

TITLE 12
LUMMI NATION CODE OF LAWS
EXCLUSION CODE

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TITLE 12
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EXCLUSION CODE

Chapter 12.01 Purpose and Scope

12.01.010 Title

This Title shall be known as the Exclusion Code.

12.01.020 Authority

In the customs and traditions of the Lummi People, individuals who posed a threat to the community were sometimes banished and excluded from Lummi Territory. The Lummi Nation, as a Sovereign and a People, has an inherent right to govern its land and territory. This right was acknowledged in the 1855 Treaty of Point Elliot, particularly Article 2, which acknowledged the Nation's authority to exclude individuals from within its territorial boundaries.

In addition to the authority acknowledged in the 1855 Treaty, the Lummi Constitution entrusts to the Lummi Indian Business Council, as the governing body of the Lummi Nation, the duty and authority to safeguard and promote Lummi culture and identity, as well as the peace, safety, morals and general welfare of the Lummi People. This Title is necessary to protect the health, safety and wellbeing of the Lummi Nation and all persons within the Lummi Reservation or on lands held in trust for the Lummi Nation by the United States regardless of location.

Based on the foregoing, this Title shall be liberally construed in the spirit of, and pursuant to, Lummi custom and tradition, the 1855 Treaty of Point Elliot, and the Lummi Constitution.

12.01.030 Purpose

(a) The fundamental purposes of this Title are two-fold: the first is to protect the health, safety, and welfare of the Lummi Nation and

the Lummi Reservation and trust land Community; the second is to encourage wellness, by providing the excluded person with the motivation and means to seek treatment and rehabilitation so that his or her conduct may no longer be a threat to the health, safety, and welfare of the Lummi Nation.

(b) Nothing in Title 12 shall be interpreted to limit the authority of the LIBC to exercise its inherent sovereign right to banish an individual from the Lummi Reservation or trust lands.

12.01.040 Jurisdiction

(a) The provisions of this Title and all rules and regulations under it shall apply within the exterior boundaries of the Lummi Reservation and all lands held in trust for the Lummi Nation by the United States regardless of location.

(b) Any individual who, by clear and convincing evidence, threatens the health, safety or welfare of the Lummi Nation, as shown by having been convicted of any of the offenses listed in LCL §12.04.010, §12.04.020, and §12.04.030, may be excluded from the Lummi Reservation and trust lands. Such exclusion may be a Full Exclusion or Contingent Exclusion in accordance with Chapter 12.04 of this Title.

(c) The Lummi Tribal Court shall exercise civil jurisdiction to carry out the purposes of this Title.

Chapter 12.02 Definitions

12.02.010 Definitions

Where a term is not defined in this Title, it shall be given its ordinary meaning. Terms used in this Title shall have the following

meaning, except where otherwise defined within this Title or where the context clearly indicates otherwise:

(a) “Contingent Exclusion” means an order of the Lummi Tribal Court which authorizes a person to remain within the Lummi Reservation or trust lands under requirements and restrictions established by the Community Panel and failure to meet those conditions will result in Full Exclusion.

(b) “Court” shall mean the Lummi Tribal Court.

(c) “Directly Related” means a person’s spouse, domestic partner, child, parent, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin or the child, parent, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin of the person’s spouse or domestic partner. This definition also includes all traditional and customary relationships similar to the relationships listed above.

(d) “Exclusion Petition” shall mean a petition by the Lummi Nation, at the direction of the Exclusion Committee, for Full Exclusion or Contingent Exclusion.

(e) “Full Exclusion” means an order of the Lummi Tribal Court which immediately excludes a person from entering the boundaries of the Lummi Reservation and trust lands.

(f) “LCL” means the Lummi Code of Laws.

(g) “LIBC” shall mean the Lummi Indian Business Council, the governing body of the Lummi Nation.

(h) “LNPD” shall mean the Lummi Nation Police Department.

(i) “Lummi Person” for purposes of this Title, a Lummi Person shall mean a person that appears on the Tribal Roll as an enrolled member of the Lummi Nation or someone who has a blood quantum that meets the

eligibility requirements for enrollment in the Lummi Nation.

(j) “Probation Department” for purposes of this Title, shall mean the Lummi Probation Department unless the LIBC designates by resolution or motion another LIBC employee, department, or program to carry out the purposes and tasks that are designated to the Probation Department in this Title.

(k) “Prosecutor,” means an attorney who has been designated by the Reservation Attorney to handle the exclusion matter.

(l) “Trust Land” shall mean all lands held in trust for the benefit of the Lummi Nation by the United States regardless of location.

Chapter 12.03 Exclusion Committee and Community Panel

12.03.010 Exclusion Committee

(a) The LIBC has established the Exclusion Committee and hereby delegates the Committee the authority to carry out the duties under this Title, subject to the review of the LIBC, including, without limitation, the explicit duty to:

(1) recommend that certain people be excluded who may threaten the health, safety and welfare of the Lummi Nation;

(2) authorize the filing of a petition for exclusion with the Court on behalf of the Lummi Nation;

(3) review and make recommendations to the Court regarding requests for temporary re-entry and reinstatement after fulfillment of conditions;

(4) adopt bylaws and procedures consistent with this Title, subject to approval by the LIBC; and

(5) carry out all other duties and responsibilities designated to the Committee in accordance with this Title.

(b) The Committee shall be comprised of:

- (1) LNPD Chief of Police;
 - (2) a member of the Law and Justice Commission selected by the Commission;
 - (3) two (2) council members of the LIBC selected by the Council; and
 - (4) three (3) or more at-large individuals designated by LIBC resolution who must be enrolled members of the Lummi Nation living within the Lummi Reservation or trust lands or actively and substantially involved in activities taking place on the Lummi Reservation or trust lands.
- (c) The Committee shall select a chairperson from among its members. The Lummi Nation Chief of Police shall act as the contact for the Committee, assist in organizing meetings, and maintain any records. The records shall be confidential.
- (d) Meetings of the Committee are not open to the public. No person may attend a meeting who is not on the Committee, unless expressly invited to attend by the Committee. No person shall disclose the content of any discussion, vote, or decision of the Committee that occurs during a meeting. The names of persons being considered for exclusion will not be made public unless and until a petition is filed. The LIBC wishes to foster a free and open discussion by the Committee and to protect the reputation of persons who may be discussed during committee meetings, but are not selected for exclusion proceedings.
- (f) A majority of all Committee members must authorize any commencement any petition for exclusion. A majority of a quorum of the Committee may carry out all other business of the Committee.
- (g) The Committee's evaluation and weighting of factors leading to its decision whether to file an exclusion petition is not reviewable by the Court or by the LIBC. Among the factors considered by the

