



LUMMI INDIAN BUSINESS

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DEPARTMENT: _____

EXT. _____



298SG00747 (G)

March 22, 1989

Raynette Finkbonner
2616 Kwina Road
Bellingham, WA 98226

RE: Constitution Committee 1988 Revision

Dear Raynette:

Attached is a copy of the September 1988 revision of the Tribal Constitution proposed by the Constitution Committee. There are two sets of notes in the margins. One set was on the document when I received it; the other set was placed there in the course of my review. I do not intend for this memo to be a detailed review of the proposed revision. Rather, I am going to attempt to hit some of the highlights and indicate some of the problems I see with it. The document is some 28 pages long.

Article I - Territory. This Article attempts to expand upon the current language but does not take into account off reservation jurisdiction in domestic relations and child welfare areas. I am also concerned about the last clause which indicates that Treaty hunting, fishing and gathering rights "shall not be abridged or restricted in any manner." Presumably that could apply to Tribal restriction as well as restriction by the State and Federal government. If the intention is to preclude Tribal regulation of hunting, fishing and gathering rights, that clause should be deleted, in my opinion. If the purpose is to minimize the effective State or Federal regulation to maximize Tribal power, the clause should be rewritten.

Article II - Membership. This section retains BIA approval over membership ordinances and seems to add new categories of members who don't have full tribal rights. I'm not sure what the motivation behind this is. It seems to add a layer of complication that we may not need.

More fundamentally, Section (1) changes the existing enrollment provisions. It does not address what I consider to be the major problem: the necessity for continuous enrollment throughout the generations. You will recall that the present Constitution requires a prospective member to be the child of a current member rather than merely descending from members of Tribe. I don't think the revision addresses that problem.

Article III - General Council. This article generally contemplates an increased role of the General Council in tribal government but does not clearly indicate what that role is. Subsection (c), Powers of the General Council, talks in general terms about certain aspects of the powers.

LARRY G. KINLEY
Chairman

GERALD I. JAMES
Vice Chairman

SAMUEL M. CAGEY
Secretary

RONALD F. FINKBONNER
Treasurer

CLARENCE BOB
Councilman

DAVID H. JEFFERSON
Councilman

ERNEST J. JEFFERSON
Councilman

MERLE B. JEFFERSON
Councilman

WILLIAM E. JONES
Councilman

RANDY J. KINLEY
Councilman

VERNON A. LANE
Councilman

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Paragraphs 5 and 6 refer to reserved powers and the creation of a tribal judiciary by the General Council, not by the tribal council. Also, the reference to Article VII in the sentence referring to the tribal judiciary seems to be misplaced because Article VII deals with referenda and initiatives rather than with the judiciary itself. Article XII deals with judiciary.

The reference to reserved-powers poses a fundamental question for constitutional revision. As indicated in my earlier memorandum, there are two basic types of constitutional organizations. Under one form, the government exercises all the inherent power of a sovereign except as expressly limited by the constitution. The second type exercises only those powers expressly granted and reserves all other power to the electorate. The 1988 draft falls in the second category. I question whether that is in the best interest of the Tribe, but that is a decision the Tribe will have to make.

Article IV - Governing Body. This Article reduces the size of the council from 11 to 7 and limits the number of terms to four three year terms. I am not personally convinced these are needed changes but that is not my decision. The article also makes some detail changes but nothing particularly revolutionary.

Article V - Vacancy, Removal and Recall. These are all areas that are properly addressed by a constitution. I have some questions about the mechanisms chosen and whether they would actually be workable.

Article VI - Powers and Responsibility of the Business Council. This is really the heart of the Constitution. It contemplates a limited form of government in which the general council holds all tribal powers and delegates them to the business council. On the other hand, grants of authority to the business council in the constitution itself are quite broad. For example, the first listed power is "To uphold the Treaty of Point Elliot of 1855." This appears to be an extremely broad grant. Very few things the Tribal Council does could not be justified under such a provision.

On the other hand, number 2, which refers to a tribal management plan approved by the general council, is quite vague. The general council is given the power to approve such a plan, but it is unclear on what the process would cover. Is it merely the administration of tribal programs or tribal offices, or is it the entire exercise of jurisdiction by the Tribe?

In this memo I will not make specific comments on several of the enumerated powers, but I would like to focus on number 13 which refers to the establishment of an independent tribal judiciary. If the intention is to actually create an independent judiciary it would probably be preferable to accomplish that in the constitution rather than giving the tribal council the authority to do it. (see Article XII) The tribal council can abolish what the tribal council can create. Whether it is a good idea to have an independent judiciary is something that should be thoroughly debated.

