

TITLE 40
LUMMI NATION CODE OF LAWS
CULTURAL RESOURCES PRESERVATION CODE

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TITLE 40
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CULTURAL RESOURCES PRESERVATION CODE

Chapter 40.01 Title, Findings, Purpose, and Definitions

40.01.010 Title

The title of this Code shall be known as "Title 40 - Cultural Resources Preservation Code."

40.01.020 Findings

(a) Beyond the memory of man, the Lummi People used traditional lands, sites, and villages within the established Lummi Reservation and our traditional territory freely, continuously, and uninterrupted for maintaining a traditional lifestyle. Such a lifestyle sustained the ancestors and the tribe's language, resources, tradition, culture, and spiritual values. Our unique heritage has been inherited from our ancestors, still exists in the present, and is evident in today's belief system and practices.

(b) The Lummi Nation hereby finds and declares that the integrity of the Lummi traditions, cultural heritage, and values is threatened due to encroachment of the dominant United States and Canadian societies and governments. The Lummi Nation further finds and declares that the existence of unregulated activities relating to cultural resources interferes with our inherent rights and leads to the destruction of our sacred lands, sites, and ancient village places associated with our Lummi history.

(c) The Lummi Indian Business Council's Tribal Resolution #93-90, entitled Sovereignty, Self-Governance, and The Trust Relationship, declares that strict tribal control over activities within the boundaries of the Lummi Reservation and traditional use areas within the ceded territory is vital to the future existence of the Lummi Nation. Regulation of activities that could negatively impact the traditional culture of the tribe is both necessary and desirable for the protection of inherent tribal rights and the benefit of the Lummi Nation and tribal members of past, present, and future generations.

(d) The Lummi Indian Business Council finds that the spirit and purpose of Tribal Resolution #97-05 should guide and inform the *Sche'lang'en* Department and the Cultural Resources Preservation Commission in carrying out their respective duties, roles, and responsibilities under this Code. Consistent with the guiding principles established in Resolution #97-05, the Department and the Commission shall seek to ensure that:

(1) all existing and any new federal legislation must maintain and enhance the jurisdictional integrity, authority, and perpetuity of the Lummi Nation as an independent and self-governing sovereign nation; and

(2) the ability of the Lummi people and the Lummi Nation to sustain its customs, practices, and traditions of its culture shall not be adversely affected by federal or state laws and/or policies; and

(3) the Lummi Nation may receive funding for the maintenance, operation, and control of any and all federal programs intended to benefit the Lummi people directly from the federal government; and

(4) appropriations made by Congress for the benefit of the Lummi people and the Lummi Nation also include sufficient funds to cover the costs of negotiations or litigation wherever they might be necessary to resolve jurisdictional issues or conflicts of interest between federal, tribal, and state authorities; and that

(5) Congress acknowledge the inherent sovereignty of the Lummi People by ensuring that no legislation, regulation, or policy is enacted without the participation and full consent of the Lummi Nation.

(e) The National Historic Preservation Act (NHPA), 16 USC § 470 *et seq.*, declares it a national policy to develop working partnerships with Indian Tribal Governments for the protection of cultural resources,

providing a mechanism by which Tribal Governments may carry out the provisions of that Act, including the power to nominate sites to the National Register of Historic Places. The Lummi Nation finds that effective tribal procedures must be established to carry out these activities.

40.01.030 Purpose

(a) As a sovereign entity, the Lummi Nation desires to manage the Nation's cultural resources in a spirit of stewardship. The purpose of this Code is to provide a framework to ensure that Lummi Nation cultural resources are preserved and protected through well-informed decisions that involve sound decision-making principles.

(b) It shall be the policy of the Lummi Nation to:

(1) Preserve and manage cultural resources in ways that contribute to meeting the social, environmental, spiritual, economic and other needs of present and future generations.

(2) Provide leadership and technical assistance in the preservation, protection, and conservation of cultural resources by developing a culturally appropriate cultural resources management program, by sponsoring educational programs for the general public and training programs for tribal members and employees, and by consulting and cooperating with other governmental agencies.

(3) Administer cultural resources within the jurisdiction or control of the Lummi Nation and on lands within the traditional territory of the Nation in a spirit of stewardship and for the inspiration of present and future generations.

