

**TITLE 42**  
**LUMMI NATION CODE OF LAWS**  
**LAND TENURE CODE**

Editor's Note: Under the requirements of the Land Consolidation Act, 25 U.S.C. §2203, Chapters 42.03, 42.04 and 42.05 of this Title establishing the Lummi Nation Land Consolidation Plan require approval from the Secretary of Interior before they are effective as to lands held in trust by the United States of America. As of the publication of the 2008 Publication, this approval had not yet been given.

Enacted:        Resolution 2005-128 (09/12/05)



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**Table of Contents**

**Chapter 42.01 Legislative Findings and Purpose**

42.01.010 Legislative Findings.....	1
42.01.020 Declaration of Policy .....	1

**Chapter 42.02 Definitions and Interpretive Rules**

42.02.010 Definitions and Interpretive Rules .....	1
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**Chapter 42.03 Land Consolidation and Acquisition**

42.03.010 Land Consolidation Plan—Authorization.....	2
42.03.020 Land Consolidation Plan—Policies .....	2
42.03.030 Land Consolidation Plan—Implementation .....	2
42.03.040 Land Consolidation Area-Map .....	2

**Chapter 42.04 Land Transaction Review Procedure**

42.04.010 Review and Consideration of Available Opportunities .....	2
42.04.020 Transaction Review Process .....	3
42.04.030 Lummi Planning Commission and LIBC Review .....	3
42.04.040 Transactions Where Time is Limited.....	3

**Chapter 42.05 Land Acquisition Fund**

42.05.010 Land Acquisition Fund Established.....	3
--	---

**Chapter 42.06 Lummi Homesite Exchange Program**

42.06.010 Purpose.....	4
42.06.020 Procedure .....	4

**Chapter 42.07 Housing Assignment Program**

42.07.010 Purpose and Need .....	5
42.07.020 Program Description .....	5
42.07.030 Eligibility .....	5
42.07.040 Program Administration.....	5
42.07.050 Role of the Lummi Planning Commission.....	6
42.07.060 Responsibilities of Applicant for Assignment .....	6
42.07.070 Responsibilities of Assignee .....	6
42.07.080 Term of Assignment—Non-Transferable—Exceptions .....	7
42.07.090 Revocation of Housing Assignment for Cause—Hearing.....	7

**Chapter 42.08 General Provisions**

42.08.010 Severability .....	8
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42.08.020 Effective Date .....8  
*Exhibit A Map* .....9

**TITLE 42  
LUMMI NATION CODE OF LAWS  
TRIBAL LAND TENURE CODE**

**Chapter 42.01 Legislative Findings and Purpose**

**42.01.010 Legislative Findings**

The Lummi Indian Business Council (LIBC), the governing body of the Lummi Nation, hereby finds that the loss of lands from Indian ownership, the fractionation of ownership of much of the land held by tribal members, and the need for useable land for housing many tribal members who are without buildable land threaten the long term viability of the Lummi Reservation as a homeland for the exclusive use of the Tribe and its members; the LIBC further finds that authorizing and directing the Lummi Planning Department and Lummi Planning Commission to implement a tribal land consolidation plan, land acquisition program, and homesite assignment program will reduce the loss of lands out of trust status, increase tribal land holdings and provide land for housing and other tribal needs.

**42.01.020 Declaration of Policy**

The Lummi Nation hereby declares its policy to consolidate and prevent further deterioration of the tribal land base, to reduce the fractionation of ownership of tribal members' land parcels in trust and restricted status, to obtain and provide buildable land for housing for tribal members, to reacquire the tribal land base, to promote conversion of lands from fee to trust status, to encourage land acquisition by tribal members, and to fully exercise its inherent authority, including the authority confirmed by the Indian Land Consolidation Act, as amended, to purchase, exchange and otherwise manage lands, both on and off the Reservation, in furtherance of this policy.

**Chapter 42.02 Definitions and Interpretive Rules**

**42.02.010 Definitions and Interpretive Rules**

For the purposes of this Title, words used in the present tense include the future, the singular number includes the plural, the

masculine form includes the feminine; the word "shall" is mandatory and not permissive; and the term "this Title" shall be deemed to include all amendments hereafter made to this Title. Unless specifically defined below, words and phrases used in this Title shall be interpreted so as to give them the meaning they have in common usage and to give the Title its most reasonable application.