Committee in determining whether to file and the priority in filing a petition, include:

- (1) The nature and gravity of the conduct that brings the person within the scope of this Title;
 - (2) The period of time that has passed since the person's last criminal conduct;
 - (3) The extent of damage and injury the person has caused and the potential risk posed to the Lummi Community;
 - (4) The size and scope of any criminal operation and the person's involvement as a leader of the operation;
 - (5) The person's membership and rank in any crime organization, including a gang;
 - (6) The person's past record of criminal conduct;
 - (7) The person's current location;
 - (8) The extent of the person's contacts with the Lummi Community;
 - (9) The current level of fear in the Lummi Community;
 - (10) The person's efforts to rehabilitate; and
 - (11) A prior designation by the LIBC or Exclusion Committee as a person to exclude.
- (f) In making recommendations regarding the filing of exclusion petitions, the Committee shall make all efforts to be fair and consistent. The Committee shall review previous Committee recommendations with comparable factors to ensure that similar situations are handled consistently unless there are documented reasons to depart from previous actions.
- (g) To assist in its decision-making, the Committee may request information from individuals, community members, and other LIBC departments and agencies, which may

have knowledge about a person being considered for exclusion.

(h) The Committee shall allow any crime victims of a person to be excluded the opportunity to address the Committee, in person, by phone, or in writing.

(i) The Committee shall report their activity to the LIBC, at least annually at the second LIBC meeting in January, or as requested by LIBC. The Chief of Police will coordinate the scheduling of this report with the LIBC. Additional procedures may be adopted by the LIBC governing how the Committee evaluates and proceeds on exclusion matters.

12.03.020 Exclusion Community Panel

(a) The LIBC has established the Exclusion Community Panel and hereby delegates the Panel the authority to carry out the duties under this Title, subject to the review of the LIBC, including, without limitation, the explicit duty to:

- (1) attend and participate in exclusion hearings;
- (2) set conditions of Full and Conditional Exclusion Orders;
- (3) determine whether a petition for a Conditional Exclusion Order should be entered;
- (5) act as a resource for excluded persons who are working toward completing conditions of re-entry;
- (4) adopt bylaws and procedures consistent with this Title, subject to approval by the LIBC; and
- (5) carry out all other duties and responsibilities designated to the Panel in accordance with this Title.

(b) The Panel shall be comprised of a pool of twelve (12) community members, appointed by the LIBC. The Panel shall be overseen by an LIBC member designated by the LIBC.

(b) To be eligible to participate in the Community Panel pool, the person must:

- (1) be an enrolled member of the Lummi Nation who is living within the Lummi Reservation or trust lands or is actively and substantially involved in activities taking place on the Lummi Reservation or trust lands;
- (2) be a respected member of the community;
- (3) possess a thorough knowledge of Lummi cultural values and practices; and
- (4) have no prior felony convictions, no criminal convictions within the previous five (5) years, and no pending criminal charges; the person must consent to a background investigation.

(c) The entire Community Panel pool shall meet quarterly to review any pending exclusion petitions and proceedings and determine appropriate conditions for emergency exclusion orders issued by the Court. The Probation Department shall coordinate the scheduling of the quarterly Panel meeting. At the beginning of each quarterly or other Panel meeting, one Panel member, selected by the Panel, shall act as the meeting facilitator.

(d) In setting re-entry conditions under this Title, the Community Panel shall use its knowledge of the community and of Lummi cultural values and practices, so that the conditions are culturally appropriate to assist in the healing of the person and the community.

(e) The Community Panel pool shall act as a resource and provide advice to excluded persons who are working toward completing the requirements to re-enter the Reservation or trust lands. An excluded person may request a meeting with the pool by contacting the Probation Department. The excluded person may obtain permission for a temporary and

limited entry for the purpose of attending the meeting under LCL §12.07.010(d).

12.03.030 Participation on the Exclusion Committee and the Exclusion Community Pool

(a) Appointment. At-Large Exclusion Committee and Community Panel members shall be appointed by the LIBC for a term of up to three (3) years and may be reappointed by the LIBC for successive terms.

(b) Oath. All members of the Exclusion Committee and Community Panel shall sign the following oath upon appointment:

I promise to faithfully carry out my duties in compliance with all provisions of the Exclusion Code, Title 12 of the Lummi Nation Code of Laws. I will maintain confidentiality of those matters that come before me as a member of the [Exclusion Committee or Exclusion Community Panel] except as necessary to carry out my duties and responsibilities. I promise to disclose any conflict of interest and remove myself from participating in any discussion for which I am conflicted. I understand that the act of exclusion is a traditional cultural remedy and that under Title 12 the court system and the prosecutor cannot proceed unless I fulfill my responsibilities as a Lummi Community Member. Therefore, I will dutifully carry out my responsibilities by attending all meetings and hearings for which I am required to attend so that I may carry out this work for the health, safety, and wellbeing of my Community.

(c) Conflict of Interest. No Exclusion Committee or Community Panel member may participate in a matter involving a person being considered for exclusion when the member:

(1) is directly related to the person being excluded;

(2) is living, or previously lived, in the same household as the person to be excluded; or

(3) for other reasons, cannot be fair and impartial in considering the particular matter.

The Committee and Panel members shall determine whether they have a conflict of interest and shall disclose and excuse themselves from any participation in the matter. A person to be excluded shall raise any conflict of interest objection before the start of the exclusion hearing and the Panel member shall decide if a conflict exists. This decision is not reviewable by the Court.

(d) Termination. Committee or Panel membership shall be terminated, and the LIBC shall appoint a substitute member, if:

(1) a Committee or Panel member is absent for three (3) or more consecutive meetings;

(2) a Panel member designated to participate in a particular exclusion proceeding fails, after receiving proper notice, to appear at the court hearing for reasons other than an unanticipated emergency or sudden illness; or

(3) a Committee or Panel member participates in a matter while knowing that the person has a conflict of interest.

(e) Training. At least twice per year, the Lummi Culture Department shall provide training to members of the Exclusion Committee, Community Panel, Prosecutor, Probation Department, and Court staff on the traditional and cultural exclusion practices of our ancestors.