(c) The Mission Statement of the Lummi Indian Business Council declares that "Our Purpose shall be to serve, meet, and protect the spiritual, economic, social, cultural, educational, physical, and environmental needs and values of our people." For purposes of this Cultural Resources Preservation Code, the Mission Statement means that

Our Culture is: "Our way of Life." *Our beliefs, spirituality, language, how we are trained, what we eat, how we live, everyday activities, attitudes toward each other, our togetherness, our system of education, our values passed down in legends, story telling and our respect for the deceased, are in part, what we call our "Sche'lang'en."*

Cultural Practice is: *An intangible aspect of our Sche'lang'en which is especially valued by our people. Although intangible by nature, cultural practices may be associated with, or dependent upon, cultural resources. They include language, and oral traditions, ideology, family life, subsistence techniques, graphic arts, handicrafts, music and dance, among others.*

Cultural Resource Management is: *The range of activities aimed at understanding, preserving, and providing for the enjoyment of cultural properties. This means the Lummi Nation is the administrator, caretaker, and protector of these properties and resources. This includes research, planning for actions affecting them and the stewardship of those resources.*

Traditional Cultural Property is: *A property associated with Xwlemi or other First Nation people's cultural practices, customs, beliefs that are rooted in our collective history and is important in maintaining our unique traditional and cultural identity. These are inherent properties passed down from time immemorial by ancestors. We learn from our ancestors that these properties were given to us by Si'lh Si'am or Xa'alhs (The Creator/the Changer) for our use and protection. These properties are to be passed on to our future generations.*

40.01.040 Definitions

"Adverse Effect" means a reasonable likelihood of more than moderate adverse consequences for cultural resources in any given site or area. This determination is based on (1) the context of a proposed action or development; (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its

occurrence; (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and (4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.

“Ancestral Human Remains” or *“Human Remains”* means the physical remains, articulated or unarticulated bones, bone fragments, associated artifacts, and the surrounding soil matrix where decomposition has occurred of any deceased human individual(s) that are reasonably believed to be Native American, or any deceased human individual(s) of historic or prehistoric origin that is known, or has been identified through available evidence, as Native American.

“Archaeological Resource” means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological value.

“Burial Site or Area” means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as a part of the death rite or ceremony, an individual or individual’s human remains are deposited. All burial sites are sacred sites and defined as Protected Sites or funerary objects, and are protected as part of the original cultural integrity of the burial.

“Chi’lang’elh” is the Lummi language word that enfolds inherent knowledge and traditional rights of family groups’ or individual’s history, traditions, customs or practices, sites, areas, and spiritual and cultural properties or their significant meaning, that connects or separates groups or individuals from others.

“Commission” means the Cultural Resources Preservation Commission.

“Consultation” means formal, direct, face-to-face contact with the Tribal Chairman or his or her designee by any governmental agency or private entity. Such consultation shall be for the specific purpose of seeking Tribal participation related to affected cultural

resources as required by Federal and State statutes.

“Council” means the Lummi Indian Business Council.

“Cultural Commission” means the Cultural Resources Preservation Commission that is comprised of representatives appointed by the Lummi Indian Business Council.

“Cultural Resources” in the traditional view of Lummi includes, but is not limited to, four major category types: language, including traditional named places and Oral History or Tradition; traditional cultural properties; historic sites; and archaeological resources. *“Cultural Resources”* also means any material remains of past, present, or future human life or activities which are of historic significance, and/or cultural or archaeological interest. Such material includes, but is not be limited to: pottery, basketry, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, sea caves, inland caves, graves, human skeletal remains, or any portion or piece thereof, whether or not found in a cultural resource context.

“Cultural Resources Management System” means the comprehensive system for the identification, protection, and preservation of Lummi cultural resources developed by the *Sche’lang’en* Department and approved by the Cultural Resources Preservation Commission and/or the Lummi Indian Business Council; the Cultural Resources Management System shall be based on principles of baseline information and history and shall include, at a minimum, this Code, the Lummi Cultural Resources Preservation Plan, the Cultural Rights and Resources Checklist, the Lummi Cultural Resources Register, and regulations, policies, and procedures approved and adopted by the Commission.

“Cultural Rights and Resources Checklist” means the checklist of information prepared prior to review and decision-making regarding tribal cultural resources.

“Cultural Site” means a geographic locality

containing tribal cultural resource properties and archaeological resources, including but not limited to, submerged and submersible lands and the bed of the sea within the jurisdiction of the Lummi Nation which includes the Lummi Reservation and ceded territory or lands in which the Lummi People have an historic interest.