Subparagraph 19 allows LIBC to take "such other actions consistent with the Lummi constitution as may be necessary for the governance of the Lummi Tribe." This is comparable to the "necessary and proper" clause of the U.S. constitution, which has been interpreted very broadly. If there really is an intention to limit LIBC powers, this subsection should be rewritten to refer to "powers necessary to carry out other powers delegated to the LIBC." Otherwise, this clause could effectively eliminate most restrictions of LIBC authority.

Subsection (c) "reserved powers" also contemplates the existence of law making authority in the general council that does not seem to presently exist. If the General Council is to pass ordinances, the mechanism should be spelled out, at least in general. The "veto" mechanism also must be addressed.

Article VII - Referendum and Initiative. There is nothing particularly unusual about Article VII, although some detail work would need to be done on it if referendum and initiative provisions are to be included in the final version.

Article VIII. The Bill of Rights section is essentially the federal civil rights statute. It exists and binds the Tribe whether it is included in the constitution or not. However, the tribal courts might construe the tribal provisions more strictly than the federal courts and thereby impose greater responsibility on the tribe than the federal court would. That can be seen as an advantage or a disadvantage, depending on your point of view. If the tribal courts were less restrictive than the federal courts, the tribe would still be bound by the federal interpretation.

Article IX creates a new entity or group of people called the "keepers of the Lummi traditions and customs." It sounds like a good idea, although I'm not exactly sure what role it would play in relation to the LIBC and General Council.

Article X is basically a by-law provision setting out the duties of the officers of the business council. One major change is the provision for a federal audit in the section referring to the treasurer. Does the Tribe really want to give authority to the federal government in its constitution?

Article XI deals with the nuts and bolts of the conducting meetings. Generally these provisions are not included in a constitution but I suppose if people want to include them they could be.

The section also changes the date of the annual elections and moves them closer to fishing season. I question whether that is a good idea.

The quorum for the general council is also set at 20 eligible voters which seems low given the increased powers of the general council under the proposed revision.

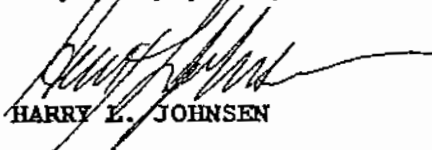
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Article XII creates an independent tribal judiciary and specifically gives it the right to interpret the constitution and declare actions of the tribal council unconstitutional. It is not clear what relief could be granted in such a case and that should be addressed. There are important questions of sovereign immunity that are not directly addressed. The exclusion of jurisdiction provision should not be included, in my opinion. I also question whether the qualifications for the tribal judge provision should be included in the constitution. If so, I think they should be much less specific than those presently proposed. They should deal with more general requirements of good judgment, knowledge of tribal law and customs and so forth, rather than referring to having a twelfth grade education and minimum reading skills.

The remainder of the Constitution raises questions about BIA control over tribal life. My preference would be to remove those provisions but those are choices that the Tribe can make in the process of evaluating the Constitution.

It is not necessary to a constitution but it is important to remember that this document will be a chance to make a lasting public statement about tribal life. A purpose statement that emphasizes the matters which the tribe considers fundamental can be a powerful tool in reinforcing community standards. For example, you could emphasize family, tribal independence, cultural identity and so forth. This sounds like motherhood and apple pie, but it really can set a tone both for internal tribal politics and for dealing with the outside world. Thus, even if a preamble has no binding effect, it is an important aspect of any organic document.

Very truly yours,



HARRY L. JOHNSON

HLJ/kk
Encl.

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ARTICLE I: TERRITORY

Preamble?
What about
off reservation
children?
The jurisdiction of the Lummi Tribe shall extend to the territorial boundaries of the Lummi Reservation, including all lands defined as Indian Country therein, whether held in trust or not, as established by the Treaty of January 22, 1855 (12 Stat. 927) and by the Executive Order of November 11, 1873, and including waterways, rights-of-way, tidelands, and air space; and, to such other lands as may be hereafter added thereto and to the usual and accustomed places for members to exercise their treaty hunting, fishing, and gathering rights which shall not be abridged or restricted in any manner. By whom? The Tribe?

ARTICLE II: MEMBERSHIPSection A:

The membership of the Lummi Tribe shall consist of the following:

1. All persons of Indian blood whose names appear on the official base roll of the Tribe as of January 1, 1942, and the succeeding generations of their natural children who possess one-quarter (1/4) degree or more Indian blood provided that such persons are not enrolled with any other tribe. The enrollment of all persons already duly enrolled on the official Lummi Tribal Roll shall not be ^{wholly} affected by this Constitution.

1 2. In order to exercise treaty rights such persons must possess
2 one-quarter (1/4) degree Indian blood from a Pt. Elliott Treaty
33 Tribe.