When used in this Title, unless otherwise required from the context,

(a) "immediate family member" shall mean: the spouse, child, parent, or sibling of the assignee;

(b) "LIBC" shall mean the Lummi Indian Business Council;

(c) "Plan" shall mean the Lummi Nation Land Consolidation Plan, comprised of Chapters 42.03 through 42.06 of this title;

(d) "Unbuildable land" shall mean:

(1) Land exposed to a condition hazardous to structures or human use if developed; and/or

(2) Land with enough adverse features to preclude full development, including one or more of the following constraints:

(A) Slopes greater than 20%;

(B) Surface water, high water table, wetlands, identified groundwater recharge areas, or other immitigable water problems;

(C) Unstable soils, as indicated by soil survey cautions against soils of low or variable sheer strength, or load bearing capacity; or as indicated by knowledge or experience;

(D) Encumbrances, including private or public rights-of-way, easements or restrictive covenants that preclude

development;

(E) Cultural resources constraints or prohibitions;

(F) Floodplains or coastal flood hazard areas designated by Federal or tribal agencies;

G) Real estate tenure constraints, including unresolved undivided interest.

### **Chapter 42.03 Land Consolidation and Acquisition**

#### **42.03.010 Land Consolidation Plan – Authorization**

As authorized by Title 15 of this code, the Lummi Planning Department prepared this Land Consolidation Plan, approved by the Planning Commission and hereby adopted by the LIBC, comprising Chapters 42. 03 through 42. 06. Upon approval by the Secretary of the Interior pursuant to 25 U.S.C Section 2203, these chapters will govern the exchange of tribal lands, or interests in tribal lands, for the purpose of eliminating or reducing undivided fractional interests in Indian trust lands or consolidating tribal land holdings.

#### **42.03.020 Land Consolidation Plan – Policies**

The land base of the Tribe and its members is critical to the long term viability of the Lummi Reservation as a homeland for the Lummi Nation. This plan shall be implemented, as financial resources allow, and in compliance with Lummi Nation laws and regulations, to further these policies, intended to promote and insure the use of the Lummi Reservation as a permanent homeland for the Lummi Nation and its members:

(a) promote Reservation land acquisition by the Tribe and its members;

(b) deter further loss of the tribal land base through involuntary alienation, conversion to fee status and land sales, and promote restoration of the tribal land base;

(c) promote reduction of fractionated interests

in trust property through purchases, sales, exchanges and other management arrangements;

(d) convert its fee land holdings to trust status, except where there are legal or financial reasons to retain land in fee;

(e) to encourage and assist tribal members in converting their fee land to trust status and in retaining the land in trust status;

(f) to fully exercise, within budget constraints, the authority confirmed in federal law, to purchase trust or restricted lands or interests in lands whenever a beneficial owner applies to the Secretary of the Interior to remove the restrictions on alienation from the property, or whenever such lands or interests in lands otherwise become available.

#### **42.03.030 Land Consolidation Plan – Implementation**

This Land Consolidation Plan will be implemented primarily by the Lummi Planning Department and the Lummi Planning Commission pursuant to the provisions of this Title.

#### **42.03.040 Land Consolidation Area – Map**

Attachment A is a map of the Lummi Indian Reservation, which for purposes of this Plan shall be identified as the Lummi Land Consolidation Area. Designation of the Reservation as the consolidation area shall in no way limit the authority of the Nation to acquire or exchange lands outside the Reservation. Such proposed off-reservation transactions shall be reviewed and considered under the provisions of this Title, but they shall not be considered to be transactions made pursuant to an approved land consolidation plan under 25 U.S.C. § 2203.

### **Chapter 42.04 Land Transaction Review Procedure**

#### **42.04.010 Review and Consideration of Available Opportunities**

It shall be the policy of the Lummi Nation to review and consider every available opportunity for acquiring, through purchase or exchange, fee lands, trust lands or interests in

lands that may be available within the Lummi Indian Reservation, or in or near areas of significant cultural, historical resource harvest or religious interests of the Lummi Nation. This includes opportunities arising in partition actions, probate proceedings, mortgage foreclosures, tax sales, other governmental disposals and surplus transactions, and from owners willing to consider the sale or exchange of their interests in land to the Tribe, as well as situations where exchange of existing tribal land may be necessary to complete a transaction that furthers the policy goals of this title. Transactions which prevent the conversion of land out of trust status, reduce fractionated undivided ownerships, or otherwise fulfill the policy goals of this title are the highest priority. Potential transactions may be identified by the owner contacting the Planning Department expressing an interest in selling, by staff review of forthcoming tax sales, foreclosures, petitions for trust restrictions to be removed, and probates, or by contact initiated by the Tribe. Contacts initiated by the Tribe shall only occur at the direction of the LIBC or the Planning Director.

