



LUMMI INDIAN BUSINESS COUNCIL

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DEPARTMENT _____

DIRECT NO. _____

July 21, 2015

Mark Personius, Assistant to the Director
Whatcom County Planning and Development
5280 N.W. Road
Bellingham, WA 98226

Mr. Personius,

I am writing on behalf of the Lummi Nation with regard to the June 24, 2015 Urban Growth Area Review (Cherry Point UGA Proposal). We have three areas of concern with respect to this proposal.

First, it is of great interest to us that none of the amendments acknowledge or reflect the mounting public concern expressed over the years about inappropriate uses at Cherry Point and, by almost any measure, a failed vision for that area. The County has listened to three years of steady comments from the Lummi Nation and the general public expressing fundamental concerns about protection of cultural heritage, cumulative degradation of the environment, shortages in water supply sufficient to meet the needs of endangered Nooksack Chinook Salmon, and deterioration of quality of life, all of which are directly relevant to the County's current planning effort. We believe this brings into focus the policy framework for uses that should and should not be permissible at Cherry Point.

A recurring theme in the report was the need to steer our economy in the direction of sustainable, green industry that produces high levels of jobs with less carbon footprint. That is a policy direction entirely appropriate for consideration during a process of amending the County's comprehensive plan. The proposed staff amendments should be reconsidered in that light. There is a vast amount of new information on these issues developed since the last time the plan was amended and updated, including recently revised modeling of the impacts of climate change on Whatcom County. It is appropriate to bring the plan current in order to reflect contemporary knowledge, best sustainable practices, best available science, and the public's contemporary, low-carbon vision for use of that area. It is also appropriate to reintroduce and support that vision during the public debate over the new Whatcom County comprehensive plan.

Our second concern is the staff report delivered to the Planning Commission on July 9, 2015 for Cherry Point. This report takes a very, very narrow reading of Department of Natural Resource's Cherry Point Aquatic Reserve Management Plan to favor continued heavy-impact industrial development. It focuses entirely on the question of whether to retain the existing UGA line. As written, the staff report cites select portions of that plan to support a conclusion that high-impact industrial development on the site is compatible with the Aquatic Reserve plan. This conflicts with both common sense and otherwise available evidence demonstrating that the

cumulative impact of additional heavy industry and shipping in this area can further accelerate the current decline of marine life of the Cherry Point Aquatic Reserve.

With these key omissions, the staff report does not form an adequate basis for a decision on what to include in the County's plan update. The comprehensive plan should be updated to accurately describe the declining functions and values of Cherry Point and Georgia Strait, with references to the specific findings of the most credible scientific sources available on this subject as follows.

First, DNR's Aquatic Reserve Plan extensively documents the dramatic decline in the Cherry Point herring stock since the arrival of heavy industries, beginning in 1954.

Second, the Puget Sound Partnership has designated as a priority target the restoration of the Cherry Point Herring stock, supported by thirteen separate action items.¹ The PSP's 2014 "State of the Sound" report first notes that: "The Cherry Point herring stock in North Puget Sound, once the largest stock in the Sound, has declined by 90% since the earliest sampling date in 1973 and shows little sign of recovery."² The report then evaluates current efforts and prospects for recovery of that key indicator species: "None of the 2020 target values for individual Pacific herring stocks or groups of stocks are met, and no progress has been made. Instead, the current spawning biomass of all stocks are below both their 25-year mean baseline reference and their 2020 target values (Figure 1 in Latest data and maps section).

Third, WWU Professor Landis, one of the foremost authorities on marine life at Cherry Point, attributes the decline in the herring stock to more than natural fluctuations, pointing to the presence of persistent organic pollutants such as PCBs and dioxins, as well as loss of quality habitat for spawning.³

Fourth, NOAA's status report on Georgia Strait herring stock notes that, over time, the remaining spawning mass has now concentrated at the Cherry Point reach down from its historical spread of over 60 kilometers, making the subspecies especially vulnerable to oil spills and "contaminant releases."⁴ The Aquatic Reserve Plan echoes this conclusion, noting that

¹ http://www.psp.wa.gov/vitalsigns/pacific_herring.php#!; see also <http://gismanager.rco.wa.gov/ntaportal>

² *Id.*

³ See, Landis and Bryant, *Using Weight of Evidence Characterization and Modeling to Investigate the Cause of the Changes in Pacific Herring (Clupea pallasii) Population Dynamics in Puget Sound and at Cherry Point, Washington*, Risk Analysis, Vol. 30, No. 2 (2010); see also, a debunking of arguments that the Cherry Point Herring decline is merely a function of natural causes, in Roberts, D., Kulshan Environmental Services, *Fact Check: Are Natural Factors the Primary Cause of Cherry Point Herring Decline?* (Dave Roberts is a former DNR manager for the Cherry Point Aquatic Reserve).

