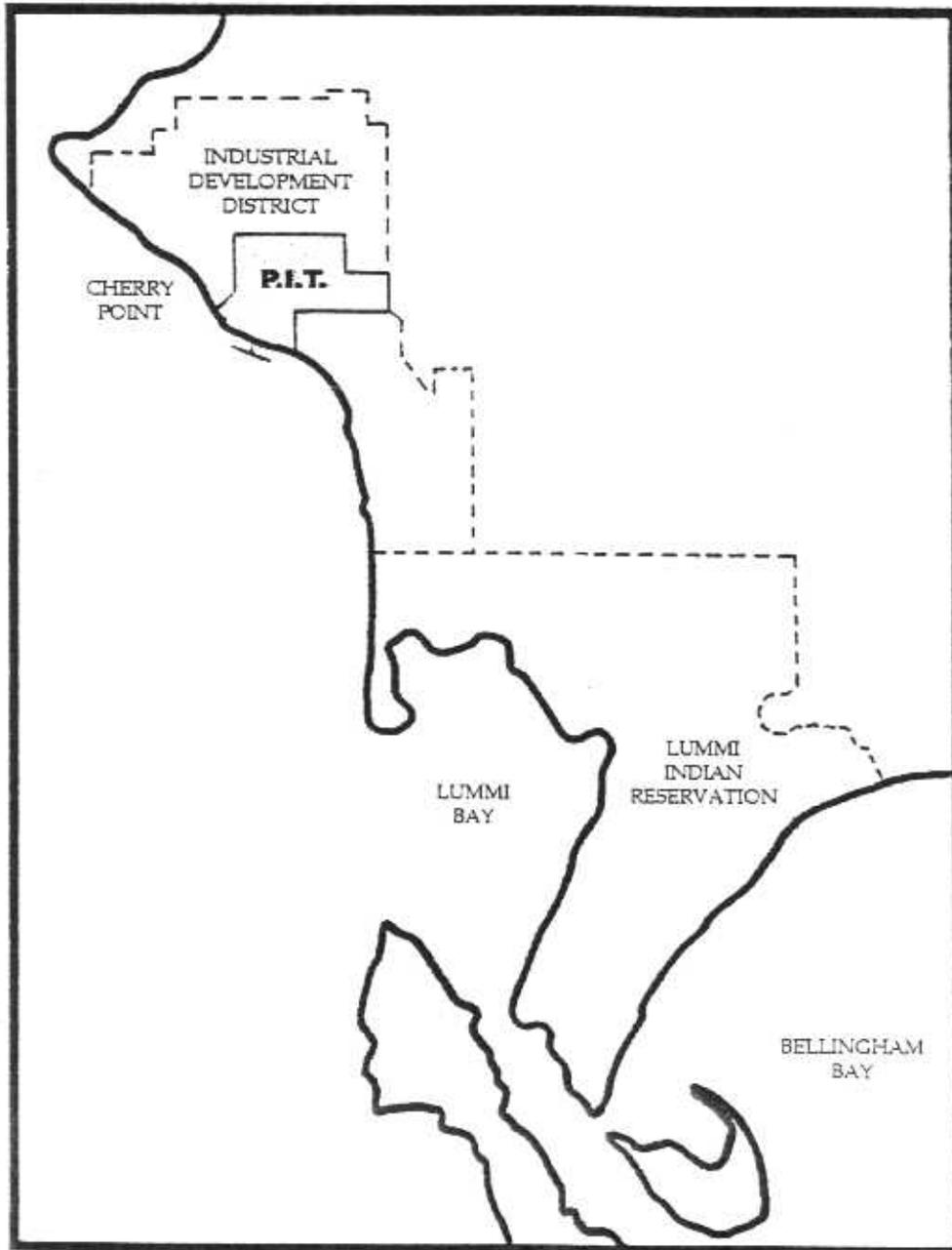


The **Cherry Point Project**

September 1999



Proposed Industrial Development at Cherry Point

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1. Summary

A. LIBC Official Position

The LIBC takes the position that it currently does not support the PIT project, pending further information, analysis, and evaluations to be obtained through the Tribal Permitting Process for this project, which necessarily includes General Council comment, and which conclusions would be brought to the LIBC for its consideration and decision.

Once the project completes its evaluation tests through the Tribal Permitting Process and the results are brought to the LIBC for a decision, and all questions, concerns and considerations are shown to be addressed, the project will be judged for its ability to meet or not meet Lummi permitting criteria and conditions. At that time, based on the findings and presentation of the findings to the Lummi people, a General Council referendum vote is planned to determine the Nation's final position.

Summary (continued)

B. Introduction and Explanation of Situation

This pamphlet provides an overview of what the PIT project is all about and its enormous complexity. The key point the pamphlet wants to get across is that the PIT project must go through the Tribal Permitting Process established for any dock proposed to be built and operated in combined Lummi/State and Federal waters. PIT has not yet made a permit application to the Lummi. Only after a proposal goes through the Lummi permit process will we be able to correctly determine the project's ability to comply with Lummi laws and conditions. And only then can we provide the General Council with an accurate presentation of adverse impacts and risks that might result from non-compliance and/or an accurate presentation of benefits and accomplishments that could result from compliance and mitigation.