“Department” means the Lummi *Sche’lang’en* Department. When established, this will also be called the Lummi Tribal Historic Preservation Office (THPO).

“Director” means the Director of the *Sche’lang’en* Department.

“District” means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically, but linked by association or history.

“Effect” means any condition or Undertaking that causes, or may cause, any change, beneficial or adverse, in the quality of historical, architectural, cultural resources, or archaeological characteristics that qualify the property to meet the criteria of the Lummi Cultural Resource Register or the National Register of Historic Places. An Effect occurs when an Undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance in accordance with the Lummi Cultural Resource Register or the National Register criteria.

An Effect may be direct or indirect. Direct effects are caused by the Undertaking and occur at the same time and place as the Undertaking. Indirect effects are also caused by the Undertaking, but occur later in time and are still reasonably foreseeable. Such effects may include changes in patterns of land use, population density or growth rate that may have an effect on properties of historical, architectural, archaeological, traditional, cultural, or aboriginal significance.

“Historic Property” means any prehistoric or

historic district, site, building, structure or object significant in tribal language or oral history, architecture, archaeology, culture or religion. This term includes all artifacts, records, remains, and reburial sites designated by the Lummi Nation or recommended for designation by the Cultural Resources Preservation Commission.

“Indian” means a member of the Lummi Nation or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person on the Reservation who is recognized by the community as an Indian, including Canadian Indian or an Alaska Native.

“Lands and Waters in which the Lummi People have a historic interest” means all lands, waterways, or water passages for travel, hunting, fishing, and gathering historically or traditionally used by the Lummi People.

“Lummi Cultural Resources Preservation Plan” means the Reservation-wide Plan, approved by the Lummi Indian Business Council, that establishes the present status and future projections for the Nation’s cultural resources preservation program.

“Lummi Cultural Resources Register and/or Cultural Inventory Checklist of Tribal Cultural Resources, Historic and Archaeological Properties” means the tribal register of districts, sites, buildings, structures, and objects significant in tribal history, architecture, archaeology or culture as determined by the Cultural Resources Preservation Commission and identified by the Lummi *Sche’lang’en* Department.

“Lummi Indian Business Council” or *“LIBC”* means the governing body of the Lummi Nation as established in the Lummi Constitution.

“Lummi Landmarks or Landforms” means those cultural properties that are of significance to the entire Lummi Nation.

“Mitigation” means the use of any or all of the following actions: (1) Avoiding the impact altogether; (2) Minimizing impacts by limiting the degree or magnitude of the action

and its implementation; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected cultural resources and or environment; or (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

“*Museum Collections*” means any private, local, state, or federal agency, including institutions of higher education, which has control or possession of Tribal cultural resources.

“*NAGPRA*” means the Native American Graves Protection and Repatriation Act of 1990, PL 101-601 (25 U.S.C. 3001-3013).

“*NHPA*” means the National Historic Preservation Act of 1966, 16 USC § 470 *et seq.*

“*National Register*” means the National Register of Historic Places.

“*Natural Resource*” means a material source of wealth occurring in a natural state, such as floral, faunal, mineral, or elemental resources.

“*Oral History or Tradition*” is a basic form of communication that embraces our ancient language as given by our creator to our people and shall be treated with respect. Our ancient language is the foundation of our cultural and spiritual heritage without which we could not exist in a manner that the *Xa'al's* intended. From time immemorial, we have used this language to encompass our collective history, traditions, culture, values, beliefs, and spirituality; this is used within our ancient customs and practices. Thus, our *Xwlemi Chosen* is the transmission of Lummi culture and values, and continues to exist through on-going usage.

“*Person*” means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

“*Plan*” means the Lummi Cultural Resources

Preservation Plan.

“*Protected Site*” means the act or process of applied measures designed to defend or guard a property or site from deterioration, loss or attack, to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of cultural resource or archaeological sites, the protective measure may be temporary or permanent.

“*Reservation*” means all lands within the exterior boundaries of the Lummi Indian Reservation of Washington as defined by the Point Elliott Treaty of 1855.

“*Sche'lang'en*” means, in the Lummi Language, “way of life” and is more fully described in the Purpose section of this Code at 40.01.030 (c). *Tse Xhales onges-tle tse tengexw I meqw stang tl'e tse Lhq'atemish, Xwlemi Elhtelnexw. Tse Lummi Indian Business Council silki's tl'e ekwist tse schelangen.* Translates: The Creator gave the land, territory to the first peoples, Lummi people. The Lummi Indian Business Council want to teach the *Sche'lang'en*.