4 3. Only those members of Article II, Section A(1) shall be eligible
5 to share in any and all judgments negotiated by or awarded to
6 the Lummi Tribe.

7 Section B:

8 1. The Lummi Tribe's Business Council shall have the power to
9 enact ordinances subject to the approval of the Assistant
10 Secretary of the Interior - Indian Affairs, governing future
11 membership, abandonment of membership, loss of membership,
12 and the correction of membership rolls subsequent
13 to the roll of January 1, 1942.

14 ARTICLE III: GENERAL COUNCIL

15 Section A:

16 The General Council shall consist of all enrolled members of
17 the Lummi Tribe. The General Council can be convened officially for tribal
18 business, as provided in this section.

19 The annual General Council meeting shall be called by the
20 Chairman of the Business Council the first week of September and special

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Why

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1 meetings of the General Council shall be called by majority vote of the
2 Business Council or upon the request to the Business Council, in writing,
3 of twenty or more qualified voting members of the tribal membership.
4 Public Notices of the annual General Council meeting and all special
5 General Council meetings shall be posted at the Tribal Business Center and
6 other places frequented by Lummi tribal members and through the media at
7 least ten (10) calendar days prior to such meetings. In addition, notices
8 for special meetings of the General Council shall state the purposes of
9 the special meeting. ^{limited to those purposes?} It shall also be the duty of the Chairman to make a
10 report at the annual General Council meeting of the activities of the Business
11 Council throughout the past year and to outline proposed plans for future
12 economic and social betterment of the Lummi Tribe as well as on other
13 matters of interest and importance to the tribal members.

14 Section B: Voter Qualification

- 15 *Elections?* 1. Any member of the Tribe eighteen years of age or over who has
16 maintained legal residence on the Lummi Reservation or within the
17 boundaries of Whatcom County, Washington, for at least six (6)
18 months immediately preceding any election, shall be qualified to
19 vote on all matters to be voted upon at the General Council meetings.

1 The residence requirements of this section shall not apply to
2 voters in elections on Constitutional amendments.

- 3 2. All those Lummi Tribal Members eighteen (18) years old and older
4 shall register to vote in special elections that are administered
5 by the Assistant Secretary of the Interior - Indian Affairs.

6 Section C: Powers of the General Council

7 The powers of the General Council shall consist of but need not be
8 limited to the following:

- 9 1. Review the reports, plans, and decisions of the Business Council at
10 the annual meeting and special meetings of the General Council,
11 and take action thereon as required. *by whom*
12 2. Make recommendations by resolution to the Business Council and
13 require Business Council reports on actions taken on recommendations
14 set forth in this resolution within specified timeframe.
15 3. (Annually) Elect an Election Board to canvass the votes and
16 certify elections to the Business Council. Create an Election
17 Board to serve the community on all elections throughout the year.
18 4. Vote upon the Recall of members of the Business Council, as
19 provided in Article V, Section C, and vote on all Referendums,

1 and Initiatives as provided in Article VII of this Constitution.

2 5. Take any action necessary under the Reserved Powers contained in

3 Article VI, Section C of this Constitution.

4 6. To create an independent tribal judiciary as provided in

5 Article VII of this Constitution.

6 ARTICLE IV: GOVERNING BODY

7 Section A: Name and Membership

8 The governing body of the Lummi Tribe shall be a Business Council

9 consisting of seven (7) members who are enrolled members of the Lummi

10 Tribe elected by the qualified voters of the Tribe to represent the Lummi

11 People. A Chairman, Vice-Chairman, Secretary, and Treasurer are to be elected

12 from within the Business Council. A minimum of five (5) members must have

13 lived on the reservation for at least one (1) year immediately preceding

14 the election.

15 Section B: Qualification

16 Any eligible voter shall be qualified to serve as a member of the

17 Lummi business Council provided that the potential candidate has not been

18 found guilty of a felony or a misdemeanor involving dishonesty within the

19 past year preceding the election by any tribal, state, or federal court;

1 PROVIDED FURTHER, that the potential candidate has been living within the
2 boundaries of the Lummi Reservation or Whatcom County, for at least one (1)
3 year immediately preceding any election; and, PROVIDED FURTHER, that a
4 minimum of five (5) members must be elected from those candidates who have
5 lived on the reservation for at least one (1) year immediately preceding
6 the election.

7 In addition, any potential candidate when announcing as a candidate
8 must have available in writing a statement certifying his residency and
9 must certify that he is aware and familiar with the Treaty of Point Elliott
10 of January 22, 1855, the Constitution of the Lummi Tribe, Lummi traditions
11 and customs, is knowledgeable about the hunting and fishing rights of the
12 Lummi Tribe, the extent and nature of the Lummi Reservation, and the
13 economic and social conditions of the Lummi Tribal membership.