Chapter 12.04 Grounds for Exclusion

12.04.010 Who May Be Excluded

(a) A person shall only be excluded pursuant to this Title if that person has been:

(1) convicted of one or more criminal offenses listed in LCL 12.04.020 or 12.04.030; or

(2) was originally charged with a criminal offense listed in LCL 12.04.020 and 12.04.030 but was found guilty of a lesser criminal offense and there is clear and convincing evidence that the originally charged crime was committed.

(b) If a criminal prosecution is terminated without a finding of guilt, it shall not form the basis for an exclusion order under this Title.

(c) A criminal conviction arising from any jurisdiction may be grounds for exclusion.

12.04.020 Grounds for Full Exclusion

(a) A conviction of one of the following criminal offenses under the Lummi Code of Laws, or an offense including substantially the same elements committed in any jurisdiction, shall be presumed as a matter of law to threaten the health, safety or welfare of the Lummi Nation and such person shall be subject to a Full Exclusion under this Title:

- (1) Homicide;
- (2) Manslaughter;
- (3) Rape in the First Degree;
- (4) Rape of a Child in the First Degree;
- (5) Molestation of a Child in the First Degree; or
- (6) Assault and Battery in the First Degree.

(b) A person who has been fully excluded under this Section may also be referred to the LIBC to be considered for Banishment. The Exclusion Committee shall report at least annually, to the LIBC, their decisions in each case that has been considered for referral to the LIBC for Banishment.

12.04.030 Grounds for Contingent Exclusion

(a) Unless the Exclusion Committee determines that aggravating circumstances exist to petition for Full Exclusion, a conviction of one of the following criminal offenses under the Lummi Code of Laws, or an offense including substantially the same elements committed in any jurisdiction, shall be presumed as a matter of law to threaten the health, safety or welfare of the Lummi Nation and such person shall be subject to a petition for Contingent Exclusion under this Title:

- (1) Rape in the Second Degree;
- (2) Rape of a Child in the Second or Third Degree;
- (3) Molestation of a Child in the Second or Third Degree;
- (4) Assault and Battery in the Second Degree;
- (5) Aggravated Unlawful Imprisonment;
- (6) Intentional Endangerment;
- (7) Aggravated Stalking after having been previously convicted of the same offense;
- (8) Aggravated Harassment after having been previously convicted of the same offense;
- (9) Delivery of a Controlled Substance, Manufacture of a Controlled Substance, or Possession of an Illegal Substance with Intent to Distribute, after having been previously convicted of any one of the three above-listed drug offenses;
- (10) Residential Burglary when the person knows at the time of entry that persons are in the home, after having been previously convicted of the same offense;
- (11) Robbery while armed with a dangerous weapon;
- (12) Extortion involving a threat of violence; or
- (13) Aggravated Arson.

(b) Any Non-Lummi Person who has been convicted of any felony sex offense, other than those sex offenses subject to a full Order of Exclusion pursuant to LCL §12.04.020, is subject to a Contingent Exclusion Order;

(c) Any Non-Lummi Person who is rated as a Level II or higher sex offender, pursuant to Chapter 5.09C of the Lummi Code of Laws, is subject to a Contingent Exclusion Order;

(d) Any Lummi Person who is rated as a Level III sex offender, pursuant to Chapter 5.09C of the Lummi Code of Laws, is subject to a Contingent Exclusion Order.

(e) Aggravating Circumstances. In determining whether the Exclusion Committee should petition the Court for a Full Exclusion when the person would otherwise only be subject to a Contingent Exclusion, the Committee shall consider only the following aggravating circumstances:

- (1) number of previous convictions for the same or similar offenses;
- (2) harm to any identifiable victim(s);
- (3) age and number of any identifiable victim(s);
- (4) previous failure to engage in or to complete rehabilitation services, including but not limited to substance abuse treatment, anger management, domestic violence treatment, sexual deviancy treatment, or other similar services;
- (5) failure to comply with previous court orders; and
- (6) violation of public trust by a public official.

Chapter 12.05 Exclusion Proceedings

12.05.010 Filing of an Exclusion Petition

(a) Only the Lummi Nation shall have the authority to seek the exclusion of a person from the Lummi Reservation and trust land boundaries.

(b) An exclusion proceeding shall be commenced by filing a petition in the Court, only after the petition has been duly authorized by the Exclusion Committee on behalf of the Lummi Nation.

12.05.020 Defense Counsel

Any person who is the subject of a petition for Full or Contingent Exclusion may be represented by legal counsel. Upon request, a Lummi Person shall be provided representation through the Public Defender's Office of LIBC. All non-Lummi persons may be represented by counsel at their own expense.

12.05.030 Procedures

(a) Exclusion proceeding shall be a civil action. Except where a procedure conflict with this Title, Titles 1, 3, and 4 of the Lummi Code of Laws shall govern the exclusion process. Exclusion petitions shall be filed and served according to the rules for filing and serving civil complaints.

(b) When the Prosecutor files an exclusion petition with the Court, the Prosecutor shall also have the person to be excluded served with a copy of the petition and provide notice to respond within twenty (20) days in accordance with Title 3 of the Lummi Code of Laws.

(c) After the period to respond has expired, the Prosecutor shall file a request for an exclusion trial date with the Court. The Court shall reserve at least one day per month for exclusion trials under this Title.

(d) The exclusion trial date must be scheduled at least thirty (30) days after the date the Prosecutor files a request for a trial date. The Court shall provide notice to the Prosecutor, the person to be excluded, and the Probation Department of the trial date.

(e) When the Probation Department receives notice of the trial date, it shall designate five (5) available and eligible persons from the Exclusion Community Panel pool to participate as the Community Panel for the particular trial. The Probation Department shall provide notice of the trial date to the designated Panel members at least fourteen (14) days before the trial date.

(1) If fewer than five (5) members of the pool are willing and able to participate on the Panel, the Panel may be reduced to three (3) participants.

(2) If the Probation Department is still not able to form a Panel, the LIBC may appoint one or more of its elected council members to act as a Panel member(s).

(3) If a Panel cannot be convened for the exclusion trial or at least three (3) Panel members do not appear for the trial, the trial shall not proceed before the Court. The Court shall grant the Prosecutor at least one continuance to another date. If a Panel does not convene on the second trial date, after sufficient notice has been provided to the Panel, the Exclusion Petition shall be dismissed without prejudice. The Prosecutor may re-file the petition only upon a showing that there is new information.