This pamphlet provides you with a summary look at the circumstances surrounding PIT, prior to the permit process. The pamphlet is not intended to go into every technical detail, because Cherry Point has been around for 23 years, since Chicago Bridge and Iron in 1977, and the Tribe has accumulated enough information on dock impacts to fill a small library, making it nearly impossible to summarize in a pamphlet. One thing is certain, the issues and concerns over this period of time remain the same: fishing, environment, culture, economic development, legal and political. The paramount criterion for judging also remains the same: protect and strengthen Treaty Rights. What has changed is, the greater expertise and knowledge available to us to help more thoroughly analyze the information, as well as, the availability of better solutions to impacts as made possible through modern technology and associated creative mitigation approaches. What has changed also, is the Tribe's transition from an old style BLA grant and rules dependent organization, to a modern self-governing, self-sufficient (evolving) sovereign, supported by stronger laws for our Nation, however, also requiring greater responsibility and accountability of Lummi government in areas such as permitting.

In a nutshell, the PIT project is about a marine cargo dock proposed to be built at Cherry Point by a company called PIT. The dock would be located in combined Lummi, State, and Federal waters at Cherry Point. This means each of those governments must issue permits on the project to make sure it complies with all laws of each of those governments pertaining to construction, siting, and operations of a dock facility in the new 21st Century. The exact sequence that PIT must follow to obtain permits is Whatcom County first, Washington State second, and Tribes/Federal Government third. Going third is the most respected and powerful position, because the federal level represents paramount interests and has final authority superseding all others. It is not Washington State DNR, which is neither a permitting agency or sole protector of the resource as the media may lead one to believe.

As of September 1999, having just completed the State level permit process, a permit application by PIT for its dock project, is now sitting at the doorstep of the Tribe awaiting processing. The Tribe has an orderly permitting framework in place: exact steps, procedures and protocols for measuring the project against Lummi conditions and for evaluating the project's ability to meet Lummi standards set by those conditions, in whole or in part, or not at all. Determination of such ability will be the result of discussions with PIT over the three to six month Tribal permitting period. While we can project some general impacts of a dock (largely the same as 23 years ago), and we can express concerns about those impacts, and we can conceptualize some possible solutions, we simply don't know the exact impacts at this time, without:

1. First having initiated the Tribal permitting process,
2. Taking the project through the process; and
3. Discussing with PIT how "potential impacts" could be eliminated or satisfactorily resolved or not, through acceptable mitigation measures meeting Lummi standards.

This pamphlet provides an outline of specific goals the Lummi government has set regarding permitting of projects and eighteen (18) precise permit conditions established by the Lummi Nation that the project must satisfy. These conditions provide the framework for our discussions with PIT, as we begin to move the project through the permitting process, in an orderly and responsible fashion, as would be expected by any government. The report also projects some estimated benefits to Lummi "if" the 18 conditions could be met, as well as, some unavoidable risks.

Once again, at this time, we simply don't know for sure what can be achieved or what exposure the Tribe would have, until after Lummi's permit compliance checklist has been evaluated and all mitigation options have been discussed, negotiated, and put on the table, and we can clearly see what we have. It is the opinion of the LiBC, therefore, that it may be premature to take a conclusive vote "for PIT or not", especially before the project completely finishes the permit process, as we do not really know at this time, if the project satisfies or not, any of the Lummi conditions that have been laid out.

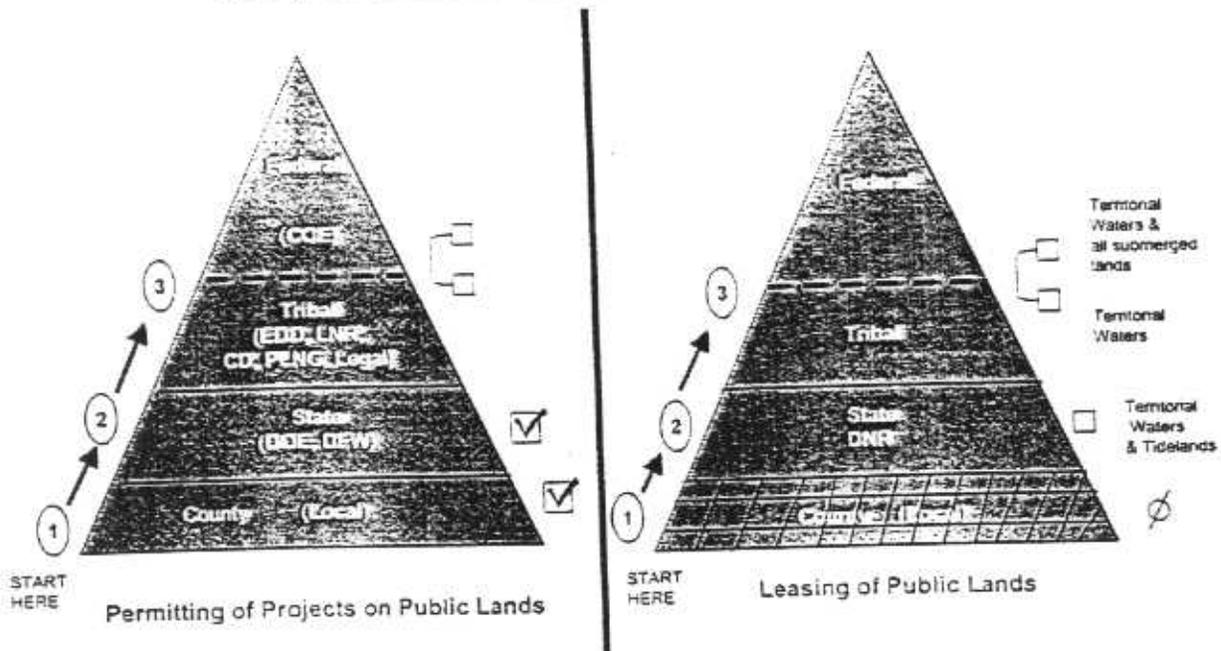
2. Permits

A. Permits and Leases: Levels and Sequence

A dock and its facilities must go through three (3) levels of permitting and in the following hierarchical order:

- 1) County
- 2) State
- 3) Federal (Tribal)

Permits and Leases: Levels & Sequence



Strict government standards of performance and parameters that a project must comply with are attached to each level. The Nation's standards are enforced at the federal level. The Lummi government, therefore, approves or disapproves the permit at the federal level, and not before, through the U.S. Army Corps of Engineers (COE) as its administrative instrument. At this level, the project is judged by its ability to meet standards pertaining to marine installations set by each jurisdiction, including the Lummi. Lummi standards are defined in the Tribal Permitting Process. Any proposed project must pass rigorous tests and meet a battery of conditions, with strict criteria and standards set around each condition as a way to measure how well the project satisfies or not any condition. In the case where a project fails to meet certain standards, mitigation is required. If mitigation can resolve a problem, it is attached as a condition to the permit, enforceable by law. If mitigation cannot resolve a problem, the permit is denied. (See section: "How Mitigation Works")

Permits (CONTINUED)

B. Tribal Permitting Process

Cherry Point represents a project of enormous complexity. There are issues such as treaty rights and responsibilities, legal standing, real estate gains and losses, legal contracts, financial models, political considerations, cultural and historical preservation, economic impact, employment, relational development with businesses and government, licensing and permitting, public information and education, negotiation and discussion, and project management involving contemporaneous oversight of multiple tasks. Because of the cross-disciplinary nature of its makeup and complex project management expertise, the Lummi government's lead agency for the project since 1997 has been the Economic Development Department.

The key steps of the Tribal Permitting Process are:

- 1) The lead agency (EDD) in consultation with selected Tribal Departments, defines the project's key areas of evaluation relevant to Tribal permitting conditions and standards. These are: environment, natural resources, planning, cultural, economic development, legal, and political.
- 2) Relevant departments measure potential impacts of the project in their respective area and recommend acceptable solutions, if any are available, to impacts. This is called mitigation. (See section: "How Mitigation Works")
- 3) Relevant commissions review their department's reports and obtain public comment and input into the report, such as opinions and suggestions.
- 4) The Cherry Point Core Team negotiates mitigation terms and conditions with PIT based on both concerns and demands in each evaluation area and standards and conditions established for those areas.
- 5) PIT compliance and/or concessions are measured against Lummi conditions and organized by the lead agency into a "findings" report on the project's compliance or non-compliance with those conditions.
- 6) The report is presented to the LIBC for a decision and the LIBC is responsible for presenting the decision to appropriate regulatory agencies and for implementing and enforcing the decision.

Permits (CONTINUED)

C. How Mitigation Works

As with any plan, we expect to find some good things about the plan, as well as some bad things. Wherever we find something bad happening, our goal is to see if the situation can be remedied sufficiently to meet Lummi standards or see if something else can be created that is just as good or better.

Here's an example of how research and study can be made part of the mitigation consideration process:

SITUATION:

Today, ships and tugs plying the waters near Cherry Point often pull up crab pots and gear. This can be very costly to some of our people.

PROPOSAL:

Under the Cherry Point proposal, a new dock would be built.

STUDY:

Our studies show that a new dock would mean more ships and tugs in the Cherry Point area, which, in turn, could mean more lost crab pots.

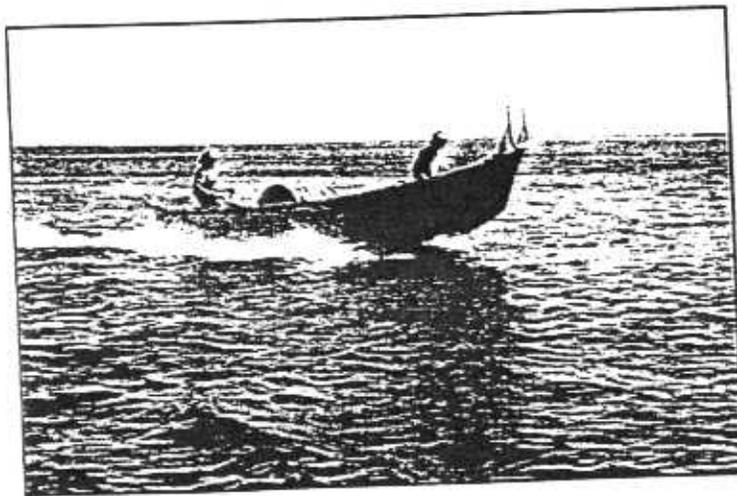
EVALUATE:

One answer would be to reject the proposal outright. Another would be to include provisions that would keep all new and existing ships clear from the crab pots, and require owner compensation for lost or damaged gear caused by inadvertent or chance snagging.

DECISION:

Careful analysis suggests that if the provision could be achieved, the proposal might actually create a better situation for our crabbers than exists today.

This is only one example of the many issues that are under study.



3. Proposal at Cherry Point

A. History

The historical land use of the properties at and/or surrounding Cherry Point, post Treaty of Pt. Elliot, was agriculture, forestry, and salt water beach recreation.