14 Section C: Election of Business Council Members

15 At the first annual General Council meeting following the approval
16 of this Constitution by the Assistant Secretary of the Interior - Indian
17 Affairs, two (2) members shall be elected for a term of three (3) years;
18 three (3) members of the Business Council shall be elected for a term of
19 two (2) years; and, two (2) members shall be elected for a term of one (1)

1 year. Thereafter, Business Council members shall be elected for a term of
2 three (3) years each and may not be re-elected for more than four full
3 three-year terms.

4 Section E: Present Business Council

5 The present members of the Business Council shall remain in office
6 until their successors are qualified, elected, and installed.

7 Section F: Installation of Officers

8 All elected members to the Lummi Business Council shall be duly
9 certified and be installed in an appropriate judicial ceremony at the next
10 regular meeting of the Business Council following the election certification.
11 Each officer and member shall take an Oath of Office administered by the
12 Lummi Tribal Court Judge at a ceremony to which various county, state,
13 federal, and tribal dignitaries have been invited prior to assuming the
14 duties of office.

15 Section G: Oath of Office

16 Oath of Office: "I, _____, do solemnly swear
17 that I will uphold and defend the Constitution of the Lummi Tribe and
18 its Treaty; that I will carry out faithfully and impartially the duties of
19 office to the best of my ability; including timely and faithful attendance

1 to all council meetings; that I will represent, promote, and protect the
2 best interests of the Lummi Tribe, its Treaty, its membership, and
3 abide by the Code of Ethics of the Lummi Tribe."

4 *and*
ARTICLE V: VACANCY, REMOVAL, AND RECALL

5 Section A: Vacancy

6 If any member of the Business Council shall die, resign, or
7 *miss meeting* *move?* live outside the boundaries of the Lummi Reservation or Whatcom County,
8 which ever shall be applicable, or shall be found guilty of a felony, or
9 misdemeanor that involves dishonesty by any Indian, State, or Federal
10 Court, a Vacancy of that office shall be created automatically. Thereafter,
11 at its next regular or special meeting, the Business Council shall appoint
12 a person qualified under Article IV to fill the office until the next
13 annual or special General Council Meeting which ever shall come first, at
14 which time a successor shall be elected pursuant to Article IV to fill the
15 office for the balance of the unexpired term, if more than three (3) months;
16 PROVIDED FURTHER, that vacancies filled by appointment or election shall
17 not affect the number of council members required to live on the reservation
18 pursuant to Article IV, Section A.

19 If a Business Council member changes his residence from the reservation

1 to elsewhere within Whatcom County during his term of office, and
2 if such move results in less than the number of Business Council members
3 required to live on the reservation by Article IV, Section A, that council
4 member's position shall automatically be declared vacant and shall be filled
5 by a qualified resident of the Lummi Reservation pursuant to this Section,
6 unless the term of office expires within three (3) months.

7 Section B: Removal

8 The Business Council shall by majority vote, initiate the Removal
9 of any officer or Business Council member, or appointed tribal official
10 for violation of Code of Ethics enacted by the General Council (date)
11 provided that he shall be given a written notice of the charges against
12 him at least ten (10) calendar days prior to the meeting of the Business
13 Council, at which a quorum is present, to consider the charges against
14 him at which time he/she shall be given an opportunity to answer any and
15 all charges. After the hearing, an affirmative vote of four votes are
16 required to effect the Removal and declare the position Vacant. The
17 decision of the Lummi Business Council shall be final. (Any elected officer,
18 Business Council member, or appointed tribal official removed pursuant to
19 this Section shall not be eligible to hold membership of any office of the

1 Lummi Tribe for a period of six (6) years following Removal.

2 Section C: Recall

3 Upon receipt of a Petition calling for the Recall of any officer
4 or Business Council member signed at least twenty-five percent (25%) of
5 those voting in the last regular General Council meeting, the Business Council
6 shall call a special meeting of the General Council to vote on the Recall
7 Petition. The Business Council shall be required to call an election
8 within three weeks upon a receipt of a valid petition or face the charges
9 of Neglect of Duty after a two-thirds (2/3rds) majority vote of the eligible
10 voters attending the meeting, at which a quorum is present, shall be
11 required to effect Recall.

12 The decision of the General Council shall be final. If the Recall
13 Petition shall fail, then no Petition may be filed against the same officer
14 or member of the Business Council for at least six (6) months.

