



Lummi Indian Business Council

2665 Kwina Road · Bellingham, Washington 98226 · (360) 312-2000

'Working together as one to Preserve, Promote and Protect our Sche Lang en'

June 29, 2018

Hearing Examiner
5280 Northwest Drive,
Bellingham, WA 98226-9097

WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES

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RE: Appeal of Determination of Nonsignificance (DNS) issued for SEP2018-00055, for the Ordinance amending Whatcom County Comprehensive Plan, Ch 8, Marine Resource Lands.

Dear Hearing Examiner:

This letter conveys to you our statements as specified on the SEPA Appeal Form PL4-83-005B.

We believe that the determination of Nonsignificance (DNS) is not correct

We strongly disagree with the contention that the ordinance will not have a significant effect(s) on Marine Resource Lands, and the natural resources there. The ordinance and its predecessors fail to recognize the obligations incumbent on the state and lesser governmental entities, including Whatcom County, to manage and regulate the actions under their jurisdiction such that tribal treaty-reserved resources and the rights to them are neither harmed nor diminished as a result of human activities or the effects thereof. Furthermore, considering the inseparable nature of the Salish Sea from our cultural identity as a people, we find that any ordinance or process that fails to timely engage us in an open and forthright manner to protect our resources and rights, in effect abets regulated activities that can, and historically have, damaged our resources and rights. The County's habit of announcing its intentions in no way meets our need and requirement for timely consultation and involvement in the planning of such an undertaking when actions promulgated in its wake absolutely could impact our culture and indeed the whole of our people in ways that could never be reasonably termed "Non-Significant".

We believe that the correct determination is a Determination of Significance

We believe that finding and determination acknowledges the potential of actions taken under the ordinance as having possibilities for harming Treaty-Reserved resources as well as the people of the Lummi Nation, whether directly or through deleterious effects to our Sche'lang'en (way of life) that is so dependent on the health and well-being of the Salish Sea and all that it naturally contains that it no less vital to us than the oxygen in the air we breathe.

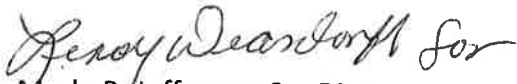
The decision (and ordinance) affects the Lummi Nation and its people by:

The DNS enables and empowers the continuance of a modus operandi through which there can be a continuing diminution of treaty rights and resources without a ready means of timely notification, preventative intervention, or redress absent a judicial proceeding.

I have enclosed a copy of our position paper for your use regarding activities and their regulation with regard to their relevance to the Salish Sea and the Lummi People. As you will note from the paper, we secured our rights in perpetuity via the Point Elliott Treaty of 1855 with the United States which, as with all treaties, is constitutionally-established as the Supreme Law of the Land. We strongly disagree with the implication in your ordinance that state laws in any way circumvent or supplant that law or eliminate the need to timely consult with us on a government-to-government basis. Where was the engagement when the proposed ordinance was crafted? Thus, it is with the foregoing in mind, that I must again renew my appeal of the issuance of a DNS by the County for the proposed ordinance.

We look forward to cooperating and collaborating with the County in its quest for developing an ordinance that recognizes the County's obligations to uphold the Supreme Laws of the Land, including the treaty-reserved rights of the Lummi Nation (and other Point Elliott Treaty Tribes), timely engages the Lummi Nation, and acknowledges the County's obligation and intention of protecting the all of the marine natural resources for the benefit of all now, and yet to come.

Sincerely,



Merle B. Jefferson, Sr., Director,
Lummi Natural Resources Department

Enc.

Cc: file

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The Cultural Significance and Management
of the
*Xwullemy*¹ (Salish Sea)
Cultural Significance of the Salish Sea

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- I. The Salish Sea, known in the Lummi language as *Xwullemy* has been the home of the Lummi and other tribes since time immemorial. It defines the identity of the Lummi Nation and sustains our existence. It is intimately associated with virtually all the events and patterns of events in history that have defined the Lummi Nation as a culture.
- II. The 1855 Treaty of Point Elliott, which like other treaties executed by tribal governments and the United States government, constitutes the supreme law of the land, guarantees to the people of the Lummi Nation the right to fish in their usual and accustomed places, which comprise the fresh and salt waters of the Salish Sea.
- III. The Lummi Nation holds that the Salish Sea is eligible for the National Register of Historic Places (NRHP), for listing as a National Historic Landmark, and for inclusion in the World Heritage List, for its association with the culture, traditions, and history of the Lummi people.
- IV. The fish, shellfish, marine mammals, avian life, plant life, water quality and air quality of the Salish Sea all are elements that contribute to its cultural significance, as do the traditions and traditional lifeways of the Lummi people.

Management of the Salish Sea and its Contributing Elements

- I. In their compliance with federal and state laws the Lummi Nation expects agencies of the federal, state, and local governments to consult in good faith (i.e., adhere to the principles of full, prior, and informed consent) with the Lummi Nation to avoid adverse effects on the tangible and intangible cultural properties of the Salish Sea, and to adopt such measures as are agreed upon to restore culturally significant aspects of the Salish Sea that have deteriorated or been adversely affected by human activities over the years. Until such time as there is meaningful consultation with the Lummi Nation and it formally agrees with the proposed measures, our position should be construed as opposed to the proposed activity. Any action contrary to this position would be in violation of our treaty, the Supreme Law of the Land.
- II. The Lummi Nation expects that such consultation will be carried out with full respect for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- III. While the Lummi Nation does and will cooperate with other tribes and governments to ensure the proper management of the Salish Sea and its contributing elements, no one but the Lummi Nation is authorized to speak for the Lummi Nation without the Lummi Nation's explicit agreement. We expect all agencies to adhere to the protocols of government-to-government relations.

¹ *Xwullemy* is the language term that historically referred to the glaciers that existed in our area and now refers to the glacial peaks and the waters left behind by the receded glaciers to become the sea and fresh water and includes other bioregion properties. Thus, *Xwlem'ich'osen* as a language-based term(s) for many if not all aspects of our bioregion. The *Xwullemy* or Salish Sea can be viewed as having both the practical side of our *Lhaqtemish* people but also have our spiritual and religious significance as yet the another side.