In the 1960's, 30 years prior to the Lummi Nation becoming a self-governing Tribe, companies now called ARCO, INTALCO, and TOSCO purchased various properties at Cherry Point because of the natural access to deep water and built 3 different types of transshipment docks. No other docks have been built since that time, although the Lummi Nation has studied various proposals for new docks since 1977. The first was the Chicago Bridge and Iron proposal in 1977, to develop a marine installation for the construction of off-shore semi-submersible drilling platforms. The second proposal in 1983 was by Kiewit Construction Company to fabricate marine oriented structures. Both of these proposals would have required considerable dredging and large tideland fill. Because of legitimate environmental concerns associated with dredging and filling, neither of the projects gained the required approvals.

In 1992, two more applications came on the scene a day apart. On June 17, 1992, Joseph Scheckter and his Cherry Point Industrial Park Company applied to develop the Cherry Point waterfront with a deep water pier. On June 18, Pacific International Terminals applied to build a multi-use import and export marine terminal for bulk, break bulk, and other marine cargoes. These two proposals are significantly different from Chicago Bridge and Iron and Kiewit Construction, as they both include piers on pilings with no dredging or filling.

Since late 1991, PIT initiated several studies to acquire baseline information that would be used for the environmental assessment process and associated permits necessary to move the project through federal, Tribal, State, and local regulatory agencies. The Lummi Nation has had available and been studying this information for nearly ten years now, although neither project – due to regulatory snags and/or financial reasons, has yet gone through the Lummi Permitting Process pertaining to offshore installations in Lummi territorial seas, and thus, no Federal permits have been granted.

Additionally, stricter regulatory conditions have been implemented since the Chicago Bridge and Iron days, at the local, State, Tribal and federal level. For instance, at the local level, under the Whatcom County Shoreline Management Program, the Cherry Point Management Unit was established in 1987 to provide a regulatory environment which recognizes and balances the special port, industrial and natural resource needs associated with the development of the marine resource along a shoreline of statewide significance; and which identifies preferred development components of port and shore-dependent industrial activities consistent with the policies of the Shoreline Management Act and clearly sets forth the standards for such development.

In 1996, the Tribe was on the verge of signing a MOU with PIT. The signing was postponed, however, as in 1997, the Lummi Nation established a Tribal Permitting Process specifically for offshore installations in marine waterways that belong in whole or in part to the Nation, which sets forth clear standards and conditions for such development.

The PIT project is now required to go through the new Tribal Permitting Process which is implemented and administered at the federal level. PIT has not initiated application to the Tribe yet and no permits have been granted. The 1996 MOU was cancelled and instead, a Tribal conditional permit agreement would be required.

Proposal (continued)

B. PIT Proposal

A master planned industrial park is evolving North of the Lummi Reservation at Cherry Point. It is located inside a 7000 acre special growth management area referred to as an Industrial Development District, which would provide master planning, infrastructure, and uniform regulatory standards to the area for industrial development. Approximately 30% of the park is built-out and currently home to the ARCO and TOSCO refineries, Tenaska power plant and the INTALCO aluminum smelter. The park capacity is for five international transshipment docks; three are currently in operation (TOSCO, ARCO, INTALCO), and the fourth (a second wing at ARCO) has been permitted since 1993 (including Lummi approvals) and ready to be built. The fifth and final dock, called Gateway Pacific Terminal, or "GPT", is being considered as part of a development project proposed by Pacific International Terminal or P.I.T. It would be located in between the ARCO and INTALCO docks.

PIT is a joint venture company established between two highly respected international companies, Stevedoring Services of America and the James Pattison Group of Canada.

The company proposes to build GPT as a state of the art complex for shipping bulk cargo commodities such as grain and iron ore, overseas.

The complex would include an upland terminal facility for storage of those bulk cargo materials to be shipped, a dock (105' x 2,320' rectangular shape @ 80' depth water) for berthing, loading and unloading ships and barges, and an approach trestle (50' x 1,100') connecting the dock to the upland terminal storage area, equipped with modern conveyor handling systems moving materials between ships and dock and terminal.

The dock will have the capacity to accommodate 3 vessels ranging in size from 60,000 to 250,000 dwt ("Panamax" and "Cape Size" ships) and 6 barges, moving an estimated 8.2 million metric tons of material through the 24 hour/day facility annually (140 ship movements/year).

The GPT site is the last remaining natural deep water site on the West Coast of North America and no dredging would be required.

The upland terminal would be built on an approximately 80 acre triangular shaped parcel of a 1,000 acre site adjacent to the shoreline, but outside the 200' required setback. Water is supplied to the site by the P.U.D. No. 1 under a pre-existing contract. The facilities would also include a loop railroad system for GPT operations, with the ability to serve 100 plus car unit trains.

The project would be built and operational within three years after all permits (County, State and Federal - which includes Lummi Nation) are obtained.

Proposal (continued)

C. Current Status

PIT first successfully completed the permitting process at the local level in 1997. The second step was to take the project through the permitting process at the state level, where it has been for the past two years. During this time, preliminary discussions have taken place with the Tribe at the Federal level, as follows:

1. For Lummi to better understand the scope of the project;
2. For Lummi to exchange views with PIT on potential areas of impact;
3. For Lummi to introduce its concerns, rules, standards and conditions that must be met in each area of impact;
4. For Lummi to gather preliminary information to assist the Nation's future evaluations; and
5. To conduct preliminary testing of the waters on the range of both acceptable and non-acceptable solutions and options in each Lummi area of consideration, thus establishing an orderly framework to address the issues at the time PIT announces it is ready to apply for any Tribal permit and/or lease required for the project.