“*Sche'lang'en Director*” means the Director of the *Sche'lang'en* Department and the lead staff member on tribal preservation efforts and undertakings of the Lummi Nation.

“*Set-aside*” means a process that enables the tribe to preserve cultural resources or properties that sustain the traditional tribal cultural significance within a historical setting. Such settings enhance the unique heritage and life-ways of past, present, and future generations of the Lummi people.

“*Traditional Cultural Property*” or “*TCP*” means a building, structure, site, object, or district eligible for inclusion in the National Register of Historic Places because of its association with the cultural practices or beliefs of a living community, rooted in that community's history, and important in maintaining the continuing traditional cultural identity of the community.

“*Tribal Historic Preservation Office*” or “*THPO*” means the Department and/or Function that is or within the *Sche’lang’en* Department.

“*Undertaking*” means any project, activity, program, development, or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resource(s) is located in the area of potential effects. For federal undertakings, the project, activity or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements.

“*Working Days*” means Lummi Indian Business Council (LIBC) working days.

“*Xa’al’s*” means The Creator/the Changer.

“*Xwlemi*” means Lummi and/or the Lummi People.

“*Xwlemi Chosen*” means Lummi language.

Chapter 40.02 *Sche’lang’en* Department

40.02.010 Establishment and Authority of Department

(a) The Lummi *Sche’lang’en* Department is hereby created and shall be the agency responsible for the protection, preservation, and conservation of cultural resources; for cultural resources management planning; and for performing the functions of a Tribal Historic Preservation Office (THPO) for the Lummi Nation.

(b) The Department shall prepare a comprehensive Reservation-wide Lummi Cultural Resources Preservation Plan which shall consist of a report or series of reports on Lummi cultural resources and the historic preservation program. These reports shall describe, analyze, and establish the present status and future projections of the preservation program. The Plan shall include an explanation of the philosophy or rationale behind the program components of the plan, the status of each component, an evaluation of

the effect of each component, and projected future plans for each component. The Plan shall be reviewed and approved by the Commission prior to submission to the Lummi Indian Business Council for final approval and implementation.

(c) The Department shall prepare an annual budget for the Department and the Commission which shall be reviewed and approved by the Commission prior to submission to the Lummi Indian Business Council pursuant to and consistent with the Council’s budgeting processes.

(d) The Department shall advise the Lummi Indian Business Council and its Divisions, Departments, Programs, Agencies, and Authorities regarding cultural resources preservation and achieving the goals of this Code.

(e) The Department shall ensure that clear roles and responsibilities are developed within the Lummi Nation to monitor any activities that might affect cultural resources as more land is developed and more economic activity takes place on the Reservation.

(f) The Department shall ensure that the Cultural Resource Management System and the Cultural Rights and Resources Checklist are utilized in making decisions regarding all land use activities in the areas over which the Lummi Nation has authority and interest, including all lands within the exterior boundaries of the Lummi Reservation and within the Nation’s traditional territory, concerning all cultural resources and other significant properties.

(g) The Department shall be the designated Lummi Nation agency to develop and administer the Cultural Resources Permit System as established in Section 40.05 of this Code.

(h) The Department shall be the designated Lummi Nation Tribal Historic Preservation Office (THPO) and the Department Director shall be the Tribal Historic Preservation Officer authorized to inform other tribal, federal, state, and local governments and private organizations and individuals on matters pertaining to cultural resources

preservation to achieve the goals of this Code on the Lummi Reservation and within the Nation's traditional territory. The Department shall prepare and submit to the Secretary of the Interior a plan describing the functions that the Department, as the THPO, proposes to assume for the purposes of the Section 106 process of the National Historic Preservation Act. 16 U.S.C. 470.

(i) The Department shall conduct such other activities as are authorized and in accordance with the Department's approved Cultural Resources Management System.