Section D: Filling Vacancy

Any vacancy shall be filled pursuant to Section A above if: (1) A
Business Council member changes his residence from the reservation to
elsewhere within Whatcom County during his term of office and if such
move results in less than the number of Business Council members required

1 to live on the Lummi Reservation by Article IV, Section A, whose position
2 shall automatically become vacant; (2) If the Business Council member is
3 Removed by action of the Business Council pursuant to Article V, Section C,
4 if the officer or member is Removed by Recall by the General Council pursuant
5 to said Section C. However, no vacancy needs be filled if the term of the
6 office ends within three (3) months.

7 ARTICLE VI: POWERS AND RESPONSIBILITIES OF THE BUSINESS COUNCIL

8 Section A: Delegated Powers

9 The Lummi Business Council shall exercise the following powers, and
10 may be delegated further powers delegated by the General Council subject
11 to any limitations imposed by the Constitution of the Lummi Tribe and/or
12 provisions of the Federal Law:

13 1. To uphold the Treaty of Pt. Elliott of 1855.

14 2. To manage a tribal management plan approved by the General Council
15 and to enact ordinances where required to implement the approved
16 plan.

17 3. To borrow money from the Federal Government, or other sources,
18 and direct that such funds be used only for beneficial, productive
19 purposes of the Lummi Tribe.

- 1 4. To collect and receipt for any funds received by the Lummi Tribe,
2 to expend any Lummi tribal funds within the exclusive control of
3 the Tribe and to expend any other tribal funds as may be
4 authorized pursuant to an annual tribal budget approved by the
5 Business Council subject to the concurrence of the Lummi General
6 Council. *How is that expressed?*
- 7 5. To purchase or otherwise ^{as} require in trust or in fee, or lease, in
8 the name of the Lummi Tribe any land or other property the Business
9 Council may deem beneficial to the Lummi Tribe.
- 10 6. To ^{enact} enforce regulations contained in or authorized by approved
11 Council resolutions, codes, and ordinances for the protection of
12 tribal property, tribal customs, and traditions, fish and wildlife,
13 and all other natural resources within the Lummi Tribe's jurisdiction.
- 14 7. a. To license and levy assessments or license fees on non-members
15 doing business or obtaining special privileges within the
16 reservation..
- 17 b. To promulgate rules and regulations governing ^{all persons} (tribal members)
18 exercising special privileges or profiting from tribal resources
19 or property and to require the payment of assessments or license fees.

- 1 8. To negotiate with the federal, state, and local governments on
2 behalf of the Lummi Tribe.
- 3 9. To employ legal counsel, the choice of counsel, and fixing of
4 fees to be subject to the approval of the Assistant Secretary of
5 the Interior - Indian Affairs as long as required by federal law.
- 6 10. To prevent the sale of tribal lands by any ^{off person?} agency or official of
7 the federal government or interests in tribal lands without consent
8 of the General Council.
- 9 11. To develop a plan for the settlement of heirship lands. *But not to*
10 *implement it?*
- 11 12. To exclude from the territory of the Lummi Tribe persons not legally
12 *Also to determine who is legally entitled?* entitled to be present therein by Ordinances setting forth appropriate
13 procedures for such exclusion.
- 14 13. To promulgate and enforce tribal ordinances governing the conduct of
15 members and non-members within the boundaries of the Lummi Reservation
16 to the extent permitted by law and providing for the maintenance
17 of law and order and the administration of justice by establishing
18 an independent tribal judiciary. *Why not do it by constitution*
- 19 14. To safeguard and promote the peace, safety, and general welfare
of the people upon the Lummi Reservation by regulating the conduct

of trade and the use and disposition of property upon the reservation.

15. To adopt procedures of the Business Council, subordinate tribal organizations, and tribal officials over whom it has jurisdiction.

16. To promote public health and education for the benefit of tribal members, encourage Indian handicrafts and cottage-type products, assist the needy, and the conservation and utilization of natural resources pursuant to a management plan approved by the Business Council and to provide such other services which may contribute to the overall advancement of the Lummi Tribe.

17. To delegate to subordinate Boards, committees, or to cooperative associations to which all members of the Lummi Tribe are eligible any of the foregoing powers reserving the right to review any action taken by virtue of such delegated powers, provided that any action taken by the Business Council resulting from such Review shall be final. *No judicial review?*

18. To develop a Tribal Administrative Plan including personnel management, budget and finance, procurement, property control and accountability and such other administrative systems necessary for the proper management of the affairs of the Lummi Tribe.

this the end of limited powers.

19. To take such other actions consistent with the Lummi Constitution
as may be necessary for the governance of the Lummi Tribe.

Section B: Future Powers

The Lummi Business Council may exercise such future powers as may be
delegated to the Business Council by the General Council or to the Lummi
Tribe by Federal, State and local laws or by Rules and Regulations of the
Assistant Secretary of the Interior - Indian Affairs.