On August 26, 1999, PIT announced to Lummi that it had concluded the State level permitting process and provided the Lummi Nation with official notification of its intent to proceed to the federal level and move the project through the Tribal Permitting Process. (NOTE: State permit regulatory approvals by Department of Ecology and Department of Fish & Wildlife are separate from State leases that would be issued by the Department of Natural Resources, a proprietary agency. The PIT lease has not been granted, pending submittal of further information to DNR.)

4. The Nations Responsibility at Cherry Point

Protecting the public health, safety and welfare of a sovereign's citizens, is the duty of government. Construction and building projects that take place within a sovereign's territory impact public health, safety and welfare. Therefore, the permitting of such projects that impact public health, safety and welfare of Lummi citizens, is a duty and obligation of Lummi Government.

For instance, the construction and operation of an offshore installation in the Strait of Georgia, an area considered as Lummi territorial waters, would require Lummi Government licensing and permit approval. The Lummi currently exercise this responsibility at the federal level, through the U.S. Army Corps of Engineers as its administrative instrument and lead agency.

The Nation's primary goal at Cherry Point therefore, is to assert its Treaty Reserved Rights to exercise the Nation's authority in the Strait of Georgia, which means the exercise of duties and obligations as both a *proprietor* and *regulator*.

As a *proprietor*, the Nation has the right to determine permissible uses of the resources and to set policy around those uses, including permissible activities and the power to levy taxes, or assess fees around those uses and activities, or install whatever other measures are necessary to maximize the Nation's property rights; to add meaningful value to its assets..

As *regulator*, the Nation has the duty and obligation to set forth rules and standards for activities considered permissible, and which safeguard the public interest; and has the duty to install measures to enforce those rules. The Economic Development's job, in cooperation with Natural Resources and all other Lummi Departments, is to determine how this can be done effectively while preserving at the same time, the Nation's capacity to add value to its asset.

SUMMARY OF RESPONSIBILITIES

- 1) The Nation has to act as a self-governing sovereign within this multi-jurisdictional area and must perform accountably.
- 2) The Nation has the obligation to exercise its self-governance duties responsibly, consistent with its laws and with reasonable regard to other sovereigns. The Nation must exercise those duties through the administrative structure it has established for this purpose, which is the Economic Development Department and Cherry Point Project Management Team, in conjunction with Lummi Natural Resources and other departments.
- 3) It means upholding the public trust and people's faith in government to consider all things essential to the public interest and integrity of the Nation both as a proprietor and regulator. In all cases, regardless of the specific type of action or activity, there are five paramount parameters any project, proposal, action or activity must comply with.

FIVE PARAMOUNT PARAMETERS:

1. The project must not abridge or weaken Treaty rights in any way; instead, it must assert or strengthen such rights.
2. The project must not jeopardize the Lummi Nation's economic security in any way; instead it must enhance and support that security.
3. The project must not threaten the Nation's environmental security, instead, it must strengthen and/or protect that security.
4. The project must not weaken or diminish the Nation's geographic integrity in any way; instead, it must maintain or increase such integrity.
5. The project must strengthen and enhance the Nation's cultural integrity.

5. Lummi Specific Goals in Permitting

The Lummi Nation has established specific goals pertaining to the permitting and/or leasing of offshore installations in its waterways.

1. The Nation wants to see all permissible Lummi maritime industries and their consequent activities protected from risk and/or displacement.
2. Ensure that other governments do not restrict the Lummi Nation's ability to exercise its rights and responsibilities in waterways that belong in whole or in part to the Nation, including the ability of the Lummi Nation, for instance, to build a public pier in its waterways if it ever chooses, provided of course, such pier meets the same rigorous conditions applicable to any other pier owner.
3. Ensure the project meets compliance with all environmental impact concerns in such principal areas as, hazardous waste, oil spills, dredging and dredge disposal, water quality, sediment quality, watershed management, alien aquatic nuisance species, and threatened and endangered species.
4. Ensure the project meets all building codes established for man-made installations in waterways necessary to protect the public health and safety.
5. The Nation wants to see that the ability to generate revenue from the use over the resource is assured, in a fair manner, to all proprietors of the resource who share the resource in common with each other.
6. Ensure that all uses and activities in the marine environment advance policies in five strategic goal areas for reaching an optimum operating environment at Cherry Point. These goal areas pertain to mitigation and investment of the Nation's resources, regardless of any new development or not. The five goal areas are:

1) PREVENTION:

- a) Reduce incident risk by installing an enhanced vessel traffic management system coordinated with Lummi fisheries.
- b) Install a superior response system for any possible accident coordinated with Lummi fisheries.

2) CONSERVATION:

- a) Install an extensive long-term plant, wildlife, and fisheries restoration program including salmon & herring recovery.
- b) Set world class water quality standards for the entire Strait of Georgia waterway.

3) ACCOUNTABILITY:

- a) Install a shared liability program among all users, so that no one user bears the sole financial burden.
- b) Contractually bind the financial duties and obligations of users in each strategic goal area.

4) INTEGRATED MANAGEMENT:

- a) Install a convention on ocean and coastal zone development and management between all responsible jurisdictions, reducing the current fragmented and single sector approach.
- b) Develop and integrate solutions pertaining to other interrelated public interests such as upland development (wildlife, environment, and cultural-resources - including incident prevention measures), water supply, beach erosion, farm pollution and other sources, and river habitat restoration.

5) FUTURE GENERATIONS:

- a) Conduct on-going planning and scientific research related to ocean space and coastal zone exploration and utilization.
- b) Conduct long term carrying capacity and sea use planning and analysis including a performance scheme.