(f) All parts of an exclusion trial shall be conducted around a table, not in a courtroom setup. All persons at an exclusion trial, including the judge, panel, prosecutor, person to be excluded, defense attorney or spokesperson, and witnesses, shall sit around a table and no party shall be elevated above another. The trial shall be recorded by the

Court. Trial by jury shall not be available in an exclusion trial. Exclusion trials are open to the public, except if the person to be excluded is a juvenile, then such trial shall comply with the confidentiality requirements set forth in Title 8 of the Lummi Code of Laws.

(g) An exclusion trial shall consist of the following parts, in order:

(1) The Prosecutor shall present evidence to the judge to establish that the person to be excluded is subject to exclusion in accordance with Chapter 12.04 of this Title. A copy of a criminal judgment or a transcript, abstract, or statement on plea of guilty signed by the person to be excluded may be admitted as evidence and shall be prima facie evidence that the person committed the offense.

(2) If the person to be excluded denies the offense, he or she shall have the burden of proving that such fact is untrue by clear and convincing evidence.

(3) The judge shall then review the evidence and determine whether the Nation has met its burden, by a preponderance of the evidence, to show that the person is subject to Full Exclusion or Contingent Exclusion in accordance with Chapter 12.04 of this Title.

(4) If the judge finds that the person is subject to exclusion, the exclusion trial shall then be addressed to the Panel. The Prosecutor and person to be excluded may present evidence, witnesses, and argument to the Panel and the Panel shall have the right to ask questions and request further information. For cases being brought pursuant to a conviction for the sale, manufacture, or possession of controlled substances, the Prosecutor shall provide the Panel any evidence available to the Nation that will inform the Panel about the crime

having been committed for profit or to support the person's own drug abuse.

(5) After the Prosecutor and person to be excluded have completed their presentation to the Panel, the Panel will conclude the exclusion trial.

(h) When the exclusion trial has concluded, the parties will be excused and the Community Panel shall set a meeting. The meeting may occur on the same day, a date in the future, or over a series of days. The meeting of the Panel shall be closed, except that if the Panel takes additional evidence or argument from the parties, the matter shall be on the record. During the Panel meeting, they shall determine:

(1) what, if any, conditions shall be contained in the order in addition to the mandatory re-entry conditions set forth in Chapter 12.06 of this Title. The conditions shall be relevant to the rehabilitation of the person so that they may no longer be a threat to the health, safety, or welfare of the Lummi Nation;

(2) if the Panel recommends a Contingent Exclusion Order, the Panel shall set the duration of time, not to exceed five (5) years, that the order will be in effect;

(3) what, if any, specific events or purposes the excluded person is authorized to make a temporary and limited re-entry onto the Lummi Reservation or trust lands. The Panel may also determine that the excluded person shall not be eligible to temporarily re-enter the Reservation or trust lands under Chapter 12.07 of this Title;

(4) whether the person is permitted to participate in treaty-reserved natural resource harvest rights, and if so, what locations and areas the person can harvest;

(5) In the event that the Prosecutor has filed a petition for a Full Exclusion based on

aggravated circumstances in accordance with LCL §12.04.030(e), the Panel shall also determine whether the final order shall be a Full or Contingent Exclusion Order; and

(6) If the Prosecutor has filed a petition for a Contingent Exclusion, the Panel may, upon a finding of good cause, determine that an exclusion order is unnecessary, based on the facts in any individual case. In such case, the exclusion petition will be dismissed.

(i) When the Panel has completed its determinations, it shall submit its written findings to the Probation Department. The Probation Department shall immediately file the Panel's findings with the Court and provide a copy to the Prosecutor and the person to be excluded. Upon receipt of the Panel's findings, the Court shall set a hearing date and provide notice of this hearing date to the Prosecutor and the person to be excluded. The purpose of the hearing shall be to read the Panel determinations into the record and enter the final exclusion order in accordance with those determinations. The Panel may attend this hearing, but is not required to attend.

Chapter 12.06 Exclusion Orders

12.06.010 Emergency Exclusion Order

(a) The Court may issue an Emergency Exclusion Order under the procedure set out in LCL §3.04.010 upon a showing of a serious and immediate risk of harm to the health, safety, or welfare of the Lummi Nation if the person is allowed to enter or remain within the Reservation or trust lands.

(b) The following circumstances are, as a matter of law, presumed to seriously and immediately threaten the health, safety and welfare of the Lummi Nation:

(1) a person who will be released from incarceration due to a conviction for a crime listed in LCL §12.04.020(a) and is

likely to enter or return to the Lummi Reservation or trust lands; or

(2) a person who has been convicted of a crime listed LCL §12.04.020(a) and is currently living, working, or attending school within the Lummi Reservation or trust lands.

(c) A petition for an Emergency Exclusion Order may only be filed by the Prosecutor if requested by two-thirds (2/3) or more of all Exclusion Committee members. The Prosecutor must also file petition for Full Exclusion at the time of filing for an Emergency Exclusion Order.

(d) An Emergency Exclusion Order shall only be valid for 180 days, or until a Full Exclusion Order is entered, whichever is fewer days. The Prosecutor may request that the Emergency Exclusion Order can be extended by motion of the Prosecutor and in accordance with LCL §3.04.010.

12.06.030 Full Exclusion Order

(a) Except as otherwise provided in this Title or in a particular exclusion order, a Full Exclusion Order prohibits the excluded person from entering within the exterior boundaries of the Lummi Reservation or trust lands, being employed by the LIBC or any of its entities, agencies or businesses, entering into a contract to provide services to the LIBC or any of its entities, agencies, or businesses, and participating in the Lummi Nation's treaty-reserved natural resources harvest rights. A Full Exclusion Order does not automatically expire on a certain date. A Full Exclusion Order shall be in effect until the Court issues an order, in accordance with LCL §12.07.020, reinstating an excluded person after fulfillment of re-entry conditions.

(b) A Full Exclusion Order shall contain provisions allowing the excluded person, upon fulfillment of re-entry conditions, to petition the Court to lift the exclusion, in whole or in

part, to allow re-entry to the Reservation or trust lands.

(c) A Full Exclusion Order must contain the following minimum conditions for re-entry:

(1) the excluded person has not been convicted of any new violent criminal offense, or any new criminal offense for which the maximum jail sentence could be more than 365 days in jail, for at least two (2) years from the date of entry of the Full Exclusion Order. However, the Panel may require that this condition be increased to up to five (5) years.