Section C: Reserved Powers

Any rights and powers heretofore vested in the Tribe but not expressly
referred to in this Constitution shall not be abridged by this Article, but
may be exercised by the people of the Lummi Tribe through the enactment
of appropriate ordinances, resolutions, initiatives, vetos, petitions
by the General Council or the adoption of appropriate Constitutional
amendments.

*How does
Gen. Council
do this*

ARTICLE VII: REFERENDUM AND INITIATIVES

Upon receipt of a valid Petition of at least twenty-five percent (25%)
of the voting membership of the Lummi Tribe, Article III, Section B-1, or
upon the request of the majority of the full membership of the Business
Council, the Chairman shall call a Special Meeting of the General Council

1 to be held within thirty (30) days of receipt of such Petition or Request,
2 to consider any enacted ordinances or resolutions of the Business Council
3 or proposed ordinances or resolutions of the General Council; and, the vote
4 of the majority of the voting membership attending the special meeting at
5 which a quorum is present will decide whether the enacted or proposed ordinances
6 or resolutions shall thereafter be in effect, provided that twenty-five percent
7 (25%) or more of the eligible voters shall vote in such referendum or
8 initiative. Public Notices of all special meetings shall be made in
9 accordance with Article III.

10 ARTICLE VIII: BILL OF RIGHTS

11 *Secretary of Family* All members of the Lummi Indian Tribe shall be accorded equal rights
12 pursuant to Tribal Law and the Civil Rights protections afforded by the
13 Indian Civil Rights Act of April 11, 1968 (82 Stat. 77 & 98). The Lummi
14 *We Version I* Tribe in exercising powers of self-government shall not:

- 15 1. Make or enforce any law prohibiting the free exercise of religion,
16 or abridging the freedom of speech, or of the press, or the right
17 of the people peaceably to assemble and to petition for a redress
18 of grievances.
19 2. Violate the right of the people to be secure in their persons,

1 houses, papers, and effects against unreasonable search and seizer,
2 for issue warrants, but upon probably cause, supported by oath or
3 affirmation, and particularly describing the place to be searched
4 and the person or thing to be seized.

- 5 3. Subject any person for the same offense to be twice put in jeopardy.
6 4. Compel any person in any criminal case to be witness against himself.
7 5. Take any private property for a public use without just compensation.
8 6. Deny to any person in a criminal proceeding the right to a speedy and
9 public trial, to be informed to the nature and cause of the accusation,
10 to be informed to the nature and cause of the accusation, to be
11 confronted with the witnesses against him, to have compulsory
12 process for obtaining witnesses in his favor, and at his own expense
13 to have the assistance of counsel for his defense.
14 7. Require excessive bail, impose excessive fines, inflict cruel and
15 unusual punishments, and in no event impose for conviction of any
16 one offense any penalty or punishment greater than imprisonment for
17 a term of six (6) months in jail or a fine of \$500, or both.
18 8. Deny to any person within its jurisdiction the equal protection of
19 its laws or deprive any person of liberty or property without due
20 process of law.

7 why
Federal law
now allows
more.

1 9. Pass any bill of attainder or ex post facto law; or

2 10. Deny to any person accused of an offense punishable by imprisonment
3 the right, upon request, to a trial by jury of not less than six
4 persons.

5 11. The privilege of the Writ of Habeas Corpus shall be available to
6 any person, in a court of the United States to test the legality of
7 his detention by order of an Indian Tribe.

8 ARTICLE IX: KEEPERS OF LUMMI TRADITIONS AND CUSTOMS

9 Section A: Appointment

10 There shall be appointed by the Chairman of the Business Council with
11 the consent of the General/Business Council a committee of three (3) tribal
12 members who shall be assigned to develop a list of candidates for Keepers
13 of the Lummi Traditions and Customs. The appointment of three (3) members
14 shall be made from this list of candidates who are recommended or who may
15 apply for this duty. Candidates who apply shall do so for by petition.

16 Section B: Duties

17 The Keepers of Lummi Traditions and Customs shall be knowledgeable
18 on the spiritualism and symbolism of traditional Lummi lifestyles and
19 shall be available, upon request, to advise and consult with the General

1 Council, the Business Council, Tribal Court or any tribal group, society or
2 individual members to describe and interpret the true meaning and significance
3 of Lummi traditional lifestyles.

4 ARTICLE X: THE BUSINESS COUNCIL

5 Section A: Chairman

6 The Chairman of the Business Council shall preside over all Business and
7 General Council meetings of the Lummi Tribe. The Tribal Chairman shall be
8 responsible for monitoring and carrying out the requirements of the Code of
9 Ethics. He shall be allowed to vote only in case of a tie. He shall exercise
10 any authority specifically delegated to him by the Business Council.

