



LUMMI INDIAN BUSINESS COUNCIL

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

**ALL COUNCIL MEMBERS
WHATCOM COUNTY COUNCIL**

RE: Response to Proposed City of Blaine Ordinance “AMENDING WHATCOM COUNTY CODE 9.32, UNLAWFUL DISCHARGE OF FIREARMS, TO ESTABLISH A NO SHOOTING ZONE IN THE DRAYTON HARBOR AREA OF WHATCOM COUNTY”.

Dear Whatcom County,

The Lummi Indian Business Council (LIBC), lawful representative of the Lummi Nation, a federally recognized Native American Tribe, understands the City of Blaine intends to enforce a no-shooting zone in a marine area in and around Drayton Harbor. Our document review indicates their reliance on the County’s assistance, as well as the Revised Code of Washington (RCW), the Whatcom County Code, the resolutions of the City of Blaine, and statements made by the WDFW.

After investigation and consultation with representatives from various entities, the LIBC submits the following response.

Article 5 of the Point Elliott Treaty of 1855 recognizes the immemorial right of Lummi to take fish at all usual and accustomed grounds and stations. Although the continued recognition of usual and accustomed rights is fundamental, it is only material to this issue as an accepted recognition of Drayton Harbor as a Lummi usual and accustomed area.

The Lummi Nation (together with other Tribal Nations) and the United States were sole parties to the 1855 treaty; Washington state did not exist at that time. Furthermore, a treaty among nations is legislation agreed to and ratified by the United States Congress, and as such cannot be infringed upon by the actions or wishes of any state or subordinate entity. The Lummi Nation continues to uphold its secure and recognized sovereign rights in Drayton Harbor, and you are strongly advised not to infringe upon them.

The Drayton Harbor area lies in part within the territory of unincorporated county land and water. Blaine therefore cannot extend jurisdiction to the area and requests the actions of Whatcom County to achieve its goal. According to this theory, Blaine relies on state law which says, in part:

“The legislative authorities of the several counties shall: [m]ake and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law, and within the unincorporated area of the county may

adopt by reference Washington state statutes and recognized codes . . . and may adopt such codes and/or compilations or portions thereof, together with amendments thereto, or additions thereto.”

RCW 36.32.120 (7), Powers of Legislative Authorities.

Although a county may amend or add to existing statutes or codes to enforce police and sanitary regulations, they can neither enact nor enforce any regulation infringing upon sovereign rights and, in so doing, create superseding organic law. To do so would unravel the clearly understood and long upheld framework of the federalism inherent to the United States Constitution and the distinction between legislative and executive power.

Blaine also refers to state firearms law to support its theory that Whatcom County may restrict firearms discharge in its jurisdiction to avoid a reasonable likelihood of harm to humans, animals, or property. RCW 9.41.300 (2). The LIBC first questions the jurisdictional ability of Whatcom County to enact such a restriction for the reasons stated above, and secondly refers to state law which says, in part:

“The provisions of RCW 9.41.050 [carrying firearms] shall not apply to: [a]ny person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area.”

RCW 9.41.060 (8), Exception to Restrictions on Carrying Firearms.

Lummi fishing throughout Drayton Harbor is lawful according to Lummi, federal and state law and is further protected by valid licensure. Although this law does not address firearms discharge, it does indicate that exceptions apply to Lummi fishers and Tribal members.

Blaine has additionally claimed a Lummi restriction against Tribal members using firearms within 1,000 feet of an occupied house. Blaine does not cite any Lummi law or restriction to make this claim. The LIBC conducted its own research on this statement and discovered no reference in Lummi Code of Laws (LCL) Title 5, Criminal Offenses, or LCL Title 10, Natural Resources. At most, willful discharge of a firearm in a place where any person might be placed in danger may result in the unlawful discharge of a weapon. LCL 5.04.070.

Concerning the protection of human and animal life from dangerous firearms discharge, it is and has always been a priority of the Lummi Nation. That Blaine has chosen to frame its approach in terms of public safety is again concerning, especially given that WDFW has testified not to have received a single public safety call concerning firearms discharge in the Drayton Harbor area in nearly 25 years. The WDFW experience of this issue does not align with the public safety concerns relied on by the City of Blaine.

The LIBC is aware of this issue and invites further dialogue between our governments and the continued recognition of the right to Native self-determination. We await your response.

Sincerely,



Travis Brockie, Vice Chairman
Lummi Indian Business Council