40.02.020 Cultural Rights and Resources Checklist Policy

The Cultural Rights and Resources Checklist Policy is set forth to address administrative assessment of projects by the Lummi Nation that require permits, consultation, review, comment, and/or recommendations regarding activities that may affect Cultural Resources and preservation efforts to protect such Cultural Resources. All tribal reviews shall be based upon a Cultural Rights and Resources Checklist which shall include the following information:

1. Project Name.
2. Area, site or location of project identified by Township, Section, and Range.
3. Funding Source(s) identified to allow staff to determine the regulatory requirements or compliance procedures required.
4. Whether the area, site, or location of a project is listed or eligible to be listed on the Lummi Cultural Resource Register and/or the National Register of Historic Places.
5. Listing of Tribal, federal, state or local permits or licenses and applications.
6. A Project Scope that indicates potential Adverse Effects on cultural resources or properties.
7. Description of proposed mitigation efforts identified with compliance standards and regulatory or procedural requirements for cultural conservation.
8. Whether the Project is to be on or off of the reservation.
9. Acknowledgement of Consultation Process with the Lummi Nation.

10. Agreement to comply with the Lummi Cultural Resources Preservation Code and the regulations, policies, and procedures of the Lummi Cultural Resources Management System.

The information required by the Cultural Rights and Resources Checklist Policy collectively ensures that the tribal review process in conjunction with tribal preservation standards and efforts are given due notice, review, and consideration. This policy can be changed or modified based upon periodic review and recommendation by the Department and approval by the Lummi Cultural Resources Preservation Commission, providing that such changes do not conflict with or change the intent of this Code.

40.02.030 Nominations to Lummi Cultural Resource Register

(a) The *Sche'lang'en* Department is authorized to nominate to the Cultural Commission all sites, buildings, districts, and objects within the Lummi Indian Reservation that qualify for listing on the Lummi Cultural Resource Register.

(b) The *Sche'lang'en* Department shall:

- (1) Conduct a comprehensive survey of all historical and cultural resource properties on the Reservation.
- (2) Compile an inventory, including basic information about the location and history of each such property.
- (3) Complete a Cultural Rights and Resources Checklist to ensure proper evaluation of properties having tribal cultural resources or significance and any potential historical, architectural, archaeological, anthropological, religious, or traditional cultural significance.

(c) Based on evaluation of the information described in the Cultural Rights and Resources Checklist, each surveyed property will be assigned a category of significance according to the Lummi *Sche'lang'en* Classification System developed by the Department. The Department will make

appropriate recommendations to modify or limit actions affecting a cultural and/or historic property according to its category of significance.

40.02.040 Nominations to the National Register of Historic Places

The *Sche'lang'en* Department shall prepare nomination forms for those properties that appear to be eligible for placement on the National Register of Historic Places and present them to the Commission for review and recommendation to the Lummi Indian Business Council for approval.

40.02.050 Assistance to the LIBC and the Commission

The *Sche'lang'en* Department shall assist the Lummi Indian Business Council and the Commission with the conservation of cultural resources and with other matters within the scope of their duties.

40.02.060 Records Management and Retention

(a) The *Sche'lang'en* Department shall initiate measures to ensure, at a minimum, that when a property listed on the Lummi Cultural Resource Register is to be substantially altered or affected, timely steps are taken to preserve all original records in the Lummi Nation Archives, including measured drawings, photographs and maps of the property, and that a copy of such records will be deposited in the Lummi *Sche'lang'en* Department for future use and reference.

(b) The Lummi *Sche'lang'en* Department, in coordination with the Lummi Records & Archives Department, exists to serve the needs of the *Xwlemi* people by protecting and preserving unique information of tribal, cultural, and historic significance to ensure that future generations will be able to learn about their own history, family, and culture in a secure and sensitive environment. These tribal Departments are designated to fulfill the needs of the *Xwlemi* community above all other individuals, groups, institutions or organizations. These Departments are designated joint responsibility to develop and implement Lummi Nation Policy & Procedures for Access to Archival Information consistent

with general policies and guidelines adopted by the Lummi Indian Business Council.

(c) The primary authority for managing these cultural resource records, excluding those duties involving the general maintenance of the Archives and Museum facility, lies with the designated Lummi staff members who have exhibited or possess the ability to protect and conserve the Lummi Nation's cultural resources.

(d) The Cultural Resources Preservation Commission shall appoint a staff member from the Lummi Records & Archives Department to review and facilitate the management of these cultural resource records in the Archival and Museum collections on an administrative level.

(e) When no such Lummi appointee is in active employment in the Records & Archives Department, administrative authority and responsibility for the cultural resource records shall be performed by the *Sche'lang'en* Department (or THPO) Director and/or the Lummi Language Director or by a volunteer ad-hoc committee comprised of three to five Cultural Resources Preservation Commission members.

