



LUMMI NATION

Chronology of Events Lummi Island Ferry Terminal at Gooseberry Point

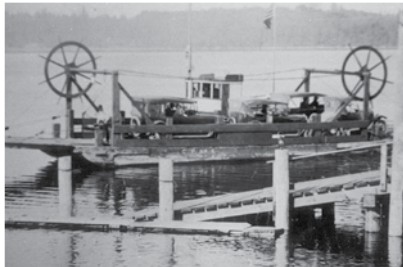
Time Immemorial: Ceremonial, subsistence and commercial harvest of finfish and shellfish and other commerce by the Lummi Indians from the Fraser River to the environs of Seattle—Gooseberry Point was the site of a major village.



1855: Under the Treaty of Point Elliot and an Executive Order dated November 22, 1873, the Lummi Nation reserves rights to the tidelands along the Reservation and the right to take fish at all usual and accustomed fishing grounds and stations.

1919: *United States v. Romaine*—The court determines that only the uplands were assigned and that the tidelands were reserved for the common use of the Lummi Nation and its members.

1921: First ferry operates from the Lummi Indian Reservation at Gooseberry Point to Lummi Island at the same location as the current ferry—a private entity known as the Lummi Island Ferry Company.



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1924: Whatcom County purchases the Lummi Island Ferry Company ferry slips on Lummi Island and Gooseberry Point.

1924 to 1962: No formal lease agreement between Whatcom County and the Lummi Nation concerning the use of Lummi Indian Reservation lands for the ferry.

1930: *United States v. Stotts*—The court determines that only the uplands were assigned and that the tidelands were reserved for the common use of the Lummi Nation and its members.

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1931: *United States v. Boynton* decides that “[T]he purpose when the allotments were made was to reserve for the common use of the tribe the land over which the tides flowed.”



1962: **Lease agreement between the Lummi Nation and Whatcom County** for annual payment of \$150 and free passenger service for Lummi tribal members and their vehicles—agreement renewed several times.

1974: *United States v. Washington*, commonly referred to as the “**Boldt decision**,” affirms the treaty secured right to take fish at all usual and accustomed grounds and stations, including an exclusive right on the reservation to take fish with a primary right to Hale’s Passage.



1988: **The Lummi Nation and Whatcom County enter into a lease agreement** dated to begin on February 14, 1985. The lease terms required an exchange of real property from the Lummi Nation and the County, an option to negotiate a second 25-year period, and that the *agreement would not be valid or binding unless approved by the Secretary of the U.S. Department of Interior*. Both Lummi and the county signed the agreement but it was *never signed by the Department of Interior*. The 25-year term of the agreement ended on February 14, 2010.

1998: **The Lummi Nation notifies Whatcom County Executive that the parties should start negotiating terms for a new agreement**, primarily because the 1988 lease agreement was not signed by the U.S. Department of Interior’s Bureau of Indian Affairs. County indicated that they would like to begin renegotiations of the lease during 2005.

2000: **The Lummi Nation cooperates with Whatcom County**, allowing the lease of tribal land for a parking lot at the ferry dock.

2002: The Lummi Nation obtains funding and installs streetlights on Haxton Way south of Smokehouse Road, to make conditions safer for everyone who uses it.

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December 16, 2002: *United States, Lummi Nation v. Keith E. Milner and Shirley A. Milner*—The court rules that the older cases confirming tribal ownership of the tidelands on the Lummi Reservation (*United States v. Romaine*; *United States v. Stotts*; *United States v. Boynton*) may not be re-litigated at this time and were correct decisions.



2003: Lummi Nation adopts a mission statement for the Lummi Island Ferry that includes the following requirements: **safety for everyone using Haxton Way, mitigate impacts to treaty fishing, develop Gooseberry Point area to its highest and best use, provide a safe harbor for tribal fishers, preserve good public relations with the greater community for economic development.**



2004: The Lummi Nation and Whatcom County jointly make application for federal dollars to build a multi-modal transportation facility, including ferry, bus, car, and bicycles, at Gooseberry Point. No funds were obtained.

2004 to 2009: Numerous meetings are held between the Lummi Nation and Whatcom County to discuss the future of the Lummi Island Ferry terminal at Gooseberry Point. At the Lummi Nation's suggestions, Whatcom County also completes several studies including a **traffic safety study** and a **ferry dock relocation feasibility study**. Joint efforts were also made to secure federal funding for a tribal marina at Gooseberry Point and a new ferry dock.

