

TITLE 13
LUMMI NATION CODE OF LAWS
TIDELANDS CODE

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**TITLE 13
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Chapter 13.01 Purpose and Scope

13.01.010 History

It is generally recognized that the Indians of the Reservation have, beyond the memory of man, used the tidelands within and adjacent to the reservation freely, continuously, and uninterruptedly for the purposes of fishing and the taking of shellfish, for the taking of driftwood, for firewood, for recreational purposes, and other purposes. Such uses are a result of the ownership of the tidelands and the rights established on any other tidelands by custom, tradition, practice and long and continuous use.

13.01.020 Necessity of Regulation

It is necessary for the preservation, protection and best use of the tidelands to adopt reasonable regulations on the use thereof.

13.01.030 Definition of "Tidelands"

"Tidelands" means any lands including beaches, seaward of the line of natural vegetation or the meander line, whichever be more landward along all saltwater bordering the reservation, including all such lands east of the Pt. Francis Treaty Rock line.

13.01.040 Tidelands Closed to Non-Members

The Lummi Tidelands are reserved for the exclusive use of the Lummi Indians by the Treaty of 1855. The Lummi Tidelands are closed to persons who are not members of the Lummi Nation, in the absence of a lease permitting non-member use of the tidelands, or use permits issued pursuant to this Title.

Chapter 13.02 Prohibited Acts

13.02.010 Barriers Prohibited--Permit Exception--Violations Deemed Trespass

It shall be a civil offense for any person to create, erect, maintain, or construct any building, obstruction, barrier, restraint of any nature whatsoever within the tidelands as defined in this ordinance, without having first

obtained a written permit from the Council. No permits shall be given for the areas below the line of mean high tide except as provided herein. A permit for the construction within the area above the line of mean high tide shall be granted only at the discretion of the Council and only after it is clearly shown that such construction will not be inconsistent with the provisions of this Ordinance nor interfere with the rights of the Indians of the Reservation to freely and uninterruptedly use the tidelands for the purposes which have long been established and that such construction will have no damaging effect upon the marine life or cleanliness of water or air in and along such lands. The Council is authorized to adopt rules and regulations for the issuance of such permits and to prescribe reasonable fees to be charged therefore. Anyone who violates the provisions of this section shall be deemed to be in trespass of the property rights of the Tribe in and to the tidelands and shall be required to remove any obstructions or barriers, and to cease from further obstruction or interference, and shall be liable for all damages caused by any such acts. Council may take all appropriate legal action to enforce the provisions of this ordinance and to take such other lawful actions as may be appropriate.

13.02.020 Prohibited Uses

It shall be a civil offense for anyone to use the tidelands in such a manner that would tend to destroy the natural beauty or pollute such lands, interfere with the established use thereof by Indians of the Reservation, or which would tend to create a nuisance thereon. The following rules and regulations covering the use thereof are hereby adopted:

(a) No person shall deposit or willfully permit the deposit of any debris, rubbish, or refuse upon tidelands.

(b) No person shall deface or destroy the natural beauty of the rocks, cliffs, vegetation, and other objects of nature upon or within tidelands.

(c) No sands, rock, mineral, marine growth, driftwood, fish, wildlife, or souvenirs or other product of the tidelands shall be taken from such lands by anyone except pursuant to the terms and conditions of a written permit first obtained from the Council. No permit shall be issued unless it is shown that the removal will not be inconsistent with the conservation of the natural resources of the tidelands. The Council is authorized to adopt rules and regulations for the issuance of such permits and to prescribe reasonable fees to be charged therefore.

(d) No person shall set or permit any fire to be set upon the tidelands except pursuant to permits issued by the Council as areas permitting the setting of camp fires as provided herein.

(e) No person shall erect any tent or overnight shelter upon the tidelands or use the tidelands as an overnight camping area except pursuant to permits issued by the Council in those areas specifically designated and posted by the Council as overnight camping areas as provided herein.

(f) No person shall operate or park or permit the operation or parking of any motor vehicle upon the tidelands except in areas specifically designated and posted by the Council as permitting such operation or parking as provided herein.

(g) No person shall be permitted upon the tidelands in an intoxicated or disorderly condition, or shall engage while on the tidelands in any acts of indecency or immorality.

(h) No person shall violate any rules and regulations subsequently adopted for the use of the tidelands by the Council.

Chapter 13.03 Regulation of Tidelands

13.03.010 Council Authority to Regulate

The Council may regulate the use of tidelands in a manner consistent with the purposes of this ordinance.