#### **42.04.020 Transaction Review Process**

(a) Upon identification of an opportunity to acquire land or an interest in land, the Lummi Planning Department shall review the proposed transaction within 30 days, including:

- (1) ordering an appraisal of the property, where appropriate;
- (2) determining the compatibility of the property with the policies of this Title and with the Comprehensive Land Use Plan and any acquisition priorities;
- (3) comparing the appraisal value with the requested seller terms and available budget;
- (4) meeting with the potential seller to discuss the transaction, clarify any details, and establish terms of the potential purchase or exchange
- (5) preparing a comprehensive report of the transaction review and recommendation to

the Planning Commission.

(b) The Planning Department may hold a public hearing on the potential transaction prior to preparing its report. If a public hearing is held, the Planning Department shall have 60 days to prepare its report to the Planning Commission.

#### **42.04.030 Lummi Planning Commission and LIBC Review**

As soon as possible, but in not more than 30 days of receipt of the staff reports and recommendation, the Lummi Planning Commission shall review the potential transaction and render a recommendation to the LIBC. The LIBC shall review the potential transaction and render a decision at the earliest available opportunity.

#### **42.04.040 Transactions Where Time is Limited**

In circumstances where an opportunity to purchase land or an interest in land may be lost if action is delayed, the Planning Director, at his discretion, may direct staff to streamline review of a given opportunity, and may call a meeting of the Planning Commission to review a potential transaction with the information available at the time of the meeting.

### **Chapter 42.05 Land Acquisition Fund**

#### **42.05.010 Land Acquisition Fund Established**

(a) The LIBC recognizes and finds that without funding readily available for land purchases, many opportunities to acquire lands or interests in lands will be lost, and the land base of the tribe and its members will not be adequately protected. There is hereby established in the LIBC budget a permanent budget line item for the Land Acquisition Fund. This fund shall be available for the costs associated with the purchase or exchange of lands by the Lummi Nation, including, but not limited, to: purchase price, costs of financing, appraising, permits, fees, and licenses, required geotechnical, cultural and environmental surveys of a parcel, land surveys, insurance, and common transaction closing costs. It shall not be available for the

payment of tribal staff salaries to perform duties associated with any potential transaction, unless such expenditure is approved in the annual budget process.

(b) Any funds allocated to the Land Acquisition Fund in one year and not spent shall roll over into the Fund for the subsequent years. The amount allocated to the Land Acquisition Fund each year shall be determined in the budget process required by Title 28 of this Code; provided that, LIBC hereby establishes the goal of allocating annually two million dollars from all available sources into the fund. The Planning Director shall be responsible for preparing the annual budget requests and report for the fund, and is authorized to approve expenditures out of the fund, except that expenditures for the purchase or exchange of tribal lands must be specifically authorized by LIBC.

(c) Any cash proceeds received by the Tribe to equalize an exchange made under this Plan shall be used exclusively for the purchase of other lands or interests in lands. Such proceeds shall be held in a separate trust account by the United States Secretary of the Interior and shall be made available for use by the Tribe pursuant to the terms of the Indian Land Consolidation Act, as amended.

## **Chapter 42.06 Lummi Homesite Exchange Program**

### **42.06.010 Purpose**

The Lummi Homesite Exchange Program, to be implemented by the Lummi Planning Department and the Lummi Planning Commission, provides an opportunity for tribal members with unbuildable land or with an undivided fraction of ownership interest in land, whether fee or trust status, to exchange their land or interest(s) in land for beneficial ownership to a parcel or parcels of tribal land suitable for housing. The goals of the program are to provide land suitable for housing to tribal members, to consolidate ownership of fractionated interests of trust lands, and promote continued trust status of lands. The Planning Department is authorized to develop procedures, forms and community education materials to inform tribal members

about the availability and requirements of the program.

### **42.06.020 Procedure**

Tribal members interested in exchanging their lands or interests in lands for one or more homesite parcels must apply to the Planning Department to participate in the program. After applying for participation in the program, homesite exchanges shall be reviewed as any other land exchange would be reviewed under this title. The number of homesite parcels obtained in exchange for a member's land or interest in land shall be determined by an appraisal and a comparison of the appraised value with the value of a tribal homesite parcel. Variances between the respective values of a member's land or interest in land and the tribal homesite parcel(s) may be paid in cash on the agreement of the parties. LIBC declares it to be consistent with the policies of this Title and in the best interest of the Tribe to authorize exchanges where the value of the lands, interest in lands and cash combined are not less than 90% of the value of the value of the tribal homesite(s).