2005: Numerous efforts are made by the Lummi Nation, independently and jointly with Whatcom County, to obtain federal assistance in addressing the dangerous conditions on Haxton Way. Lummi Nation representatives meet with Senator Murray's staff and others from Washington's congressional delegation, but receive no assistance.

May 2009: Whatcom County proposes a 5-year extension of the 1985 agreement for \$2,716 per month (\$35,592 per year).

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October 9, 2009: *United States and Lummi Nation v. Milner*—The U.S. Ninth Circuit Court of Appeals upholds the federal district court rulings in the same case and affirmed tribal ownership of the Reservation tidelands.

December 2009: Lummi Nation proposes a 5-year term that includes payments as well as an emphasis on projects to increase community safety. The proposal included payments of \$605,000 for the first year and \$310,000 in the subsequent four years, plus completion of **two sidewalk projects, installation of two or more electronic speed advisory signs**, maintenance of sanitary facilities at ferry landing, and free passage for tribal members and employees.



February 2010: Interim agreement reached in recognition of on-going productive negotiations under which the County agreed it would pay Lummi monthly payments of \$16,677 (equivalent to \$200,000 per year). The U.S. Department of the Interior's Bureau of Indian Affairs did not sign this but verbally agreed to this temporary agreement.

2010: The Lummi Nation and Whatcom County jointly send a letter asking Senator Patty Murray and Senator Maria Cantwell to request federal funding to alleviate traffic dangers on Haxton Way and other reservation streets leading from the Lummi Island Ferry. But no funding is obtained.

2010: The Lummi Nation informs Senator Byron Dorgan's staff about dangerous conditions on Haxton Way.

May 10, 2010: The Lummi Nation and Whatcom County reach a tentative three-part agreement. Agreement is following nine meetings over a five-month period and pending approval by respective councils. Agreement is for a lease with a 35-year term. **Part 1** of the agreement is an inter-governmental framework agreement. **Part 2** is a tideland use agreement for \$200,000 per year plus adjustments based on the consumer price index (CPI). **Part 3** is an upland use agreement for \$110,000 per year plus adjustments based on the CPI but with the ability to "buy down" payments to \$0 by implementing **\$8 million in traffic safety projects**. Also included a \$4 million payment if marina project permitted and designed around the ferry terminal. Parties calculate that the agreement could be paid for by raising the current ferry rates by \$2.51 per person if the marina project is permitted, and by raising the rates by \$2.07 per person if no marina project is permitted.



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May 17, 2010: United States Supreme Court denies petition to rehear *United States and Lummi Nation v. Milner* and *Mary D. Sharp v. United States*, which ends the court proceeding regarding trespass on tribal tidelands.

July 30, 2010: The Lummi Nation restates the terms of the tentative agreement reached by the negotiation teams in May 2010 in a letter to the County Council.

August 12, 2010: Whatcom County Council states in a letter to the Lummi Nation that it rejects the terms of the May 2010 tentative agreement; offer \$200,000 per year for a 25-year term (no CPI adjustment) for the ferry terminal and for an area adequate for parking needs.

September 8, 2010: Negotiation teams for both parties agree to seek an outside mediator.

November 23, 2010: Whatcom County Council votes to increase the round trip fare for the Lummi Island Ferry by \$3.00 per person effective on January 23, 2011.

November 29, 2010: A 10-hour mediation session takes place, but no agreement is reached.

December 10, 2010: The Lummi Nation makes a new offer: 25-year term, \$200,000 per year with CPI adjustment, and \$10 million for safety projects during the first 8-years of the lease.

January 25, 2011: Whatcom County responds with “best and final offer” for a 25-year term agreement with an annual payment of \$200,000 per year with a CPI adjustment.

January 28, 2011: The Lummi Nation notifies Whatcom County that the county offer does not address traffic safety and notifies the county that any outstanding offers from the Lummi Nation are revoked.

February 10, 2011: The Lummi Nation sends letter to Whatcom County notifying county that it has 60-days to terminate ferry service from Gooseberry Point. The Lummi Nation also refuses monthly payment associated with interim agreement



April 10, 2011: End of 60-day period.