11 Section B: Vice-Chairman

12 The Vice Chairman of the Business Council shall assist the Chairman when
13 called upon to do so. In the absence of the Chairman, he shall preside,
14 and when so presiding, have all the rights, privileges, and duties, as well
15 as the responsibilities of the Chairman. He shall assist the Chairman by
16 receiving progress reports, final reports and monitor the activities of all
17 appointed officers and committees, and carry out other duties assigned by
18 the Chairman.

1 Section C: Secretary

2 The Secretary shall be responsible for the preparation of all tribal
3 correspondence and shall sign correspondence, notices, and other documents
4 when authorized to do so by the Chairman or the Lummi Business Council.
5 It shall be the duty of the Secretary to keep a complete and accurate record
6 of all matters transacted at Council meetings and to submit copies of Minutes
7 of all meetings of the Lummi Business Council and Lummi General Council to
8 the Western Washington Agency. The Secretary shall also perform other duties
9 as may be delegated by the Business Council. The Secretary shall monitor the
10 activities of the Public Relations Department and be responsible for making
11 appropriate reports to the General Council. **The Secretary shall supervise
12 the tribal recording secretary and assure that the recording secretary's
13 records and minutes are kept up to date.

GM having
Sec/Thurs?

14 Section D: Treasurer

15 The Treasurer shall have custody of and be responsible for all funds in
16 the custody of the Business Council. The treasurer shall deposit to the
17 credit of the Lummi Tribe all such funds in such federally insured banks
18 or elsewhere as directed by the Business Council and shall keep proper records
19 of such funds. The Treasurer shall report on all receipts and expenditures

1 and the amount and nature of all funds on hand at the General Council meeting
2 and upon request of the Business Council. The Treasurer shall not pay out
3 any funds except when authorized to do so by the Business Council pursuant
4 to a tribal budget approved by the General Council and all checks must be
5 signed by the Treasurer and counter-signed by (the Chairman) or such other
6 tribal officer as may be authorized to do so by the Business Council.

7 The books and records of the Treasurer shall be audited annually by
8 either a competent auditor or by a federal employee appointed by the Assistant
9 Secretary of the Interior - Indian Affairs or his authorized representative. *What?*

10 *Superintendent
CFO?* The Treasurer will be required to have a surety bond satisfactory to the
11 Business Council and the Superintendent of the Western Washington Agency.

12 The Treasurer shall perform such other duties as may be delegated by the
13 Chairman of the Lummi Business Council.

14 Section E: Appointive Officers and Committees

15 The duties of all appointive committees and officers appointed by the
16 Lummi business Council shall be clearly defined by Resolution of the Business
17 Council at the time of their creation or appointment; however, any committees
18 so appointed may submit their proposed duties to the Business Council through
19 the Vice-Chairman within thirty (30) days after appointment for action by the

1 Business Council. All committees shall be appointed for a specified time
2 but may be renewed if needed.

3 Such committees or officers shall report from time to time as required to the
4 Business Council through the Vice-Chairman and their activities and decisions
5 shall be subject to review by the Business Council at their discretion.

6 ARTICLE XI: TIME AND PLACE OF MEETINGS AND PROCEDURES

7 Section A: Regular Meetings

8 The regular meetings of the Business Council shall be held on the first
9 Tuesday of each month at the Tribal Business Center Council Chambers. The
10 date or location of regular meetings may be changed by Resolution of the
11 Business Council and Notice of such change shall be posted at the Tribal
12 Business Center, Health Clinic, Fisherman's Cove, and Baker's Store in
13 Marietta. Special Meetings may be called by written notice to all Business
14 Council persons, signed by the Chairman, or by a majority of the Business
15 Council, and when so called by Notice to all council persons, the Business
16 Council shall have power to transact business as in regular session. Atten-
17 dance at any meeting shall be considered as waiver of Notice.

18 Section B: Annual Election and General Council Meeting

19 The General Council Meeting shall be held during the first Saturday in

1 November of each year. At this caucus, Bsuiness Council candidates shall

2 announce their candidacy for office. Campaign speeches and/or debates

3 shall take place on the third Saturday of November at 7:00 p.m. at the

4 Neighborhood Facility. This annual election shall be held on the first

5 Saturday of December at _____ from _____ A.M.

6 to _____ P.M. and voting shall be by Secret Ballot limited to eligible

7 voters.

8 Section C: Quorum

9 No official tribal business shall be transacted unless a quorum is present.

10 A quorum of the Business Council shall consist of four (4) members of that

11 Council. A quorum of the General Council shall consist of twenty (20)

12 eligible voters; PROVIDED, however, that the lack of a quorum shall not be

13 cause for postponing the annual election of tribal officials.

