



THE SUQUAMISH TRIBE

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PORT GAMBLE S'KLALLAM TRIBE

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August 4, 2010

Steve Bauer, County Commissioner
Kitsap County Commissioners' Office MS-4
614 Division Street
Port Orchard, WA 98366

RE: North Kitsap Legacy Partnership

Dear Commissioner Bauer:

Recently, the Suquamish Tribe and the Port Gamble S'Klallam Tribe (hereafter "the Tribes") met to discuss the proposed development plan offered by Pope Resources and Olympic Property Group (referred to collectively hereafter as "OPG") within the context of the North Kitsap Legacy Partnership ("NKLP") wherein OPG intends to increase development in the historic Port Gamble town site and develop approximately 1,000 acres of rural lands at urban densities in exchange for offering approximately 7,000 acres of OPG-owned commercial timberlands for public use.

Although the Tribes view the conservation of 7,000 acres of commercial timberland as a positive step in conserving critical fish and wildlife habitat, both Tribes have voiced their concerns to you separately either in person, by letter, and/or by email correspondence regarding the unanswered questions and potential impacts of OPG's proposed development in the "historic town" and in the adjacent rural lands. This joint letter provides a summary of the Tribes mutual concerns related to the NKLP proposal.

Treaty Resources: Both Tribes retain access and have rights to harvest treaty resources (fin fish and shellfish) in Port Gamble Bay. In addition, Port Gamble Bay provides critical herring habitat and spawning grounds which include the entire shoreline within and just outside of the bay. The NKLP has not addressed how OPG's development proposal will be protective of the Tribes treaty resources. First, Port Gamble Bay is a State of Washington Model Toxics Control Act ("MTCA") cleanup site arising from wood waste and pollutants discharged from the Port Gamble Mill Site and post-marine industrial activities over the past 157 years. Port Gamble Bay has not been restored and OPG's proposed development leaves unanswered questions as to

future impacts to the bay and treaty resources. Major shoreline or residential developments with potential to impact the bay's resources should not be considered until at least five years of post-cleanup monitoring can verify the relative health of the bay.

Second, the Tribes jointly opposed the current dock/marina proposal from OPG due to its potential impacts and further understand that OPG's master plan includes the development of a marina and other commercial docks. Additional shoreline development will likely give rise to expansive marinas, docks and moorage buoys. These structures have the potential to create automatic shellfish closure zones and impair the Tribe's treaty rights by precluding access to treaty resources.

Archaeological, Historical and Cultural Resources: The Tribes strive to preserve and protect archaeological, historical and cultural resources in Port Gamble and the surrounding area. To date, nothing in the NKLP documentation recognizes these tribal resources and the need to protect them.

Growth Management Act: OPG recently provided some detail regarding its proposed development. The majority of the development occurs on rural lands at densities consistent with urban subdivisions – i.e. cluster development with substantial density bonuses. This type of development is prohibited in rural lands under the Growth Management Act ("GMA"), as the townsite is clearly urban growth in the rural area and the uplands proposal, suburban sprawl. The NKLP has not provided answers as to how this proposal intends to meet the requirements of the GMA. Further, it is unclear how this type of development is legally supported in Kitsap County in light of the increase in proposed density and expansion of the existing "permanent" LAMIRD limitations. Although the County repealed the Rural Wooded Incentive Program ("RWIP") Ordinance for which this development was intended, the Washington State Court of Appeals in *Suquamish Tribe et al. v. Kitsap County* later found that the RWIP was not protective of rural character and held that the County and the Growth Board erred in relying on a bright line rule to determine rural density. History has shown that the County has failed to successfully litigate its prior attempts to design cluster developments in rural lands with significant density bonuses. The Tribes question the continued advocacy of this type of development when the current legal landscape does not support such development. The Tribes also question how the NKLP intends to meet other federal, state, and local environmental statutes and regulations.

Although the NKLP proposes to seek additional legislation to support this concept, the legislative approach has not been shared.

Water: A legal decision is pending before the Washington State Supreme Court concerning constitutional challenges to the Municipal Water Law, *Lummi Nation et al. vs. Washington State et al.* The outcome of this case may directly impact KPUD's ability to supply water to

OPG's proposed conceptual development through water transfers within its service area. The Tribes do not support the concept of transferring water from one basin to another given the uncertain risks posed to salmon and other treaty resources.

Population Allocation: Population has not been allocated to the Port Gamble area and vetted through KRCC and PSRC. The Tribes have been informed unofficially that the County is planning to utilize an unallocated population of 2,500; however, it is unclear where this number originated. In addition, given the recent Court of Appeals decision, which will likely result in the Land Capacity being calculated at greater than 4 du/acre in the urban areas (thus increasing the capacity of the UGAs and likely shrinking the boundary), the Tribes believe any decision to allocate "excess" urban population at this time would be inappropriate. If additional population is allocated to Port Gamble how will the county then restrict/dissuade development in the remaining rural areas?

Transportation: The OPG development as proposed, will more than double the traffic loads on the local roads and State Highway system. This will increase air, water and noise pollution in the vicinity and could result in impacts to water quality in Port Gamble Bay. Road improvements will certainly be needed to serve the new population base and keep traffic flows at acceptable levels. This will necessitate significant road widening and other improvements. The full economic and environmental costs of the transportation impacts must be fully considered and mitigated.

Stormwater: The Tribe understands that the County has not updated its stormwater manual for consistency with the latest Ecology manual. Does the County plan to update its manual to apply Ecology's recommended approach in this development concept?

LOSS Systems: The County has approved LOSS systems in the rural areas. Given the conceptual development, who will be responsible for verification of associated codes, enforcement and system maintenance to ensure tribal resources are not impacted in the future? These larger on-site systems have the potential for more substantial effects on the surrounding environment than a low-density residential use.


Finally, the Tribes question the nature of the NKLP structure. Here, Kitsap County is the legislative and regulatory body that oversees any and all development applications in the County and OPG is a private developer (soon to be applicant). The structure of the NKLP raises questions as to the legitimacy of the County's arms length negotiations with OPG. The Tribes are unaware of any similar partnership between the County and other private developers in a "conceptual proposal."

In sum, the Tribes continue to raise substantive and complex concerns about the NKLP proposal and wish to further discuss these issues during and after our government-to-

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government meeting with the County. On behalf of the Suquamish Tribe and the Port Gamble S'Klallam Tribe, we appreciate your consideration of our concerns.

Sincerely,


Leonard Forsman, Chairman
Suquamish Tribe


Jeromy Sullivan, Chairman
Port Gamble S'Klallam Tribe