Upon approval of a homesite exchange where both parcels are in trust status, the beneficial ownership of the homesite parcel(s) will be transferred from the Tribe to the tribal member, with legal title to remain in the United States as trustee. The exchange contract shall require that the homesite parcel remain in trust status and notify the participants that the homesite parcel may not be mortgaged, leveraged, encumbered, secured, transferred, sold or exchanged in any manner that results, or could result in its loss of the trust restrictions on alienation.

When the homesite parcel is not in trust status, the exchange shall not be finalized and deeds shall not be exchanged unless and until the homesite parcel is accepted into trust status by the United States for the tribal member. The exchange agreement shall require that no action be taken to encumber the property during the pendency of the application, and that once in trust status, the homesite parcel may not be mortgaged, leveraged, encumbered, secured, transferred, sold or



exchanged in any manner that results, or could result in its loss of the trust restrictions on alienation.

## **Chapter 42.07 Housing Assignment Program**

### **42.07.010 Purpose and Need**

Providing land suitable for housing for Lummi Tribal members is the primary purpose of the housing assignment program. Many Lummi people currently lack adequate housing and tribal members will continue to need suitable housing sites at an increasing rate. Assigning tribal trust land to tribal members for individual houses or multi-family development is one effective way of using tribal lands to assist Lummi individuals and families in obtaining property suitable for housing.

### **42.07.020 Program Description**

A housing assignment is a temporary conveyance of land use rights on a specific parcel of tribal property to an individual tribal member, solely for use for housing and permitted accessory uses for a certain term of years. Assignments may be for a piece of developed property, with or without a single family detached dwelling already on it. Assignments may also be for sites suitable for multiple family dwellings for an extended family group, or for a condominium arrangement where the assignment of common areas is to a condominium association, the members of which are individual assignees of condominium units in the facility. Assignments shall be made for a renewable 25 year term. Title to the property shall remain with the United States, in trust for the Lummi Nation. Real property improvements affixed to or appurtenant to the assignment shall become the property of the Lummi Nation upon the expiration or revocation of an assignment. An assignment does not create a leasehold interest or any other interest in real property subject to probate, and it is not otherwise subject to probate as personal property.

### **42.07.030 Eligibility**

Enrolled adult or emancipated minor Lummi

tribal members without land or with unbuildable land are eligible for a housing assignment. The criteria for selection and prioritization of applicants are:

(a) the level of personal need as evidenced by the applicant's current housing status, the number of minor children, elders and persons needing special care in the household, and the length of time the applicant has been waiting for a housing assignment; and

(b) the capability and readiness of the applicant to construct or install an approved housing unit on an assigned parcel within a reasonable time.

### **42.07.040 Program Administration**

The housing assignment program shall be administered by the Lummi Planning Department, with assistance from the Housing Department.

(a) Responsibilities of the Planning Department will include:

(1) establishing policy, procedures, detailed criteria, and informational material for implementation of the housing assignment program;

(2) identifying suitable land for housing assignments and recommending its allocation to the Lummi Planning Commission and LIBC;

(3) recommending assignments for qualifying applicants to the Lummi Planning Commission;

(4) producing model condominium housing association by-laws, covenants and restrictions;

(5) coordinating with the Housing Department and other agencies and departments to arrange for site development and construction, where appropriate, on suitable parcels;

(6) implement review procedures and provide staff assistance to the Lummi Planning Commission which will determine

if an assignment should be revoked, re-assigned or transferred

(7) any other activities necessary for implementation of the program.

(b) Responsibilities of the Housing Department shall be:

(1) develop forms in consultation with the Planning Department to collect sufficient information to determine an applicant's eligibility;

(2) determine the eligibility and priority of assignment applicants pursuant to the requirements of this Title;

(3) regularly provide the Planning Department with updates of an eligibility list; and

(4) coordinate with the Planning Department on other program implementation and budgeting issues as they arise.

#### **42.07.050 Role of Lummi Planning Commission**

(a) The Lummi Planning Commission shall:

(1) adopt rules and regulations to implement this program pursuant to the rulemaking procedures in Title 15;

(2) review and approve or modify the policies, procedures, criteria, and informational material developed by the Planning Department for implementation of the housing assignment program; and

(3) make assignments to qualifying applicants according to adopted policies; and

(4) conduct hearings and determine whether assignments should be revoked or the assignee placed on probation for cause.

#### **42.07.060 Responsibilities of Applicant for Assignment**

A Lummi tribal member who applies for a housing assignment shall provide complete

and truthful information relating to his eligibility, including information relating to current housing, household size and need, and his financial ability to construct or locate an approved dwelling onto an assignment, in addition to any other information required in the application process. All such personal information shall be used only for implementation of the Housing Assignment program, or other housing assistance programs. Failure to provide complete and truthful information in the application process may result in the denial or revocation of a housing assignment at any time.