(2) An excluded person for whom substance abuse was a factor in the conduct that lead to exclusion, the excluded person must:

(A) have obtained a substance abuse evaluation from an accredited treatment provider within the last three (3) years prior to the person's request for re-entry;

(B) completed the treatment recommendations; and

(C) provide documentation that the excluded person has been drug-free for a minimum of one (1) year immediately preceding any request for re-entry by submitting evidence of supervised drug testing at least once per month during that preceding year.

(3) for sex offenders, the excluded person must:

(A) have obtained a sexual deviancy evaluation from an accredited treatment provider; and

(B) successfully completed treatment, or has complied with treatment recommendations for at least three (3) years prior to the person's request for re-entry. If the person is still currently in treatment, the person's treatment provider

must submit a statement that the person is currently in treatment but is no longer at substantial risk of committing a new sexual offense.

(d) For exclusion orders where the Community Panel has determined that additional re-entry conditions are necessary, the order must contain all conditions and other evaluations required by the Panel.

(e) For persons who are not subject to the criminal jurisdiction of the Lummi Nation, the order shall contain clear language that would allow a trespass action to be brought by the State or other jurisdiction that will be requested to aid in enforcing the order.

12.06.040 Contingent Exclusion Order

(a) Except as otherwise provided in this Title or in a particular exclusion order, a Contingent Exclusion Order authorizes the excluded person to remain within the Lummi Reservation and trust lands under conditions and restrictions established by the Community Panel. A Contingent Order of Exclusion is intended to allow the person sufficient time to demonstrate that he or she is no longer a threat to the health, welfare, and safety of the Lummi Community or membership, by complying with the requirements and restrictions of the Contingent Exclusion Order. A Contingent Exclusion Order shall be for a set duration, up to five (5) years. Unlike a Full Exclusion Order, a Contingent Exclusion Order shall expire after the set duration unless the Court issues an order, in accordance with LCL §12.06.060, to extend or revoke the order based on non-compliance.

(b) A Contingent Exclusion Order must contain the following minimum conditions that will be in effect for the duration of the order:

(1) may not be convicted of any new violent criminal offense or any new criminal offense for which the maximum

jail sentence could be more than 365 days in jail;

(2) must report at least one (1) time per month to the Probation Department or other LIBC department or program designated by the Community Panel;

(3) shall not knowingly be present where drugs are being illegally used, sold or manufactured;

(4) must abstain from alcohol and non-prescribed drugs and submit to testing;

(5) must be employed or otherwise constructively occupying the person's time;

(6) must be in full compliance with all treatment recommendations that were required by the Panel as a part of the order; and

(7) must perform Community Work Service as determined by the Community Panel.

(c) A Contingent Exclusion Order may also restrict an individual's access to certain areas of the Lummi Reservation or trust lands or restrict the person's participation in certain activities conducted on the Reservation or trust lands.

(d) Upon fulfillment of the requirements imposed by a Contingent Exclusion Order, the person may petition the Panel to lift the Contingent Exclusion Order using the procedure set out in LCL §12.07.020.

(e) Probation shall file a closure order on all Contingent Exclusion Orders that have expired and where there are no other pending petitions or motions to extend or revoke.

12.06.050 Modification or Amendment to Conditions of Exclusion Order

(a) The Prosecutor, at the direction of the Exclusion Committee, or an excluded person may petition the Community Panel for modification or amendment to the conditions imposed in a Full or Contingent Exclusion Order.

(b) The conditions set by the Community Panel in a Full or Contingent Exclusion Order shall not be modified or amended except at the direction of the Community Panel. The Panel may grant a request upon a finding of good cause. Modifications or amendments may include, but are not limited to requests to:

- (1) participate in treaty-reserved harvest rights in harvest areas within the Lummi Reservation, areas off-Reservation, or areas within the Reservation and off-Reservation;
- (2) adjust the excluded person's reporting schedule to Lummi Probation;
- (3) modify the treatment recommendations;
- (4) modify the Community Work Service requirement;
- (5) change the areas or activities that the excluded person is prohibited from accessing; or
- (6) modify or amend any other condition in the order.

(c) Any request to modify or amend conditions of an Exclusion Order shall be submitted in writing and filed with the Lummi Court. A copy of the written request shall be served on the other party and the Probation Department, who will notify the Community Panel.

(d) The Community Panel shall review requests at the next quarterly meeting. Upon availability of at least three Panel members, the Panel may review a modification or amendment request sooner. The Panel will determine whether to approve or deny the modification or amendment or whether the Panel needs to meet with the Prosecutor and excluded person to gather more information

before making a determination. If the Panel requires a meeting with the parties, the Probation Department shall assist in scheduling this meeting.

(e) The Panel will notify the parties and the Court, in writing, of its determination whether to approve or deny the request. The Prosecutor shall then prepare an order setting out the Panel's determination and file it for entry by the Court. The Court shall enter an order adopting the Panel's determinations unless it finds by clear and convincing evidence that the determination should not be followed because it is arbitrary and capricious.

12.06.060 Contingent Exclusion Order Revocation Procedure

(a) If a person does not comply with the conditions of a Contingent Exclusion Order, the Prosecutor shall notify the Exclusion Committee of the non-compliance and obtain a recommendation from the Committee as to whether to file a petition to revoke the Contingent Exclusion Order and convert to a Full Exclusion Order;

(b) If the Prosecutor, at the direction of the Committee, files a petition to revoke a Contingent Exclusion Order, the Prosecutor shall also serve the excluded person with a copy of the petition and provide notice to respond within twenty (20) days in accordance with Title 3 of the Lummi Code of Laws.

(c) After the period to respond has expired, the Prosecutor shall file a request with the Court for a revocation hearing date.

(d) The revocation hearing date must be scheduled at least thirty (30) days after the date the Prosecutor files a request for a date. The Court shall provide notice to the Prosecutor, the excluded person, and the Probation Department of the date.

(e) When the Probation Department receives notice of the revocation date, it shall first attempt to provide notice to the designated

Community Panel that set the original conditions of the Contingent Exclusion Order. If one or more of the original Community Panel members are unavailable or no longer in the pool, the Probation Department shall designate a replacement from the current Community Panel pool to participate in the revocation hearing. The Probation Department shall provide notice of the revocation hearing date to the designated Panel members at least fourteen (14) days before the revocation date.