40.02.070 Tribally Owned Properties

The *Sche'lang'en* Department shall initiate measures and procedures to provide for the maintenance, preservation, rehabilitation, or restoration of tribally owned and registered sites at the professional standard prescribed by the Director of the Department.

40.02.080 Transfer of Property on the Lummi Cultural Resource Register

The *Sche'lang'en* Department shall cooperate with purchasers and transferees of any property listed on the Lummi Cultural Resource Register in the development of viable plans to use such property in a manner compatible with preservation undertakings.

40.02.090 Promotion of Preservation Efforts

The *Sche'lang'en* Department is authorized to take the following actions for the purpose of promoting cultural resources and historic preservation efforts:

(a) Develop and make available to tribal agencies information and advice concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining cultural resource sites and historic properties;

(b) Advise tribal agencies in the evaluation, identification, preservation, stabilization, improvement, restoration, and maintenance of historic and cultural resource properties;

(c) Encourage, in cooperation with the Cultural Commission, public interest and participation in cultural resource management/archaeology, and historic preservation;

(d) Conduct studies in various areas such as the adequacy of the Lummi Tribal laws and federal, state and local laws pertaining to tribal cultural resources and archaeological and historic preservation activities;

(e) Encourage training and education in the field of tribal cultural resource management and archaeological and historic preservation as outlined within this Code and other federal, state and local cultural resources preservation laws;

(f) Prepare and submit to the Secretary of the Interior a plan describing the functions that the Department, as the THPO, proposes to assume with respect to the tribal lands as provided in the National Historic Preservation Act. 16 U.S.C. 470a(d)(2);

(g) Prepare and maintain a current listing of archaeologists, anthropologists, historians, and other relevant professionals approved to perform services related to cultural resources and historic preservation efforts and activities within the Lummi Reservation and within the Lummi Nation's traditional territory; and

(h) Employ professional and support staff as employees and/or independent contractors, within the limits of the Department's approved budget, to fulfill the purposes of this Code and provide the services the Department is designated to perform.

40.02.100 Establishment of Agreements, Funding, and Contract Services

The *Sche'lang'en* Department, in consultation with the Commission, is authorized to review and make recommendations regarding proposed agreements, funding, service, and hiring contracts as follows:

(a) Agreements. The Department shall initiate, review, and recommend for approval or disapproval to the Lummi Indian Business Council any formal written agreements or memoranda of understanding with governmental entities and private parties concerning tribal and other cultural resources preservation undertakings and projects. The recommendation shall include a description of the review procedures followed by the Department and whether the terms of the proposed agreement are consistent with the purposes and requirements of this Code and any applicable federal historic preservation law.

(b) Legislative Funding Contract(s). The Department shall initiate, review, and/or recommend for approval to the Lummi Indian Business Council the application for or acceptance of any federal, tribal, state, or local grant/contract or other funding source that promotes cultural resources preservation undertakings, projects, and activities.

(c) Public Agency or Private Sector Contract Services. The Department may solicit and enter into contracts with governmental entities and/or private parties to conduct activities and provide services solely for the purposes of cultural resources or historic preservation. Funds generated from such contracts shall be deposited to the Lummi Historic Preservation Revolving Account for disbursement in accordance with Lummi Nation budgetary policies.

(d) The *Sche'lang'en* Department may initiate and recommend the following for Lummi Indian Business Council approval:

(1) Creation of a not-for-profit (501)(c)(3) status entity to receive tax-exempt contributions, donations, grants, and volunteer services and goods for cultural resources preservation purposes;

(2) Department utilization of Lummi Tribal Tax-exempt status;

(3) Investment, consistent with LIBC investment policies, of civil judgment or settlement awards or other assessments or awards made by court or administrative bodies to benefit tribal cultural resources preservation;

(4) Hiring of a cultural attorney to provide legal services related to tribal cultural resources preservation; and

(5) Hiring of Tribal Elders/Eminent Persons to provide guidance and expertise on tribal cultural resources preservation matters. The approval of the LIBC shall not be required for the hiring of Tribal Elders/Eminent Persons if such hiring has been approved by the Lummi Cultural Resources Preservation Commission.

40.02.110 Annual Report

The *Sche'lang'en* Department, in consultation with the Commission, shall annually submit a comprehensive report of its activities and the results of its studies to the Lummi Indian Business Council. Such reports shall include a summary of actions undertaken by the Department and the Commission in reviewing proposed undertakings, applications for permits, and in reviewing nominations for the Lummi Cultural Resource Register and the National Register of Historic Places. The Department shall submit such additional and special reports as the Department and the Commission deem advisable.

