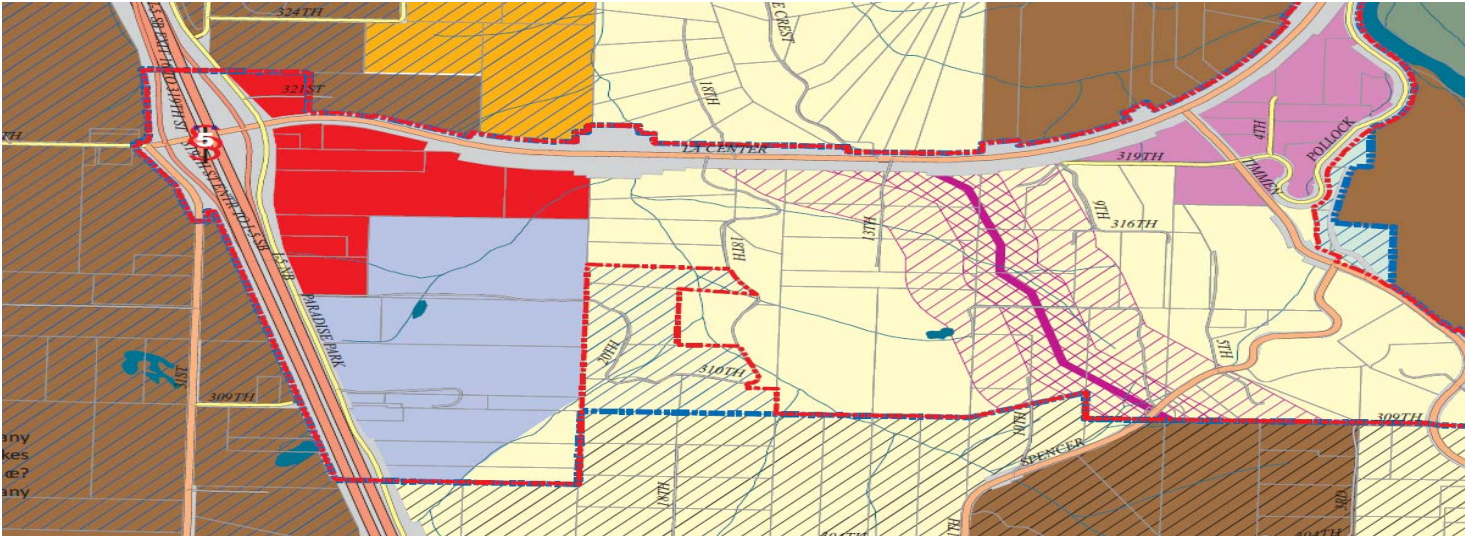
It is important to note that, although the land in the Proposed Reservation is not currently within the City's UGA, the Proposed Reservation **is still immediately adjacent** to land that is within the City Limits and the land that abuts the Proposed Reservation is currently zoned Light Industrial and/or Commercial. On September 14, 2011, the City annexed the land all the way out to the Proposed Reservation (including the I-5 right-of-way).¹² As a result, the current zoning in the area immediately adjacent to the Proposed Reservation looks very similar (though not quite

¹⁰ See Plaintiff Clark County's On-line Maps, Zoning & Comprehensive Plan Map, Zoning Overlays (showing the proposed Trust property with an Industrial Reserve overlay) available at: http://maps.clark.wa.gov/imfmol/imf.jsp?site=pub_maponline (last visited Oct. 23, 2013).

¹¹ See AR 064688-89 (ROD - indicating the original impact analysis assumed agricultural zoning, so no further analysis needed), and AR 064684-85 (ROD - finding no need for Supplemental EIS on that same basis).

¹² 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.) (Sept. 14, 2011), available at: http://www.ci.lacenter.wa.us/city_departments/pdfs/Ord%202011-03%20Junction%20Annexation.pdf (last visited Oct. 23, 2013).

identical), to what was contemplated by the City and the County in the 2008 Comprehensive Plan. The zoning currently looks like this:



The light blue area next to I-5 is a Light Industrial zone, and the red area is a Commercial zone. Both zones abut the Proposed Reservation.¹³

The City Limits now extend out to and directly abut the Proposed Reservation.¹⁴ Those limits are outlined by what looks like a red and blue dashed line that goes out to and across the I-5 Interchange, on the map above. It is the City's express plan to have more urban development in and around the La Center I-5 Junction area. That development will most likely occur, regardless of whether the Proposed Reservation decision is upheld (and regardless of whether the

¹³ See Current City Zoning Map, available at: http://www.ci.lacenter.wa.us/city_departments/pdfs/Zoning2.21.13.pdf (last visited Oct. 23, 2013). Commercial 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 Comprehensive Plan, at p.9 (May 14, 2008), available at: http://www.ci.lacenter.wa.us/city_departments/pdfs/1.ComprehensivePlan%202008.pdf (last visited Oct. 23, 2013).

¹⁴ See *Alexanderson v. City of La Center*, Case No. 12-2-0004. See also, current La Center City Limits Map, available at: http://www.ci.lacenter.wa.us/city_departments/pdfs/City%20Limits.pdf (last visited Oct. 23, 2013).

Cowlitz Tribe puts a casino or other related developments there). That intended development will simply occur sooner, if the Proposed Reservation is approved and developed as proposed in the ROD.

II. Water Quality and Sewer Discharges

The East Fork of the Lewis River has, in the past, had significant pollution issues.¹⁵ The Local Opponents make note of this in their papers.¹⁶ 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.¹⁷ 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.¹⁸

¹⁵ 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).

¹⁶ See Local Opponent’s Corrected Sum. Jud. Mot. at p.43.

