

DRAFT MEMORANDUM OF UNDERSTANDING FOR ESTABLISHMENT OF A COORDINATED TRIBAL/COUNTY LUMMI RESERVATION PLANNING PROCESS

**between
THE LUMMI NATION AND WHATCOM COUNTY
March 6, 1991**

This memorandum of Understanding is made by and between the Lummi Nation, a federally-recognized Indian Tribe organized pursuant to the Treaty of Point Elliott (12 Stat. 927)(hereinafter "Nation") and Whatcom County, a political subdivision of the State of Washington (hereinafter "County"). The Nation and County (collectively referred to as "parties") hereby acknowledge and agree as follows:

INTRODUCTION

Following a series of meetings held between December, 1990 and March, 1991, the Nation and the County reached mutual understanding concerning a definable government-to- government relationship. A goal of this relationship is creation of a process that will, hopefully, result in a cooperative plan for the management of lands within the Lummi Indian Reservation.

MUTUAL POINTS OF UNDERSTANDING

1. The Intergovernmental Cooperation Act provides the means for Indian tribes and counties to enter into agreements; and
2. That the Nation and the County are implementing separate comprehensive landuse policy programs regulating land use activities on the Lummi Indian Reservation (Reservation); and
3. That the Nation has asserted regulatory jurisdiction for all land areas within the exterior boundaries of the Reservation, regardless of ownership type, and that the County has asserted partial regulatory jurisdiction for those lands held in fee title by nontribal members lying within the exterior boundaries of the Reservation and the parties recognize that the potential for conflict exists between County regulatory decisions and the regulatory decisions of the Nation; and

4. Neither party concedes that the other party's position on jurisdiction is correct, but both parties agree that, to the extent possible, jurisdictional conflicts should be minimized. That in order to alleviate the potential conflict which may result from the concurrent application of both regulatory programs within the exterior boundaries of the Reservation, the parties to this Memorandum of Understanding agree to initiate a coordinated land use planning process for land areas contained within the exterior boundaries of the Reservation; and

5. The parties agree that all persons affected by the pending process should be given notice of the various proposals under consideration and an opportunity to be heard before final planning and land-use decisions are made, regardless of the outcome of any jurisdictional disputes; and

6. Water is a key element in all planning for the Lummi Indian Reservation and that a hydrologic examination of water sources is a necessary prerequisite to planning for the future growth of the reservation; and

7. The land use planning decisions shall be compatible with water resource planning; and

8. Applications for building permits through the County requiring demands for water, either through a water system or individual well, shall be withdrawn from consideration until adoption of these plans or mutual agreement by both governments; and

9. Enrolled tribal members owning fee land will be exempt from section 8, and

10. That it is the interest of the residents of Whatcom County and the Reservation that a coordinated reservation planning process be established whereby the Nation and County cooperate and share resources in the promotion of planning within the Lummi reservation, and

11. That in order to implement a coordinated planning process, the parties recognize that voluntary cooperation and an attitude of good faith towards the joint planning process is a prerequisite for successful coordinated planning.

STRATEGIC ACTIVITIES FOR COORDINATED PLANNING

The parties further recognize and have identified the following strategic activities that must be completed in order to bring about such a coordinated regional planning process:

12. The Nation and the County do mutually recognize the benefits of

entering into a Memorandum of Understanding to establish a long term, government-to-government planning and regulatory relationship in order to jointly commence a process for the: update of the Nation's and County's Comprehensive Land Use Plans; to formulate a single synthesized Comprehensive Plan; and to investigate alternative methods for the administration of the resources plan and other landuse related regulatory codes for those land areas lying within the exterior boundaries of the Reservation;

13. The Nation and the County recognize the benefits of actively pursuing future joint planning studies addressing reservation concerns to both the County and the Nation, which may include water quality studies in Bellingham and Lummi Bays and other such studies;

14. The Nation and the County recognize that, for the purposes of initiating a coordinated comprehensive planning update process, that a Planning Advisory Team should be appointed, representing the Nation, Sewer District and County, for purposes of identifying updated requirements to both the County's Plan and the Nation's Plan in an effort to attain compatibility between plans;