6. Permit Conditions

Based on the Nation's strategic goals, policies, and permitting responsibilities at Cherry Point, the Lummi Government has set forth *eighteen (18) specific areas of consideration*, with quantifiable standards and criteria in each area, around which regulatory mitigation and proprietor terms and conditions would need to be designed for this project by the Nation; and if in their final form agreed to by the General Council, attached as conditions to any final Government permit:

- 1) **QUALITY VESSEL TRAFFIC SAFETY:** The Nation seeks an improved vessel traffic management system at Cherry Point, with designated approach and departure corridors, holding zones for tugs and barges, and other vessels, and a well orchestrated coordination system between cargo traffic and Lummi fishing vessels and herring or other marine species spawning schedules.
- 2) **GEAR LOSS PREVENTION:** The Nation seeks implementation of a fishing gear loss prevention and recovery program, including crab gear, uniformly applicable to all dock owners, providing appropriate compensation to registered Lummi fishers and/or crabbers for loss of damaged gear at no fault of their own.
- 3) **FIRST RESPONSE:** The Nation seeks installation of a world class oil spill prevention and response program, targeted at reducing incident risk, complete with staging barges, state-of-the-art clean-up equipment, and rapid response coordination and response.
- 4) **SPECIES REPLENISHMENT:** The Nation seeks to establish programs for restoration, replenishment, and conservation of existing species including the creation of artificial spawning grounds and habitat for macroalgae and herring, for instance, with achievable production targets and schedules.
- 5) **REVENUES:** The Nation seeks to limit and regulate access, as may be reasonably possible, to special designated economic zones within Lummi waterways where we have reserved commercial rights and receive ongoing revenues for use of and/or access to the zone.
- 6) **LAND OPTIONS FOR COMMERCIAL PURPOSE:** As part of its revenue-generating program, the Nation seeks the ability to purchase and own significant amounts of land at Cherry Point which could be developed for commercial purposes by Lummi companies and/or leased to other companies, adding value and providing additional revenue.
- 7) **NON DEVELOPABLE LAND:** The Nation seeks to acquire and provide stewardship to additional lands on Cherry Point for cultural preservation and conservation placed in a Lummi land trust with public access to beach and other historical sites and to have select interpretive centers made part of such special management areas.
- 8) **ON-GOING ENVIRONMENTAL MONITORING:** The Nation seeks to ensure that the project is measured, tested, and continually evaluated for its environmental performance and on-going compliance with Lummi standards and those of other jurisdictions, throughout its lifecycle.
- 9) **COMPLIANCE WITH HIGHEST TECHNOLOGY STANDARDS:** The Nation seeks to require the project to install and outfit its technological construct with capacities to continuously upgrade with latest technologies, materials, hardware, software, and knowledge management supportive of the Nation's strategic operating environment goals at Cherry Point.
- 10) **CULTURAL PROTECTIONS:** The Nation seeks to require on-site representation during construction of all land and sea facilities and full compliance with Lummi cultural resource management standards set forth in the Nation's Cultural Resource Management Plan.

Permit Conditions (continued)

- 11) **PARTNERING FOR NEW BUSINESS AND ASSOCIATED JOBS:** The Nation seeks to foster the opportunity for Lummi business interests to enter into Cherry Point business ventures that would create more jobs and revenue for the Nation.
- 12) **SCHOLARSHIPS AND JOB TRAINING:** The Nation seeks to create and develop a variety of diverse and plentiful educational opportunities and job training programs.
- 13) **ON-GOING SCIENTIFIC RESEARCH:** The Nation seeks to establish an agenda for excellence, including financial commitments to the agenda, supporting studies and on-going research, such as sediment and tissue sampling and herring stock monitoring, necessary to foster the Nation's ability to achieve its Strait of Georgia strategic operating environment goals: Prevention, Conservation, Accountability, Integrated Management, Future Generations.
- 14) **SAFE SHIP OPERATIONS AND BUSINESS PRACTICES:** The Nation seeks to require conditions pertaining to ship operations, such as ocean ballast water protocol, and establish a framework for accountability by the terminal operator, ensuring that potential impacts that would result from ship operations or business practice errors impacting the Nation's established standards and/or strategic goals at Cherry Point, are satisfactorily addressed.
- 15) **INTEGRATED MANAGEMENT:** Ocean and coastal zone development and management are inextricably linked to the need for accountability and coordination between all levels of government in addressing mutual and/or exclusive concerns. The Nation seeks for the project to foster greater cooperation across difficult cross-jurisdictional boundaries to bring improved coordination and management of the multiple resources and facets of ocean use and development.
- 16) **UPLAND DEVELOPMENT COORDINATION:** The Nation seeks to install steps that foster joint cooperation with others for pursuing acceptable solutions to regional problems and opportunities pertaining to the organization of an industrial development district and comprehensive master plan for elaboration of Lummi's neighboring community.
- 17) **INTEGRATE ACCEPTABLE WATER SOLUTIONS:** It is within the Nation's purview and resolve, to encourage the pursuit of integrated policies and cooperative works with other jurisdictions and sovereigns, to reach acceptable solutions pertaining to ecosystem resource challenges. The Nation seeks for the project to specifically address comprehensive water supply and demand issues and to foster inter-jurisdictional cooperation in this regard.
- 18) **BUILDING CODES COMPLIANCE:** The Nation seeks to ensure that all public safety issues concerning construction projects of this nature, including natural disaster impacts, are satisfactorily met in compliance with the highest standards established by approved building codes and building laws, across multiple jurisdictions.

