

LUMMI ISLAND FERRY ADVISORY COMMITTEE (LIFAC) MINUTES

9/22/22

Location: The Grange Hall – Lummi Island

Meeting called to order by Chair, Cris Colburn at 6:00pm

ROLL CALL:

Cris Colburn (Chair), Judy Olsen (Vice Chair), Mary Marshall (Secretary) Rich Frye, Jim Dickinson, Mike McKenzie, Todd Lagestee

Others:

Rhayma Blake, Rich Hudson, Roland Middleton

Open Public Comment:

None

Internal Business:

Cris:

- Meeting minutes from July not complete, will approve on October 4th
- Rich gave all members Ferry Cards for use on Board meeting days
- Cris thanked Rich for passes
- Remote meeting access is a problem as our resource can no longer help with service or equipment.
- We need to reassess whether we can accommodate remote meeting access - for now will proceed without until such time as resources are available
- Calendar:
 - October 4th – Civic Building – Budget Meeting
 - Nov 9th – Lummi Island
 - No meeting in December
 - Frequency of meetings to be determined for 2023
- Cris asked Mary to check on whether County email access for LIFAC members is working

External Business:

Report from Rich Hudson:

- Maintenance went well in May and steering issues fixed
- General Maintenance reported no new issues
- Theo White new Captain as of June
- Working on scope of work for next dry dock:
 - End of May, early June of 2023

- Full tune up, boat out of water
- New coatings
- Will take full 3 weeks
- 3 new staff
 - Debbie Lunde
 - Dylan Letchworth
 - Eli Miller
- Ferry traffic wait times have been long due to multiple construction vehicles
- Rich was questioned whether traffic load had been considered and answer is yes
- Breakwater work has been in the works and approved 3 years ago – 12 years in the works – will be working thru October – is great news for the ferry as it will really help with rough weather in the winter
- Dolphins will also be replaced
- Factors affecting the work/approval included: permitting, supply chain (specifically steel), covid, Orcas and engineers changing out.

Report from Roland Middleton:

Supplemental Information provided by Roland Middleton:

- *Gooseberry Point Terminal Timeline Talking Points (attached)*
- *New Vessel & Terminal Improvements (attached)*

Discussion:

- Clarified that the Surcharge Fund:
 - Enables project-based budget without having to take from road fund
- **ASK** – Needs a letter from LIFAC to legislature to request \$10K For Sea Mammal Security
- **ASK** – Needs LIFAC to assist his office with naming the new vessel
- Informed LIFAC the new ferry is due for completion during second half of 2026. However, a service disruption of six months or more is necessary during new dock construction. A passenger only ferry with new float dock will provide service during that time. Original plans for terminal construction anticipated regular service operating concurrent with construction activities. Conditions have changed, preventing that as a viable operational approach. Roland and Rich conveyed Public Works' commitment to work with all stakeholders to develop responsible approach to the challenge.

Action Items:

1. **ASK** – Needs a letter from LIFAC to legislature to request \$10K
2. **ASK** – Needs LIFAC to his office to assist with naming the new vessel (see above)

Meeting adjourned at 7:30 by Cris Colburn

Gooseberry Point Terminal Timeline Talking Points

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.

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.

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.

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.

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.

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

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

Gooseberry Point Terminal Timeline Talking Points

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.

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.

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.

October 27, 2011: Tidelands Lease, Uplands Lease, and Intergovernmental Framework Agreement are approved by Lummi Nation and Whatcom County. Tidelands Lease: 25-year term with an immediate 10-year extension. Lease expires October 27, 2046. Rent: \$200k + Consumer Price Index increases every

Gooseberry Point Terminal Timeline Talking Points

year. Uplands Lease: All projects listed in Exhibit B. Plus dollar to dollar match for transportation improvement projects in the amount of \$2M in year 1, \$2M in year 6, \$2M + CPI increase in year 15.

EXHIBIT B

The immediate improvements for which provision is made in Section 3. a, Consideration for Lease, shall be completed within one year from the execution of this document by the County as follows:

- 1) Purchase and installation of four electronic speed monitoring signs along Haxton Way; *(Installed October 2012)*
- 2) Reduction of speed limits, after due public process, in agreed, specified locations along Haxton Way; *(Approved June 19, 2012)*
- 3) Installment of traffic calming measures including rumble strips and additional signage as agreed, at agreed, key locations along Haxton Way; *(Installed September and October 2012)*
- 4) Implementation of traffic queuing measures at the ferry landing area at Gooseberry Point in order to reduce backup of vehicles waiting to use the ferry and resulting congestion along Haxton Way/Lummi View Drive, to be operational by October 1, 2012. *(Installed and operational September 2012)*

December 2011: Whatcom County Public Works adds to the duties of the Special Projects Manager the role of Tribal Liaison to implement the projects listed in Exhibit B and to coordinate with the Lummi Nation on all transportation issues.

March 22, 2012: BIA approves Tidelands Lease.

January 26, 2015: Lummi Nation notifies Whatcom County to prepare to relocate the Gooseberry Point terminal to make way for the Fisherman's Cove improvements.

June 2015: Lummi Nation submits for a TIGER grant from US DOT. The project description is for improvements at Fisherman's Cove including moving the ferry terminal to the West, as recommended in the 2009 relocation study. The grant was not approved.

July 2018: Whatcom County Level of Service Alternatives Analysis identifies the ultimate location of the Gooseberry Terminal is to the West of the existing terminal, as identified in the 2009 Relocation study and the 2015 Lummi Nation TIGER grant application.

Winter 2021: Lummi Nation Planning Commission begins internal discussion regarding the relocation of the Gooseberry Point terminal.

Precedent cases regarding the tidelands dispute.

1919: U.S. v. Romaine; 1930: U.S. v. Stotts; 1931: U.S. v. Boynton; 2002 (2010): U.S., L.N. v. Milner —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.