(1) If fewer than five (5) members of the pool are willing and able to participate on the Panel, the Panel may be reduced to three (3) participants.

(2) If the Probation Department is still not able to form a Panel, the LIBC may appoint one or more of its elected council members to act as a Panel member(s).

(3) If a Panel cannot be convened for the revocation hearing or at least three (3) Panel members do not appear for the revocation, the hearing shall not proceed before the Court. The Court shall grant the Prosecutor at least one continuance to another date. If a Panel does not convene on the second revocation hearing date, after sufficient notice has been provided to the Panel, the Revocation Petition shall be dismissed without prejudice. The Prosecutor may re-file the petition only upon a showing that there is new information.

(f) All parts of the revocation hearing shall be conducted around a table, not in a courtroom setup. All persons at the revocation hearing, including the judge, panel, prosecutor, excluded person, defense counsel, and witnesses, shall sit around a table and no party shall be elevated above another. The hearing shall be recorded by the Court.

(g) A revocation hearing shall consist of the following parts, in order:

(1) the Prosecutor shall present evidence to the judge to establish that the excluded person has violated one or more conditions of the Contingent Exclusion Order.

(2) if the excluded person denies the violation, he or she shall have the burden of proving that such fact is untrue.

(3) the judge shall then review the evidence and determine whether the Nation has met its burden, by a preponderance of the evidence, to show that the excluded person has failed to comply with one or more condition of his or her Contingent Exclusion Order.

(4) If the judge finds that the person has failed to comply, the revocation hearing shall then be addressed to the Panel. The Panel shall have the right to ask questions and request further information.

(h) When the revocation hearing has concluded, the parties will be excused and the Community Panel shall set a meeting. The meeting of the Panel shall be closed. The meeting may occur on the same day, a date in the future, or over a series of days. The Panel will deliberate and consider the circumstances of the crime(s) that made the person eligible for exclusion, the nature of the violation of the Contingent Exclusion Order, and the rehabilitation efforts made by the person. The Panel will then determine whether:

(1) the Contingent Exclusion Order should be revoked and converted to a Full Exclusion Order;

(2) additional conditions should be required as part of the Contingent Exclusion Order in lieu of converting to a Full Exclusion Order;

(3) the Contingent Exclusion Order should be reissued for an additional term; or

(4) the Contingent Exclusion Order should be allowed to expire regardless of whether the re-entry requirements were fulfilled.

(i) When the Panel has completed its determinations, it shall submit its written findings to the Probation Department. The Probation Department shall immediately file the Panel's findings with the Court and provide a copy to the Prosecutor and the excluded person. Upon receipt of the Panel's findings, the Court shall set a hearing date and provide notice of this date to the Prosecutor and the excluded person. The purpose of the hearing shall be to read the Panel determinations into the record and enter any required court order in accordance with those determinations. The Panel may attend this hearing, but is not required to attend.

12.06.070 Appeal

(a) Except as otherwise limited by this Title, any party aggrieved by a decision of the Court or the Community Panel issued pursuant to this Title, may file a Notice of Appeal with the Lummi Court of Appeals. The LIBC specifically waives its immunity from suit in the Lummi Tribal Court for the sole and limited purpose of the appeals permitted under this Section, and for the awarding of equitable relief only, and not for the award of monetary damages.

(b) A Notice of Appeal shall be filed with the Court within ten (10) calendar days of the Court or Panel decision, and shall not operate to stop the effect of the decision unless the Court of Appeals shall so order. The Court of Appeals shall limit its review on appeal to the issue of whether the person appealing was given due process or if the Court or Community Panel committed an error of law. Relief shall be limited to a declaration of the correct law and a grant of a new hearing before the trial court and Community Panel.

Chapter 12.07 Re-Entry and Reinstatement

12.07.010 Temporary Re-Entry

(a) Unless an excluded person is restricted from making temporary re-entry as part of his

or her particular exclusion order, an excluded person may request to make a temporary re-entry onto the Lummi Reservation or trust lands under the procedures and conditions of this Chapter. Re-entry does not permit the excluded person to be present at any other location within the Lummi Reservation or trust lands.

(b) Death of Direct Family Member.

(1) An excluded person is permitted to request temporary re-entry onto the Lummi Reservation or trust lands for the funeral, burial service, and burning ceremony of a direct family member. Requests must be filed with the Court on a regular business day at least 48 hours before the funeral services and a copy must be served on the Prosecutor. All requests shall include a civilian escort agreement signed by a community member who would be a civilian escort designated to take responsibility for the excluded person's compliance with the conditions of the re-entry. The Committee may consider funeral requests filed late for good cause. The Court shall not issue an order until the Prosecutor files a response or a proposed order approved by the Exclusion Committee.

(2) The Prosecutor shall notify the Exclusion Committee of the request and obtain their recommendation on whether to consent or object to the request. Funeral ceremonies are essential to the wellbeing of the family and friends of the deceased. The Committee and the Court must consider the interests of the grieving family and any victim and the victim's family in addition to the interests of the excluded person.

(3) Upon authorization from the Committee, the Prosecutor will file a proposed order with the Court recommending that the Court approve or deny the request. If the Committee recommends that the request be approved,

the proposed order shall contain all re-entry and escort conditions recommended by the Committee and it shall be signed by the Prosecutor and the Chair or Vice-Chair of the Committee. The Prosecutor shall also notify the excluded person, or their counsel, of the Committee's recommendation. The Court shall enter an order adopting the Exclusion Committee's recommendation unless it finds, by clear and convincing evidence, that the recommendation should not be followed because it is arbitrary and capricious.

(4) The Exclusion Committee's recommendations may require that the excluded person be required to have a civilian escort or police escort during his or her temporary re-entry, may limit the timeframe for re-entry, prohibit contact with certain persons, or limit locations for re-entry.

(c) Health Care, Court, and Identification.

(1) An excluded person is permitted to make temporary re-entry onto the Lummi Reservation or trust lands for the purpose of:

(A) obtaining health care, mental health care, or substance abuse treatment;

(B) appearing at the Lummi Tribal Court for any case that the excluded person is a party or subpoenaed; and

(C) obtaining a Tribal Identification Card or Treaty Fishing Identification Card.

(2) A petition and order from the Court is not required so long as the excluded person shall provide 24-hour advance notice to the Lummi Nation Police Department.