These 18 areas of consideration would be set forth as an official *discussion agenda* organized into a "non-binding letter of intent" between the Lummi Government and proponent. This agenda would serve as a preferred and mutually agreed to framework by which both parties can discuss the Nation's permitting concerns in an orderly fashion. In legal terms, such a "non-binding letter of intent" means a letter used as a framework for discussions between two parties, without binding either party to any final deal.

Details of any final agreement between the parties would be carefully outlined throughout the Tribal Permitting Process, in a separate, legal, binding contract or "conditional permit agreement". Among many things, this agreement, if one can be reached, would limit the Nation's risks and exposure, protect all rights guaranteed by Treaty, and guarantee that both the project's developer and operator would comply with all Lummi standards, controls and regulations established for the project, into perpetuity. With regard to compliance and its enforcement, the Nation will not act on trust alone; instead, at every step of the process the Nation would continue to exercise due diligence to advance its goals and protect its rights.

7. Benefits

If the Cherry Point project can substantially achieve its objectives in each of the 18 areas of consideration outlined, the project then holds potential to yield significant benefits to the Lummi Nation.

1) ADVANCEMENT OF A STRONG LUMMI NATION

We believe the Cherry Point project could mark the beginning of a new era of self-governance for our Nation. Rather than struggle to support a tribal community in isolation, we would strive to become an indispensable part of a growing vibrant regional community. Rather than accept a role that others leave to us, by having a recognized and respected seat at the table, we would begin to re-define and shape our own role; one that allows us to responsibly exert more, not less influence on the decisions that affect the health of our fishery, environment, economy, culture, and overall quality of life for the future - decisions too often made by others without our input.

2) STRONG ECONOMIC OPPORTUNITIES

To make real progress toward our goals, it is important not only to create jobs, but also to increase the income and sense of pride that those jobs offer our people. Any final agreement on the Cherry Point project would assume that we create our own businesses. Those businesses would produce direct revenue and generate excellent job opportunities. In addition, specific job training programs would qualify Lummi citizens to compete for jobs at other companies within the development. Revenue generated from the use of designated Lummi economic zones within its waterways, would support Lummi Government goals to advance important social and public interest programs within the Lummi Reservation and within all of the Nation's commonwealth territories.

3) FORGING OF STRONG PARTNERSHIPS

We would be full partners in an historic effort to create a regional gateway for trade and prosperity for our mutual communities. Through the strength of our leadership and resolve, we would also be the conscience of that effort, demonstrating that our values can also become the values of others when they serve to benefit everyone. Naturally, we are as anxious as everyone to see prosperity, but we recognize that forging relationships with partners in order to cooperatively achieve prosperity takes time, patience, and perseverance. The Nation would continue to demonstrate its patience and perseverance in years ahead, virtues upon which all great nations are built upon.

4) STRENGTHENING OF JURISDICTION

The Cherry Point project would recognize and respect the Nation's Treaty Rights not only to fish, but also to all of the commercial opportunities that the waterways provide to the Nation and to which the Nation is entitled. By acknowledging that our Treaty Rights extend beyond fish alone, to a vast array of other assets, benefits that may be derived from sea and Earth, the project would begin to produce and maximize for our people the great benefits that have long been ours but have remained unrealized. This component of the project could significantly and historically, strengthen our National Sovereignty.

5) STRONG ENVIRONMENTAL PROTECTION

Another role the Lummi take seriously is our historic kinship with the environment. Through recognition of the Nation's high environmental and water quality standards at Cherry Point, the Cherry Point Project will help the Nation evolve as a strong center of environmental responsibility that looks at all matters of environmental and economic significance, with due diligence and proven principles, continuously committed to balancing growth with environmental sensitivity.

Benefits (continued)

6) STRONG CULTURE

The Cherry Point project represents a historic catalyst to bring people of the Lummi Nation from differing viewpoints, together, to focus on important issues from a unified position, standing strong as a community of unique historical and cultural significance to the Pacific Northwest and United States from past to future. Additionally, economic strength derived by the Nation from its responsible position in the project would provide the Nation capacities to finance many traditional cultural programs and measures advancing Lummi core values and essential Indian character long into the future. These two factors would promulgate a proud and strong culture for the Lummi Nation.

7) A FACILITY OF STRENGTH

The Cherry Point dock and marine terminal would introduce 21st Century state-of-the-art technology and marine practices serving as a model and standard of excellence for all like facilities to meet. Because of this, the project demonstrates the human capacity to achieve new levels of engineering and operational greatness, fostering unprecedented environmental protection, ecological harmony, and community collaboration.

8) STRONG FISHING INDUSTRY

The Cherry Point project will produce a world class operating environment in the Strait of Georgia essential for fostering the development of a strong fishing industry, through implementation of such efforts as an improved vessel traffic management, long term carrying capacity planning, new integrated oil spill and ship collision prevention and response integrated with Lummi fisheries, new regulations reducing the potential for gear loss, while providing fisherman relief, unprecedented marine species replenishment and management programs - including Herring protection and recovery, and collaborative maintenance of mandatory water quality standards.

9) STRONG NEIGHBORING COMMUNITY

For the first time in its history, the Lummi Nation would bring its leadership and vision as a coastal Nation of distinction and of vision, co-planing and co-developing land and waterways surrounding the Nation, providing stewardship to see the Cherry Point industrial complex evolve as a model community of low-impact and maximum symbiotic benefit to the Lummi Nation.

10) STRONG ASSETS

By exercising its Treaty Rights creatively and responsibly, the Cherry Point project allows the Nation to put a new, previously untested economic framework around its marine resources, allowing the Nation to realize the untapped potential of its assets: an asset previously not fully utilized, now becomes an asset that translates into a "Nation of strength."

