



# LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD · BELLINGHAM, WASHINGTON 98226 · (360)384-1489

DEPARTMENT \_\_\_\_\_

DIRECT NO. \_\_\_\_\_

July 30, 2010

Sam Crawford  
Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

## **Re: Lummi Nation Final Offer for Gooseberry Point Ferry Lease**

Dear Sam:

As you know, for over six months Whatcom County and the Lummi Nation have been negotiating the County's continued operation of the Lummi Island Ferry from Gooseberry Point on the Lummi Indian Reservation.

The purpose of this letter is to clarify that the offer presented by the Lummi Nation on May 10 and June 21 is the final offer for Whatcom County to consider for the purposes of continuing ferry service from Gooseberry Point to Lummi Island.

In the six-month period, the Lummi Nation has made repeated good faith offers of lease terms to the County. The offers made to the County have included actual contract language, draft contracts, and complete explanation of the terms. To date the County has not provided a single, clear and concise counter-offer or alternative to the Nation's proposal. The Nation recognizes that the County staff involved in the negotiations have indicated a desire to work with the Nation and reach agreement in the interest of the County residents on the Island, but the Nation has not been shown there is political support by the Whatcom County Council to continue providing ferry service from Gooseberry Point to the residents at Lummi Island. The final offer proffered by the Nation was made on May 10, 2010, that offer was affirmed at a meeting with you and your staff on June 21, 2010.

### **Background and Efforts to Reach Agreement**

I know that you are aware of the recent resolution by the United States Supreme Court of long running litigation regarding the ownership and control of the tidelands that surround the Lummi Indian Reservation.<sup>1</sup> I assume that the County Council has been educated that there is a clear ruling that reaffirms three previous federal court rulings dating back to 1919 that the tidelands surrounding the Lummi Nation are held in trust by the United States, for the benefit of the Lummi Nation. The tidelands and uplands at Gooseberry Point are important sites for the Nation and the compensation for use that has been proposed in the negotiations is fair and reasonable.

<sup>1</sup> United States v. Milner, 583 F.3d 1174 (9<sup>th</sup> Cir. 2009), *sub nom.* Mary D. Sharp v. United States, *cert. denied*, No., 09-820 (2010).

The Lummi Nation's interest in the ferry operation from Gooseberry Point is to ensure that the use of tribal uplands and tidelands is accurately accounted, and the impacts of the ferry operations and associated traffic on the Lummi community are adequately compensated. Aside from the general concerns that all landowners have about their property being used by others, the Nation would like to be good neighbors to the residents on Lummi Island. Yet, we will not expend any additional staff time working on this effort if we are dealing with an unwilling County Council. The interim agreement reached in February 2010 is not a final resolution of outstanding issues related to the impact of the Ferry and its traffic in the Lummi Community, and is not one that the Nation will present to the United States for approval.

The Lummi Nation has dedicated considerable hours of staff time from our Council, Natural Resources Commission, Planning Department, Natural Resources Department, and Office of the Reservation Attorney. The Lummi Nation has offered several legitimate, good faith and clearly articulated offers to Whatcom County regarding continued ferry operation from Gooseberry Point but it now seems like this process has devolved into a process where meetings take place for the sake of meetings.

At this point, the Nation has determined that further negotiations will not be fruitful because the County is not offering any alternatives to what is offered by the Nation. Again, after six months of effort and no present signs of intent to commit from the County, the Nation cannot and will not continue to commit staff time to this effort.

#### **Essential Terms of the Offer Made by the Lummi Nation**

Over the past several months, the Nation has proposed an agreement consisting of these three parts: (1) Intergovernmental Framework Agreement between the Lummi Nation and Whatcom County, (2) Tidelands Lease Agreement for Lummi Island Ferry Service, and (3) Uplands Lease Agreement for Lummi Island Ferry Service. Based upon current Ferry ridership, the proposed agreement would result in an increase of between \$2.00 and \$2.50 per person who rides the Ferry.

The three agreements create an overall proposed contract with some of the following as essential terms:

- 35 year lease term
- \$200,000 annually for lease of the tidelands
- \$110,000 annually for lease of the uplands, subject to reduction based on payment to a safety escrow account for mutually agreed-upon projects in the Ferry Area
  - Credit of safety funds will offset the \$110,000 annual payment at the rate of fifty cents per dollar spent by the County
  - Credits may be used to offset the \$110,000 throughout the lease term and may be carried forward to offset future years
- Certainty at existing ferry location for the County in the event the Nation develops a marina at Gooseberry Point
  - The Nation proposes developing and designing a marina to accommodate the Ferry and ferry passenger traffic
  - The County would be required to pay \$4 million at the time the Nation begins the permitting process with the United States Army Corps of Engineers

- All payments are linked to the Consumer Price Index and the consideration for the lease will increase annually using a five-year annual average growth formula for the preceding five-year period.
- Upon execution by the Nation and the County, the Nation promises to present the lease for approval by the United States Department of the Interior.

**Next steps**

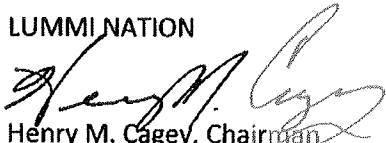
Through its governing body, the Lummi Indian Business Council, the Lummi Nation reaffirms the offer presented in May and June as the final offer by the Lummi Nation for continued Ferry service from Gooseberry Point. However, in a final effort to reach a resolution favorable to the Island residents, members of the Lummi Indian Business Council offer the opportunity for Whatcom County Council members to meet. This invitation for meetings is open until August 23, 2010, and the meetings can be set up by contacting my assistant Bobbie Tally by calling 384-1489.

If you and the Whatcom County Council are not amenable to a final attempt to reach resolution of the Ferry service from Gooseberry Point, the Nation requests a written proposal by September 1, 2010, outlining the process Whatcom County will use to wrap up the Ferry service from Gooseberry Point with all Ferry service completed from the Lummi Indian Reservation by October 15, 2010.

The Lummi Nation would like to protect our property rights and our Treaty fishing rights in a manner that ensures the safety of Reservation residents and the continued safety of the Island residents who will face a very difficult commute if an agreement between the Lummi Nation and Whatcom County cannot be achieved. After six months of good faith efforts on the part of the Lummi Nation and Whatcom County staff it will be unfortunate if an agreement for continued ferry service from Gooseberry Point cannot be reached.

Sincerely,

LUMMI NATION

  
Henry M. Cagey, Chairman  
Lummi Indian Business Council

Enclosures

Cc: Lummi Island Community Association c/o Terry Terry  
United States Department of the Interior, Regional Director