#### **42.07.070 Responsibilities of Assignee**

Upon approval of a housing assignment to a Lummi tribal member, the assignee must:

(a) sign an assignment contract within 10 days, upon which date the assignment becomes valid;

(b) within one year of the assignment contract, begin to improve the assignment with primary residential land uses, as evidenced by a land use and/or building permit application or obtain a one year extension of this requirement;

(c) comply with all tribal planning and building codes and regulations and permit conditions and all applicable Housing Department rules and regulations;

(d) reside on the premises as his primary residence for the term of the assignment as soon as a home is ready for occupancy on the assignment or within two years of the date of the assignment contract, whichever is earlier; the Planning Director may grant a one-year extension of the two-year date for good cause;

(e) maintain the assigned land and improvements thereon as required in the assignment contract, any applicable covenants and restrictions, condominium association rules or applicable Housing Department program rules;

(f) comply with Title 18 of this code, governing the accumulation and disposal of solid waste;

(g) refrain from taking part in or permitting by others any behavior on the premises that constitutes a threat to the health, safety and well-being of the Lummi Nation and the community, including but not limited to: the possession or use of illegal drugs, any crime of violence or destruction of property or any behavior resulting in eviction by the Housing Board from a dwelling on the property or termination of participation in a Housing Department program.

**42.07.080 Term of Assignment – Non-Transferable – Exceptions**

(a) A housing assignment shall be made for a term of 25 years, and may be renewed to the original assignee for successive 25 year terms upon application and approval by the Lummi Planning Commission.

(b) Housing assignments are non-transferable, except that the original assignee may apply to transfer the assignment during his lifetime to an immediate family member who is an enrolled Lummi tribal member for the remainder of the original term, using a form approved by the Lummi Planning Commission. Assignments transferred under this paragraph may be renewed by the transferee for successive 25 year terms upon application and approval by the Lummi Planning Commission. Transfers under this paragraph are not automatic and are in the complete discretion of the Lummi Planning Commission.

(c) An assignment expires upon the death of an assignee, but may be transferred by the Planning Commission after the death of the assignee under the terms of this paragraph for the remainder of the term of the original assignee. The assignment contract shall allow the assignee to name a beneficiary to whom the assignment may be transferred upon the death of the original assignee. The beneficiary must be:

- (1) eligible for the program under 42.07.030; or
- (2) an immediate family member of the assignee living on the housing assignment

at the time of the assignee’s death;

(3) the parent or guardian of the assignee’s minor children; or

(4) a person entitled to remain in the dwelling pursuant to a Housing Department program.

If no beneficiary is named, or if the named beneficiary does not meet the requirements of this section, or if the beneficiary declines the housing assignment the assignment will be reassigned. A beneficiary under this section may apply for renewal of the assignment at the end of the original assignee’s term, but renewal is in the complete discretion of the Lummi Planning Commission, and is contingent on the applicant’s eligibility for the program under 42.08.030 at the time of the application for renewal.

**42.07.090 Revocation of Housing Assignment for Cause – Hearing**

A housing assignment may be revoked for cause if an assignee violates 42.08.060 or 42.08.070. The Planning Department shall investigate complaints of violations of these sections by an assignee. If the Planning Director concludes that a violation has occurred, he shall notify the assignee in writing of the time and place of a hearing before the Lummi Planning Commission at which the Commission shall hear testimony and take evidence offered by the Planning Director and the assignee concerning the alleged violations. The assignee may be represented by counsel at his own expense.

If the Commission finds that a violation has occurred, it may:

- (a) revoke the housing assignment immediately;
- (b) transfer of the housing assignment to an immediate family member who is an enrolled Lummi tribal member on the condition that the assignee no longer reside on the assignment; and/or
- (c) notify the assignee of a probationary period of up to two years, during which the

assignee may reside on the assignment premises, but during which any further violations of 42.08.060, 42.08.070 or other conditions imposed by the Planning Commission may result in immediate revocation of the housing assignment following a Commission hearing.

## **Chapter 42.08 General Provisions**

### **42.08.010 Severability**

If any section, clause, or provision of this code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of the code and application to any other person or circumstance shall still be valid and in effect.

### **42.08.020 Effective Date**

This title shall take effect upon its enactment by the Lummi Indian Business Council. Upon approval of this Title by the Lummi Nation General Council, land transactions approved by the LIBC that are consistent with, and in furtherance of the policies of this Title, shall be considered approved by the General Council. The Land Consolidation Plan shall become effective under federal law upon its approval by the Secretary of the Interior.

Title42pub08