8. The Risks

No significant undertaking that offers potential rewards is without some risk. Because it is impossible to eliminate all risk, progress toward our vision requires that we carefully assess and manage risk to limit or mitigate it wherever possible.

The Cherry Point proposal raises several kinds of risks:

1) RISKS OUT OF OUR CONTROL

No matter how many preventative and protective measures are installed, there is always the possibility of a ship collision resulting in substantial environmental damage. That risk already exists today, however, potential damage from an incident could be reduced considerably if improved response measures could be implemented through the PIT project.

2) RISK OF BROKEN CONTRACTS

No matter how many legal binding contracts or agreement are entered into by the parties, there is always the possibility that some part of a contract could be broken. Contracts would have rockbed provisions built into them limiting the Tribe's exposure and providing appropriate recourse and remedies to the damaged party if any one provision were broken.

3) IMPACTS OF GROWTH

No matter how carefully planned, a new shipping business will require many support activities. This will mean consequential growth and will result in more people, more homes, more cars and traffic, drawing on already scarce resources and permanently altering the size and density and sophistication of the regional community. An increase in growth could cost local governments more money and require from them more services and improved performance of public responsibilities. It could, however, also mean increased revenue for government resulting in an improvement to public services and amenities that do not currently exist.

4) POTENTIAL LOSSES

A) The PIT dock combined with any ships moored there, would take up a 35 acre parcel of combined Lummi/State/Federal waters. The 35 acres would not be used for fishing, but could be used for other reserved rights of commerce to the Lummi. While this results in the loss of 35 acres of real estate for fishing, there is no net loss of Lummi's 100 square miles of territorial seas or "usual and accustomed" grounds.

B) The location of the dock potentially represents culturally sensitive areas associated with Lummi territorial seas. This issue needs careful study, especially with regard to its historical significance, combined with the fact that the area will always be retained by Lummi no matter what happens to the project. Also, consideration must be given to the potential of the project to provide to Lummi significant cultural and historical land areas not currently under Lummi control or ownership, as well as new financial resources, to strengthen and expand its traditional cultural holdings.

9. Consequences of "NO"

Sometimes, the greatest risk comes not from any action, but from a failure to act. Human history offers many examples of people who perished because they were unable or unwilling to anticipate challenges and adapt to a changing world.

- 1) If we fail to aggressively exercise our treaty rights, such as not enabling the Project to go through our Tribal Permitting Process, efforts to weaken or destroy our rights may gain momentum at the National level.
- 2) If we fail to actively manage our natural resources to their full potential, by failing to secure control of our own destiny with those resources through binding contracts with pier owners, others may attempt to do so for us, eroding our ability to preserve and protect those resources.
- 3) If we fail to act now to lay the foundation for a strong economy, to exercise our right to receive on-going revenues from pier owners from investment and protection of our marine asset, to secure good jobs and better educational opportunities in the future, we may be dooming future generations to a life of poverty and despair.
- 4) If we cannot work in the spirit of partnership to resolve problems and find solutions and participate in entitled permit processes, our influence on crucial regional decisions may disappear, leaving us at the mercy of outside interests or governments and costing the Lummi possibly millions of dollars in legal fees to defend itself for not acting responsibly.

10. Separating Rumor From FACT

RUMOR FACT

1. *We are "selling away" our Treaty rights.*
Our Treaty rights are not for sale.

2. *We will destroy our fishing industry.*
Fishing has always been an important part of the Lummi way of life, and always will be. The project would offer significant protection for our fishing industry.

3. *We will destroy our environment.*
Not all environmental impacts are bad. Those that might be can be limited or mitigated.

4. *We will undermine our way of life.*
Our way of life is currently threatened by economic uncertainty. The project can help to secure our values for future generations.

5. *Only a few will benefit from the project.*
The project presents genuine opportunity for all, but no guarantee for any individual.

6. *New, better jobs are speculative at best.*
Our survival as a nation is speculative without economic strength. Binding contracts would guarantee some jobs and create opportunities to generate more.

7. *The deal has already been approved.*
There is no deal in place and any decision on one requires General Council approval.

8. *The Opinion of the people doesn't really matter.*
The informed opinion of the people is vital, but misinformed opinion based on rumor or fear, instead of fact, is harmful to the nation.

9. *The LIBC hid the project from the people.*
The LIBC has gathered facts and is presenting them to the people in a timely manner.

10. *We have sold out to big business.*
We are attempting to strengthen our power and influence in the broader community by seeking partnerships that give our nation a "seat at the table."

11. *It's happening too fast, all at once.*
The LIBC has been studying the proposal for approximately five years, in order to present accurate, meaningful facts to the people. If approved, the project would be implemented over the next two decades.

12. *We won't own the dock.*
We would share in benefits of owning the dock without exposure to risks.

13. *We're not protecting our cultural assets.*
The project must meet standards as set forth by the Lummi Cultural Resource Management Plan pertaining to off-Reservation projects

14. *The Train is coming and can't be stopped. We'll get rolled over.*

This rumor is about confidence in the Lummi Nation as a strong self-governing sovereign. Laws and the ability of a project to comply with standards that are set by law for a particular project, is what determines the fate of a project. If the PIT project does not comply with County or State law, we can no more wish the project to move forward than, the County or State can wish it to move forward if it violates Lummi law. That determination by Lummi is made at the federal level of permitting. In the case of PIT, federal law, which includes the Tribe, is the paramount authority, superseding the State and County.