Chapter 40.03 Cultural Resources Preservation Commission

40.03.010 Establishment of Cultural Resources Preservation Commission

The Cultural Resources Preservation Commission (formerly known as the Lummi Cultural Resources Protection Committee) is hereby established and shall consist of not less than eighteen (18) members appointed by the Lummi Indian Business Council. Included in the membership shall be the *Sche'lang'en* Department Director and other enrolled tribal

members nominated by the Commission to the LIBC.

(a) The Commission shall select from among its members a facilitator and any other positions deemed necessary to assist the Commission in performing its duties.

(b) A vacancy on the Commission shall not affect its powers. Seven (7) members of the Commission shall constitute a quorum.

(c) Meetings of the Commission shall be held at regular monthly intervals as established by the Commission. Emergency meetings may be held upon twelve (12) hours actual notice, and business may be transacted provided that no less than a majority of the full Commission concurs in the proposed action.

(d) Each member of the Commission shall take the following oath before beginning his/her duties:

"I promise to faithfully execute all provisions of the Lummi Cultural Resources Preservation Code, Title 40 of the Lummi Code of Laws, which Protects Burial Sites, Graves, Cultural Resource Sites, and Traditional & Contemporary Historical Sites, places, and areas and any regulations promulgated in furtherance thereof, and to be bound by the Lummi Nation Code of Laws, the jurisdiction of the Tribal Court and the Constitution and by-laws of the Lummi Nation and to otherwise faithfully perform my duties as outlined by the Law. I vow to faithfully protect and execute the traditional laws, customary and traditional culture of the Lummi People, as inherited through the governance and gifts of Xa'als."

(e) After approval of this Code, members of the Commission shall serve indefinite terms until such time as the Commission recommends and the LIBC approves the removal of a member. Upon such removal, the Commission shall nominate, and the LIBC shall appoint another person to serve on the Commission in the removed member's place.

40.03.020 Powers and Duties

(a) The Commission shall serve as the hearing

review board for all hearings requested by applicants for Cultural Resource Permits or permittees according to the procedures established in this Code and policies and procedures established by the Commission consistent with the requirements of this Code. The Commission may designate a hearing review board in any given case consisting of at least seven (7) members of the Commission to conduct such hearing and to render a final decision. The Department Director shall not serve as a member of a hearing review board, nor shall any Commissioner serve on a hearing review board in any matter in which that Commissioner has served as an advisor or consultant to the Department.

(b) The Commission shall serve as the hearing board to assess civil penalties as provided in this Code. Unless the Commission adopts procedures for the assessment of civil penalties, the notice and hearing requirements of Section 40.05.080 shall apply.

(c) The Commission shall review and approve the Department's findings and recommendations prepared in performing

(1) the Nation's consulting functions as set forth in Section 106 of the National Historic Preservation Act;

(2) the functions assumed by the Department as a THPO pursuant to a plan approved under the National Historic Preservation Act;

(3) Consulting functions as provided in any other federal, tribal, state, or local consultation or permitting process.

(d) The Commission is empowered to consider requests for exchanges or dispositions of cultural resources made pursuant to tribal, federal, state, or local law, and to determine what conditions, if any, should be attached if consent is given.

(e) As directed by the Lummi Indian Business Council, the Cultural Commission is empowered to initiate, comment, and participate in federal, state, or other governmental rulemaking processes concerning matters pertaining to its expertise, particularly when entering into consultation with a federal

agency acting pursuant to ARPA, 16 USC §47011. The Cultural Resources Preservation Commission may participate in any reoccurring or testimony process when requested by a federal agency.

(f) The Commission, in consultation with the Department, is authorized and directed to consult and cooperate, whenever feasible, with other Tribal and non-Tribal governments, departments, and agencies, and with private organizations involved in historic and cultural resource protection activities, including the National Trust for Historic Preservation, the International Center for the Study of Preservation and Restoration of Cultural Property, museums, and organizations of professionals. Cooperation shall include providing assistance to other agencies and organizations and coordinating the planning and conducting of historic preservation programs.

(g) The Commission shall review and approve the annual budget prepared by the Department prior to submission of the annual budget to the Lummi Indian Business Council.

(h) The Commission shall review and approve the comprehensive Annual Report prepared by the Department for submission to the Lummi Indian Business Council and shall make such recommendations as the Commission deems appropriate regarding changes or improvements needed in the provisions of this Code.