⁴ NOAA, *Technical Memorandum, Status Review of Cherry Point Herring* (June 2006) at 86: Since 1996 the Cherry Point Reach has been the only section of the coast receiving spawn deposition by the Cherry Point population. In 2004, less than 22 km of shoreline was utilized by Cherry Point Pacific herring for spawning, compared to over 60 km in 1981 (Figure 42). However, shoreline spawning was reported to be more extensive at Cherry Point in 2004 than it had been for a number of years [footnote omitted]. Bargmann (2001) pointed out that this contraction of the utilized spawning habitat increases risks from anthropogenic stressors such as oil spills and contaminant releases near Cherry Point.

increased vessel traffic at Cherry Point brings with it increased risk of oil spills, concluding that “impacts to threatened and endangered species could be catastrophic,” especially to herring reproduction: “The Exxon-Valdez investigations indicated that oil spills can result in significant reproductive impacts to Pacific Herring.”⁵

The plan should cite to oil spill and contaminant problems already occurring at the Cherry Point industrial area in light of this potential to adversely affect herring spawning. The plan narrative and updated policies should note that a superfund cleanup site at the former Treoil storage site (with no cleanup underway) in the Cherry Point uplands, documented by Ecology, creates a potential groundwater contamination plume that could be adversely affecting herring reproduction, according to the Aquatic Reserve Plan.⁶ The comprehensive plan policies and narrative for the Cherry Point UGA should be updated to take account of this more recent body of “best available science.”

Our third concern is the issue of cultural heritage. In the March 2015 draft of Chapter 2 (Land Use), Goal 2J the plan refers to Policy 2J-3 (“Cooperate with Tribal governments to ensure local traditions are respected in all land-use decisions”). The traditions of the Lummi people include beliefs, practices, and traditional knowledge that are directly related to the landscape and seascape of the Cherry Point UGA. There is no evidence to demonstrate that our traditional knowledge is understood, respected, or in any way taken into account in the proposal to maintain the UGA boundary as it currently exists for Cherry Point. There needs to be a respectful dialogue between the Lummi Nation and Whatcom County government on this issue well in advance of deciding the issue of the UGA boundary.

This issue of cultural heritage is also central to Policy 2J-1 (“Encourage the preservation of cultural resources”) and Policy 2J-4 (“Protect culturally and spiritually significant places from non-essential development that is viewed as incompatible by the affected community.”) We believe there needs to be a more balanced assessment of what constitutes essential and non-essential development. In the conclusion to your report you state that “the lands in the Cherry Point UGA and the adjacent marine waters are economically and environmentally important to Whatcom County.” While Cherry Point might be important, it is not essential for the economy to promote high-impact, heavy industry with a large carbon footprint in the Cherry Point UGA. Cherry Point is without question, however, an essential landscape and seascape in terms of its cultural significance to the Lummi Nation.

⁵ See, DNR, *Cherry Point Aquatic Reserve Management Plan* (2010) at 158-59.

⁶ *Id.*, at 26: Ecology is concerned about the TreOil Industries Limited site at 4242 Aldergrove Road; contaminants such as pulp and paper manufacturing by-products have leached into the groundwater which later discharge into Puget Sound (see Figure 20, 151). Ecology has identified the site as potentially hazardous to human health and the environment, and it is ranked number two on their list of hazardous sites awaiting cleanup (Ecology 2008). Ecology notes the potential of this site to be contributing to herring mortality through groundwater transport to the nearshore (Marshall, pers. Comm.).

This contamination is also mentioned in Ecology’s Fact Sheet for the BP Oil Refinery NPDES permit. Department of Ecology, *Fact Sheet for NPDES Permit No. WA0022900, BP Cherry Point Refinery NPDES Permit* (Feb. 14, 2006) at 18. Ecology has documented this hazardous waste site since as early as 2008, rating it highly for cleanup but without any action.

The area within the current UGA boundary contains at least twenty-three archaeological sites registered with the Washington State Historic Preservation Office, including one site that is eligible for the National Register of Historic Places as well as documented reef-net and fish-trap sites in the marine waters of Cherry Point. The Cherry Point archaeological landscape is one of the largest and best documented of its kind in Washington State. In addition, the value and meaning of these sites and their properties have both a cultural and spiritual dimension known only by our people. The current UGA boundary does not provide for the protection of this historic, cultural and spiritual landscape and seascape and their properties in a manner that respects our cultural values, beliefs, and practices. Once again, we believe there is an urgent need for a dialogue between the Lummi Nation and the Whatcom County government prior to settling the issue of the UGA boundary.

The proposed framework, theme and direction of the plan might have been adequate thirty years ago but it is now inappropriate. We believe the plan should reflect a vision for sustainable growth rather than continued, high-impact, heavy industry with a large carbon footprint.

Amendments to the comprehensive plan can, and should, create a best practices sustainable development policy framework for regulation of Cherry Point.

We look forward to having a government-to-government dialogue with the Whatcom County Council prior to the approval of the UGA Proposal for Cherry Point.

Respectfully,



Kirk Vinish, AICP
Interim Planning & Public Works Director
Planning Department
Lummi Nation

cc: Whatcom County Council
Governor Jay Inslee
Washington State Department of Natural Resources