(3) A person making a temporary re-entry under this Subsection must use a route from Marine Drive to Kwina Road, unless flooding or other natural disaster makes that route impassable.

(4) An excluded person, at the request of the Lummi Nation Police Department, may be required to sign a Release of Information for the Lummi Nation Police Department to confirm appointments and activities.

(5) The excluded person shall comply with the minimum re-entry requirements set out in Subsection (g) of this Section. If the Exclusion Committee determines that the excluded person has failed to comply with these conditions, the excluded person shall be ineligible for temporary re-entry without an order of the Court.

(d) Other Reasons.

(1) An excluded person may be granted temporary and limited re-entry for other purposes by filing a request with the Court at least five (5) business days before the requested time of re-entry, except that the person must file a request at least 48 hours before a funeral (for persons other than direct family members), and a copy of the request must be provided to the Prosecutor.

(2) The request must specify the necessity for re-entry and include all necessary details and documentation to allow review of the request on the written documents alone. All requests shall include a civilian escort agreement signed by a community member who would be a civilian escort designated to take responsibility for the excluded person's compliance with the conditions of the re-entry.

(3) The Prosecutor shall provide the request to the Exclusion Committee for its response. The Exclusion Committee shall consider whether the excluded person's interests in temporary and limited re-entry outweigh the interests of the Lummi Nation in preventing the re-entry.

(4) Within three (3) business days of the filing of the request, except funerals which will be responded to as soon as possible

before the service, the Prosecutor shall file the Committee's response with the Court. The Court shall enter an order adopting the Exclusion Committee's recommendation, unless it finds by clear and convincing evidence that the recommendation should not be followed because it is arbitrary and capricious.

(e) Civilian Escort. Any community member who is designated as a civilian escort to take responsibility for the excluded person's compliance with the conditions of the re-entry shall sign a sworn document accepting that responsibility. The person shall agree to contact the Lummi Nation Police Department immediately upon the excluded person's violation of the conditions of re-entry.

(f) Fee Land Ownership. An excluded person who owns fee or individual trust real property within the Lummi Reservation may access the property. This Subsection does not permit access to real property acquired after the exclusion petition was filed.

(g) Minimum Conditions of Temporary Re-Entry. Any excluded person who is authorized to make a temporary re-entry shall comply with, at minimum, the following terms:

- (1) provide notice to the Lummi Nation Police Department of the temporary re-entry and the hours during which he or she shall be present;
- (2) use the most direct available route to the person's authorized destination;
- (3) only remain on the Lummi Reservation or trust lands for the necessary time needed for the authorized purpose;
- (4) not use or be under the influence of alcohol or an illegal substance while on the Lummi Reservation or trust lands;
- (5) not commit a crime while on the Lummi Reservation or trust lands; and

(6) stay with any designated community escort ordered and not be at any locations other than the locations authorized for temporary re-entry.

(h) The Lummi Nation Police Department shall immediately remove the excluded person from the Lummi Reservation or trust lands if that person violates a condition of re-entry. A person who violates a condition of re-entry immediately loses authorization for the re-entry and may be arrested and booked for Violation of an Exclusion Order under LCL §5.07.075, as well as any other crimes that may have been committed.

12.07.020 Reinstatement after Fulfillment of Re-Entry Conditions

(a) The Probation Department shall provide guidance to excluded persons about the steps they must take to comply with the conditions for re-entry. The Probation Department shall review compliance with the Community Panel at their quarterly meetings.

(b) Upon fulfillment of re-entry conditions set out in the Order of Exclusion, the excluded person may petition the Court to lift the exclusion order. The excluded person shall file the petition with the Court and provide a copy to the Prosecutor. The petition must explain how the excluded person has complied with each of the re-entry conditions. The person must provide the Prosecutor with authorization to investigate compliance including a release of information to allow the Prosecutor to obtain records, including drug and alcohol testing records, and consult with the excluded person's probation officers and treatment providers.

(c) The Prosecutor shall consult with the Exclusion Committee regarding the petition and the results of the compliance investigation. The Exclusion Committee shall direct the Prosecutor whether to oppose the petition in whole or in part, and whether to

recommend additional conditions on the person after re-entry.

(d) Any opposition to the petition shall be filed with the Court within twenty (20) business days from the date the Prosecutor is served with the petition. The Court may grant up to an additional ten (10) days, upon a showing that necessary information or evidence from external sources has been delayed so more time is needed to investigate the excluded person's compliance with the conditions for re-entry.

(e) If the Prosecutor files an opposition to the petition, the Court shall set a hearing at which time the excluded person has the burden of proving, by preponderance of the evidence, that he or she has complied with the conditions for re-entry.

(f) If the Court finds that the person has completed all re-entry conditions, the Court shall issue an order closing the exclusion at which time the person shall be permitted to enter onto the Lummi Reservation and trust lands.

(g) If the Court finds that the person has not completed all re-entry conditions, the Court shall refer the Prosecutor and excluded person to meet with the Community Panel. After meeting and hearing the information presented by the Prosecutor and excluded person, the Community Panel may recommend that the order be maintained, be lifted, or be converted to a Contingent Exclusion Order. If the order is converted to a Contingent Exclusion Order, the requirements in LCL §12.06.040 shall apply.

Chapter 12.08 Enforcement

12.08.010 Enforcement of Exclusion Orders

(a) A violation of an exclusion order violates the sovereignty of the Lummi Nation and its right to determine who is allowed within its territorial borders. An exclusion order is

entered for the purpose of safeguarding and promoting the health, safety, and welfare of the Lummi Nation and the Lummi Community. Any violation, even if short in duration, is a serious violation of this purpose and the sovereignty of the Lummi Nation.

(b) An excluded person may be immediately removed by a law enforcement officer if the person is found within the exterior boundaries of the Lummi Reservation or trust lands and may be charged with the criminal offense of Violation of an Exclusion Order, LCL §5.07.075. For those persons who are not subject to the criminal jurisdiction of the Lummi Nation, violations of exclusion orders shall be referred as criminal trespass to the jurisdiction with prosecuting authority.

(c) A person who knowingly assists or encourages an excluded person to enter or remain on the Lummi Reservation or trust lands, or to violate a condition of an authorized re-entry for a temporary and limited purpose, may be criminally charged with aiding and abetting the offense of Violation of an Exclusion Order.