14 Section D: Order of Business

15 The order of business for all meetings is that established in ROBERTS

16 RULES OF ORDER, REVISED EDITION: however, the order of business may be changed

17 at any regular or special meeting of the Business Council or General Council

18 by unanimous vote to suspend the rules.

ARTICLE XII: TRIBAL JUDICIARY

Section A:

There is hereby created an independent Tribal Judiciary, the Courts of which shall have general jurisdiction over all criminal offenses involving Indians and civil causes of action involving either Indians or non-Indians, or both, within the territory of the Lummi Tribe as described in Article I of this Constitution. It shall also have jurisdiction to determine if actions taken by the General Council, the Business Council and appointed tribal officials are in compliance with the Lummi Constitution and the Indian Civil Rights Act. *Declaratory Only or Compensatory, Injunctive, etc?* (Appropriate court procedures must be followed to invoke the jurisdiction of the Court.) This jurisdiction shall not extend over such person(s) or subject matter under the exclusive jurisdiction of federal or state courts.

Section B: Tribal Court

The tribal court shall consist of a chief judge and two associate judges. Any one of the judges may hold court as assigned by the chief judge.

Section C: Court of Appeals

The Court of Appeals shall consist of the two judges of the tribal court not involved at the trial court in the proceedings of any case on appeal.

1 The decision of the Court of Appeals shall be final.

Scope of Review

2 Section D: Election of Judges

3 Judges of the Tribal Court shall be elected by the General Council in
4 the same manner and on the same day as the Business Council for a term of
5 six (6) years and they may be elected to successive terms. Judges shall be
6 required to take training when authorized by the Business Council. Their
7 salaries shall be established on a daily or monthly basis by resolution of
8 the Business Council and the Business Council shall provide an annual budget
9 adequate for the operations of the Tribal Judiciary.

10 Section E: Qualification

11 No persons shall be elected to the office of Tribal Judge unless he is at
12 least thirty (30) years of age and not more than seventy (70) years of age
13 and must have a 12th grade education or equivalent in education and experience.
14 Tribal Judge candidates must be able to successfully pass a minimum reading
15 qualifications test. No persons shall be elected to the position of Tribal
16 Judge who has been convicted of a felony, or within one year of the election,
17 a misdemeanor involving moral turpitude.

18 Section F: Tribal Judge Position shall be Vacated

19 Any position of a Tribal Judge convicted of a felony or misdemeanor, which

1 reflects adversely on the Tribal Judiciary or who violates the Code of
2 Judicial Ethics during his term of office shall be immediately vacated.
3 A special election shall be called by the Chairman to fill the vacancy
4 created.

5 Section G: Removal of Judges

6 Judges of the Tribal Court may be removed under provisions of an
7 ordinance enacted by the Business Council setting forth the causes and due
8 process procedures for Removal. The ordinance of Removal shall be subject
9 to Approval by Referendum Vote of the General Council.

10 Section H: Duties and Procedures

11 The duties and procedures of the Courts of the Lummi Tribe shall be as
12 now prescribed or may be prescribed by appropriate ordinance of the Business
13 Council and included in the tribal Law and Order Code; however, all present
14 and future duties and procedures of the Courts of the Lummi Tribe must be in
15 compliance with this Constitution. The Court shall operate independently
16 free from and ~~undue~~ interference by officers and Business Committee members in
17 the procedures and duties of the Court is prohibited.

18 Section I: Code of Ethics

19 Any person elected to the office of Tribal Judge must subscribe to the

1 Code of Ethics approved by the national American Indian Court Judge's
2 Association upon being installed as Judge.

3 ARTICLE XIII - SAVINGS CLAUSE

4 All previous ordinances and resolutions duly enacted or approved by the
5 Lummi Business Council shall remain in effect to the extent they are not
6 inconsistent with the Constitution.

7 ARTICLE XIV - SEVERABILITY CLAUSE

8 If any part of this Constitution is held to be invalid or unconstitutional
9 by any Federal Court, the remainder of this document shall be in full force
10 and effect.

11 ARTICLE XV - AMENDMENTS

12 This Constitution may be amended by a two-thirds (2/3rds) vote of those
13 voting at an election authorized for that purpose by the Assistant Secretary
14 of the Interior - Indian Affairs, provided that at least thirty percent (30%)
15 of those entitled to vote shall vote in such an election. NO amendment
16 shall become effective until it shall have been approved by the Assistant
17 Secretary of the Interior - Indian Affairs.

18 It shall be the duty of the Assistant Secretary of the Interior - Indian
19 Affairs to authorize an election upon presentation of a request by a two-thirds