15. In accordance with the September 16, 1982 intergovernmental agreement between the Lummi Nation and Whatcom County, both governments recognize that an operational and organizational strategy for jointly administering a land use policy will establish: 1) the jurisdictional claims to land use regulation by both parties, and 2) each government's concern expressed in paragraph 5. Said organizational strategy will outline a procedure for implementing the provisions of a comprehensive land use plan;

16. The parties mutually acknowledge that efforts to initiate a joint planning process for the purposes of updating the Nation and County Comprehensive Land Use Plan has commenced during the winter of 1990 and should be finalized by the fall of 1992.

PLANNING PROCESS

Pursuant to this Memorandum of Understanding, the Nation and the County acknowledge their commitment to pursue a. process leading towards the coordination of resource planning and regulatory activities on the Reservation, and have identified the following three major elements of a program to commence during the spring of 1991 as follows:

A. Commitment to Coordinated Planning

1. The Nation and the County will formulate an Planning Advisory Team (PAT) representing the Nation and the County, which shall

- oversee the development of a joint comprehensive planning process; and
2. The PAT shall initially hold scoping meetings to better understand issues important to the public; and
 3. The PAT shall participate in the drafting and review of the comprehensive plan documents and make their recommendations to the governments; and
 4. The PAT shall complete the assigned tasks and responsibilities previously mentioned within 18 months of their appointments. At that time, reappointment to the PAT may be initiated by the governments to evaluate the administration of the adopted plans and facilitate in the resolution of conflicts that arise during implementation.

B. Operational Procedures

1. In order to administer an updated comprehensive land use plan, and subsequent regulatory codes, the PAT shall outline procedures for joint administration;
2. The PAT shall serve as a representative board making recommendations to each government's Planning Commission regarding the adoption of the comprehensive land use plans;
3. The PAT shall facilitate the resolution of any disputes, if any, between the Nation and the County in the implementation of the plan and regulatory codes on the Reservation and make recommendations on such procedures to each government's governing bodies.

C. Additional Planning Considerations:

1. The PAT may pursue funding (including any current and future funds available through the Growth Management Act) for special planning of mutual interest to the governments and may oversee the conduct of such studies.
2. During the development and implementation of the comprehensive plans the County shall give deference to the Nation in matters regarding protection of areas of cultural and archaeological significance.
3. Linkages between land use planning and water resource planning generally outlined in the Chelan Agreement shall, when applicable to this process, be utilized.
4. The Nation and County shall share all information related to the formulation of this comprehensive reservation plan(s) but not proprietary information, or information gathered or formulated in anticipation of litigation with other parties.

TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall commence on the date that it is approved by both the Nation and County, and shall remain in effect for a period of twenty-four (24) months. Either party may terminate this Memorandum of Understanding provided written notification of such intent to terminate is transmitted to the other party within thirty (30) days of actual termination. It is anticipated by the parties that following the Term of this Agreement, a subsequent Agreement shall be drafted and approved whereby the parties will mutually agree on methods for coordinated administration and maintenance of a coordinated comprehensive plan.

JURISDICTION

Nothing in this agreement shall limit or waive the regulatory authority or jurisdiction of either party.

IN WITNESS WHEREOF, this Memorandum of Understanding serves to document an understanding between the Lummi Nation and Whatcom County with respect to establishing a coordinated regional land use planning process by and between the parties, and the parties hereto have executed this Memorandum of Understanding on the day and year of the last date of signature below:

PASSED by the Whatcom County Council

this _____ day of _____, 1991

Ms. Shirley VanZanten, County Executive

Approved as to Content: Daniel Taylor, Director of Planning

Approved as to Form: David S. McEachran, Prosecuting Attorney

PASSED by the Lummi Indian Business Council

this _____ day of _____, 1991

Henry M. Cagey, Chairman

Juanita Jefferson, Secretary

Approved as to Content: Clayton D. Finkbonner, Operations Manager

Approved as to Form: Harry L. Johnsen, Tribal Attorney

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