12.08.020 Contempt Proceedings

(a) Violation, whether by tribal member or non-tribal member, of any order issued by the Court under this Title may be treated as civil contempt of court. Civil contempt of court is an act of disobedience or disrespect towards the judicial branch of the government, or an interference with its orderly process. It is an offense against a court of justice to which the judicial functions of the Lummi Nation's sovereignty have been delegated.

(b) The use of civil contempt sanctions under this Subsection shall be limited to compelling compliance with a court order. Contempt sanctions intended to punish an offender or to vindicate the authority of the Court are criminal in nature and not governed by this section. The applicability of this section and the sanctions provided for herein shall be in

addition to any others available under the Lummi Code of Laws.

(c) Civil contempt may be initiated by a motion in an exclusion action brought under this Title that recites the essential facts alleged to be contemptuous and complies with the requirements of this section and Lummi Code of Laws Titles 2, 3, and 4. Civil contempt shall not be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and order to show cause or order to appear containing the hearing date and time must be personally served upon the alleged contemnor in accordance with the procedures specified in LCL §3.03.030.

(d) The order to show cause or order to appear must specify the time and place of the hearing and must contain substantially the following language:

FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A CIVIL ARREST WARRANT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL FOR NO MORE THAN 24 HOURS BEFORE A HEARING IS HELD.

(e) The Court shall make an express finding as to whether the alleged contemnor had notice of the motion and order to show cause or appear. The Court shall determine whether the Nation has established that a prior exclusion order was entered and that the alleged contemnor had notice of the prior order and has willfully failed to comply with the order.

(f) After hearing the testimony and evidence presented, the Court shall enter a written order granting or denying the petition for contempt. An order finding the alleged contemnor in contempt shall include the following:

(1) a recital of facts on which the contempt finding is based, and

(2) if the Court finds it appropriate, a statement setting out appropriate sanctions to obtain compliance with the order, including incarceration, seizure of property, attorneys' fees, costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law, provided the order includes a purge provision as set forth in subparagraph (g), below.

(g) If the Court orders incarceration, a fine, or any other sanction for failure to comply with a court order, the Court shall set conditions for the purging of the contempt based on the contemnor's present ability to comply. The Court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The Court may grant the contemnor a reasonable time to comply with the purge conditions. If the Court orders incarceration but defers incarceration for more than twenty-four (24) hours to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the petitioner shall file an affidavit of noncompliance with the Court. The Court may then issue a civil arrest warrant. Upon incarceration, the contemnor must be brought before the Court within forty-eight (48) hours for a determination of whether the contemnor continues to have the present ability to comply with the purge.

(h) If a person is incarcerated for civil contempt after hearing, a review hearing shall be set at least every fourteen (14) days as long as the person is incarcerated. At such hearing the Court shall determine if the person has been able to comply with the purge condition(s) or amount of release payment and review the person's present ability to comply. The Court shall continue or modify the orders accordingly.

12.08.030 Dissemination of Exclusion Orders

(a) The Court shall publish and disseminate the name and photo of each person who is subject to an exclusion order or a contingent exclusion order, and the terms of the order. Disseminated must, at a minimum, be provided to the Northwest Indian College, Silver Reef Casino, LIBC agencies, LIBC businesses, and LIBC contractors. The Court shall also publish this information in the *Squol Quol* and on the Lummi Nation internet home page and the LIBC intranet home page. The Court may obtain photos from the LNPD. LNPD is authorized to obtain the photo from any source, including booking photos and records of the Enrollment Department.

(b) The Court shall also publish and disseminate information about the lifting of an exclusion order and any conditions that may have been placed on re-entry.

Chapter 12.09 General Provisions

12.09.010 Severability

The invalidity of any section, clause, sentence or provision of this Title shall not affect the validity of any part of this Title which can be given effect without such invalid part or parts.

12.09.020 Review of Exclusion Orders Issued Prior to Adoption of the Most Recent Amendments to this Title

(a) The Lummi People practiced banishment for centuries before the European settlers invaded the traditional lands of the Lummi, as a way of protecting the People from individuals who posed a risk to the safety of the People. Prior to this Title, the LIBC continued the practice, through political decision-making and direction that Lummi Court orders be sought to enforce its decision to exclude Lummi and non-Lummi individuals who committed particularly serious crimes.

(b) Even after the Lummi Nation began using incarceration as a deterrent to criminal behavior, the Nation would use exclusion in place of incarceration due in small part to lack of funding and in large part to federal laws, which forbade the use of incarceration beyond one year, even for crimes the federal government claimed jurisdiction over, but failed to prosecute.

(c) Once the Lummi Nation was able to incarcerate persons convicted of criminal behavior for significant terms, the Nation discontinued the use of exclusion as an alternative to incarceration.

(d) This Title has been, and will likely continue to be amended, as the People's expectations are interpreted by staff, committee members, and the Court, in a manner that the people are not comfortable with.

(e) To insure the rights of the Community are protected, when this Title is amended in a manner that creates significantly different rights and expectations for those who were excluded under a previous version of this Title, or in lieu of incarceration under Title 5, the Nation, through the Committee and the Prosecutor, shall have twelve (12) months from the effective date of the amendment to review all exclusions issued after the year 2004 and before the most recent amendment to this Title to consider:

(1) Whether the excluded person still meet the requirements for exclusion under LCL §12.04.010, §12.04.020, or §12.04.030. If an excluded person no longer meets the eligibility requirements for exclusion, the Nation shall submit an order to dismiss the exclusion order; and

(2) Whether the Committee still recommends exclusion. If the excluded person is still eligible for exclusion, and the Committee is still recommending exclusion, the Nation must file a motion with the Court to have the Community

Panel review the conditions of the order and determine whether the terms of the order should be changed or dismissed. If the Committee determines that an excluded person no longer represents a threat to the community, the Committee can recommend that the Prosecutor file a motion to dismiss.

(f) If the Committee has failed to move the Panel to review or failed file a dismissal within the 12-month time period, a Lummi Person or any other excluded person who is directly related to a Lummi Person, who was excluded after the year 2004 and before the most recent amendment to this Title, may file a motion with the Court to dismiss the exclusion order. The Panel shall determine whether the exclusion order should be dismissed or whether the order should be modified.

(g) Any person, Lummi or non-Lummi, who has been excluded or trespassed by resolution of the LIBC on before the year 2004 are not eligible to request that their Exclusion Order be modified.

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