13.03.020 Council Authority to Prepare Development Plans

The Council may prepare plans for

development of tidelands, classify tidelands as to use and designate areas where specific activities may be permitted.

13.03.030 Council Authority to Grant Rights-of-Way

Nothing in this Ordinance shall be deemed to diminish the right of the Council to lease or permit rights-of-way over and across tidelands except that any such lease or permit affecting tidelands shall be subject to all the provisions of the Ordinance.

13.03.040 Council Authority to Close Tidelands

The Council is authorized to close all or any portion of the tidelands if it finds that the rules and regulations herein provided, or the rules and regulations adopted by the Council pursuant to this Ordinance, cannot be adequately enforced or if necessary to preserve the tidelands.

13.03.050 Regulation of Construction of Bulkheads and Other Structures within Lummi Coastal Zone Management Area

The Council authorizes the Natural Resources Department, in consultation with the Planning and Water departments, to adopt regulations governing the construction of bulkheads and other structures on or adjacent to tribal tidelands which have the potential for impacting natural resources on the tidelands and adjacent properties. Regulations shall be designed to protect and restore Lummi Nation natural resources from the short-term, long-term and cumulative impacts of construction activities on Reservation shorelines.

(a) Regulatory authority includes the authority to require permits, fees, and technical studies to adequately determine risks.

(b) Any person or company who violates this section shall be subject to the penalties of Chapter 13.04 of this Ordinance.

13.03.060 Interim Fees and Rates for use of Tribal Tidelands

(a) All project proposals and required environmental assessments must be approved and conditions established by tribal I.D. team (interdisciplinary team of tribal technical staff) prior to a permit being issued.

- (1) \$200 per/day for low risk construction.
- (2) \$400 per/day for high risk construction.
- (3) \$2500-\$5000 bond, returned after an inspection of the construction site determines that damages have not occurred or have been mitigated or remediated.

(b) Interim criteria for low risk construction:

- (1) Access to the beach is not restrictive and would not require moving equipment and/or supplies a significant distance over the beach or intertidal zone.
- (2) The slope of the beach is less than 5 degrees and the biological assessments demonstrate no potential for impacts to adjacent biological resources.
- (3) The location of the bulkhead is not subject to severe wave energy which causes rapid beach erosion.
- (4) There is little or no potential risk of adverse impacts to upland or aquatic biota or other natural resources.

(c) Interim criteria for high risk construction:

- (1) Access to the beach is restricted and would require moving equipment and supplies a significant distance over the beach or intertidal zone.
- (2) The slope of the beach is 5 degrees or greater and the biological assessment indicates a significant possibility for impacts to Biological resources.
- (3) The location of the bulkhead would subject it to severe wave energy which causes rapid beach erosion.
- (4) There is no potential risk of significant adverse impacts to upland or aquatic biota or other natural resources.

Chapter 13.04 Penalties

13.04.010 Civil Penalties--Confiscation

- (a) Any person who violates this ordinance or

any rule governing entry upon or use of the tidelands shall be deemed to have committed a civil offense. Any person found to have committed a trespass shall be subject to a civil penalty in an amount not to exceed five hundred dollars (\$500.00) for a first offense and one thousand dollars (\$1,000.00) for a second or subsequent offense.

(b) Any object involved in such violation shall be subject to confiscation and forfeiture following a hearing in the tribal court regardless of whether the person in possession of the object is the owner of it. In the event the person in possession is not the owner, the owner shall also be given notice of the hearing and provided an opportunity to raise any defense he may have. At the hearing the tribe shall have the burden of proving by a preponderance of the evidence that the object was present on the tidelands without the permission of the Tribe or without compliance with this ordinance or the rules and regulations promulgated under this ordinance.

(c) A proceeding to enforce this title shall be commenced in the same manner as any civil action in tribal court. In the event that an object is found abandoned on the tidelands and ownership of the object cannot be determined, an action may be commenced against the object itself with notice of the action being published in a newspaper of general circulation in the reservation area.

13.04.020 Refusal to Leave Scene of Violation is Deemed Trespass

Any person who violates this ordinance or any rule or regulation of the Council with regard to tidelands may be requested to leave such lands and failure to leave or return without proper permission shall be deemed trespass.

13.04.030 Prohibited Entry is Deemed Trespass

Any person who enters upon any closed tidelands or who enters upon any tidelands without valid permission or permit shall be deemed to have committed trespass.

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