¹⁷ See La Center Sewer Plan, at p.10-1 to 10-4 (July 2006), *available at*: http://www.ci.lacenter.wa.us/pdfs/Sewer_plan.pdf (on-line PDF p.57-60) (discussing recommended sewer system upgrades) (last visited Oct. 23, 2013), and La Center Urban Area Capital Facilities Plan, at p.32-36 (May 14, 2008), *available at*: http://www.ci.lacenter.wa.us/city_departments/pdfs/CAP%20FAC%20TEXT%202008%20-%20ADOPTED.pdf (on-line PDF p.38-42) (Sanitary Sewer Discussion) (last visited Oct. 23, 2013). See also City Resolution No. 11-340, at p.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.”) (last visited Oct. 23, 2013).

¹⁸ See La Center Urban Area Capital Facilities Plan, at p.32-36 (May 14, 2008), *available at*: http://www.ci.lacenter.wa.us/city_departments/pdfs/CAP%20FAC%20TEXT%202008%20-%20ADOPTED.pdf (last visited Oct. 23, 2013).

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 capacity is sufficient to treat the first phases of a Cowlitz casino development.¹⁹ 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, which is pending for approval at the Washington Department of Ecology (DOE).²⁰

As the Local Opponents also note, the East Fork is currently Water Quality Limited.²¹ No Total Maximum Daily Load (TMDL) has been adopted by the DOE for the East Fork, nor has a TMDL for the East Fork been approved by the Environmental Protection Agency (EPA).²² 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.

However, there is an alternative to a Cowlitz Reservation development obtaining a discharge permit for discharge into the East Fork. Specifically, the Cowlitz Tribe could send its

¹⁹ 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) (last visited Oct. 23, 2013). See also City's Decl. Of Construction of Water Pollution Control Facility, filed with Washington Department of Ecology (Oct. 11, 2011), *available at*: <http://www.ci.lacenter.wa.us/community/cowlitz/Declaration%20of%20Construction%209.28.11.pdf> (last visited Oct. 23, 2013) 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. 23, 2013).

²⁰ 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=110:1000:1153228381177575::NO:RP:P1000_FACILITY_ID,P1000_FACILITY_NAME:21317,LA%20CENTER%20STP (last visited Oct. 24, 2013) (which includes both the City's 2004 discharge permit, and the draft revised permit that was published for comment in 2011 and is awaiting DOE final approval and issuance).

²¹ See Local Opponents Sum. Jud. Mot. at p.43.

²² *Id.*

waste water to the City's municipal treatment facilities. Even the Local Opponents recognize this.²³ The FEIS and the ROD both specifically recognized this option as well, and recommended such an approach as an alternative form of mitigation.²⁴ 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.²⁵ The permits authorized in the Sewer Agreement were issued on December 20, 2011.²⁶

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.²⁷ Moreover, providing such service makes sense for the City and for the East Fork of the Lewis River for a number of reasons. First, the Sewer

²³ See Local Opponents Sum. Jud. Mot. at p.44 n.20 (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. 24, 2013).

²⁴ 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).

²⁵ 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>, (last visited Oct. 24, 2013) 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. 24, 2013).

²⁶ 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)

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) (last visited Oct. 24, 2013) (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) and City Resolution No. 11-347, *supra*. (authorizing and approving the execution of the Sewer Development Agreement and outlining how both the City and the Tribe would benefit from such an Agreement)

Agreement will ensure substantial additional revenue to the City. Second, the Sewer Agreement will also help provide financial stability by significantly broadening the City's sewer rate base. This will help reduce sewer system-related expenses and monthly charges for other City residents.²⁸ Third, 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 through some less sophisticated facility, should help prevent further sewage-related water quality degradation on the East Fork.²⁹

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.³⁰

The Local Opponents correctly observe that the Sewer Agreement previously signed by the City with the Tribe was held to be an unlawful "de facto" amendment to the City's

²⁸ 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) (last visited Oct. 24, 2013).

²⁹ Since such a discharge would be via an already existing discharger who already has a discharge permit, it should not run afoul of the regulatory proscriptions in 40 CFR 122.4(i) against issuance of new permits when no TMDL is in place.

³⁰ See City Resolution No. 11-340, *supra*. (making finding on that issue).

Comprehensive Land Use Plan.³¹ As a result, the City rescinded the Sewer Agreement.³² This was done in order to respond to the Western Washington Growth Management Hearing Board's 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.³³ As part of that process, a series of amendments have been proposed that would correct the inconsistencies identified by the Growth Board decision.³⁴ If adopted, those amendments will allow the City to provide sewer services for the Proposed Reservation and to 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.³⁵ If the new Comprehensive Plan Amendments are adopted (and are deemed to be legally sufficient in the face of any challenge), then the City

³¹ See Local Opponents Sum. Jud. Mot. at p.44 n.20 (citing *Alexanderson v. City of La Center*, Case No. 12-2-0004 (W. Wash. Growth Mgmt. Hearings Bd. May 4, 2012), *supra*).

³² 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) (last visited Oct. 24, 2013).

³³ 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> (last visited Oct. 24, 2013), as well as City letter to DOE with Draft Environmental Impact Statement (DIES) for Comprehensive Plan Amendments and City DEIS on same, *available at*: <http://www.ci.lacenter.wa.us/community/CompPlanAmd2013.html> (last visited Oct. 24, 2013).

³⁴ *Id.*

³⁵ See La Center Junction Draft Subarea Plan, Sewer System Map - Figure 17, at p.5-18 (2010) (on-line PDF p.76), *available at*: http://www.ci.lacenter.wa.us/city_departments/pdfs/subarea/La%20Center%20Junction%20Subarea%20Plan%20v5.pdf.

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 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: November 6, 2013

Respectfully submitted,

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