(i) The Commission shall review and approve the comprehensive Reservation-wide Lummi Cultural Resources Preservation Plan prepared by the *Sche'lang'en* and Planning Departments. Furthermore, the Commission is authorized to recommend changes or additions to the Plan. Final approval and authorization to implement the Plan, or any changes to the Plan, shall be by the Lummi Indian Business Council.

(j) The Commission shall review nominations of tribal cultural resources or properties for the Lummi Cultural Resource Register submitted by the *Sche'lang'en* Department and approve those that qualify as significant in tribal history, culture, value, architecture, or archaeology.

(k) The Commission shall review National

Register nomination forms prepared by the *Sche'lang'en* Department, to assure adequate public participation in the nomination process, and to recommend to the Lummi Indian Business Council those properties it deems appropriate for listing on the National Register of Historic Places.

40.03.030 Records of Commission Proceedings

The Commission shall maintain records of its proceedings. Records shall be kept in accordance with standard record management policy and/or special requirements established by this Code and/or as recommended by the Lummi Records & Archives Department.

40.03.040 Education

The Commission is authorized to develop and operate a program of information and education for tribal members, employees, and/or the general public concerning cultural resources and protection of properties listed on the Lummi Cultural Resources Register and the National Register of Historic Places.

Chapter 40.04 Lummi Cultural Resources Register

40.04.010 Nomination and Acceptance

The Lummi Cultural Resources Register is hereby established, the purpose of which shall be to serve as a register of tribal cultural resources and properties, prehistoric and historic districts, sites, buildings, structures, and objects significant in tribal history, architecture, archaeology, traditional culture, and aboriginal religion. Any person may make nominations to the Lummi Cultural Resource Register by submitting their nominations to the Department. The Department shall prepare a comprehensive review of the nomination for presentation to the Commission which shall make the final decision whether the nomination is accepted to be included on the Lummi Cultural Resource Register.

40.04.020 Undertakings Upon Listed Properties or Properties Eligible to be Listed

Any person or entity applying for a permit to conduct an Undertaking on the Lummi Reservation shall inform the Department whether the proposed activity may affect any

property listed on, or eligible to be listed on, the Lummi Cultural Resource Register of Cultural Properties. If the property is eligible to be listed, the *Sche'lang'en* Department Director may nominate the property for such listing.

40.04.030 Comprehensive Survey

A comprehensive Lummi Reservation-wide survey of tribal cultural resources and historic properties shall be conducted by the Director of the *Sche'lang'en* Department and submitted to the LIBC by the Cultural Commission. The long-range objective of the comprehensive survey shall be the identification, protection and preservation of all cultural/archaeological resources, districts, sites, buildings, structures and objects within the Lummi Indian Reservation that are potentially significant in tribal history, architecture, traditional cultural resource properties, culture, and aboriginal religion. The survey shall be conducted in as timely a manner as possible and shall encompass all historic properties and cultural resources regardless of title, boundaries, or ownership. Another objective of this survey is to nominate properties significant to Lummi history, architecture, and culture to the Lummi Cultural Resource Register, the National Register of Historic Places, or both.

Survey data shall be maintained by the *Sche'lang'en* Department in an accessible location and shall be kept up to date so that the information is readily available to the *Sche'lang'en* Department and other tribal departments involved in planning and permitting, thereby allowing parties to make informed decisions. The information will be restricted, and the publication and duplication of sensitive materials must be coordinated with the *Sche'lang'en* Department Director. (See Section 40.02.060.) The survey data need not be published but shall be organized and indexed in a manner to provide for easy access. Availability of survey data to the general public shall be limited and/or restricted if, in the opinion of the Department, such availability might result in damage to cultural or archaeological resources and historic properties.

40.04.040 Nondisclosure

Information concerning the nature and location of any cultural resource or historic property

may not be made available to any person unless the Director of the *Sche'lang'en* Department or the Cultural Resources Preservation Commission determines that such disclosure would further the purpose of this Ordinance and would not create an undue risk of harm to such resources or the site at which such resources are located. The *Sche'lang'en* Department and the Cultural Commission are authorized to withhold from disclosure information regarding the location of sites or objects listed on the Lummi Cultural Resource Register or the National Register of Historic Places upon a determination that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

Chapter 40.05 Cultural Resource Permits

40.05.010 Application -- Contents

Any person proposing to visit or inspect cultural resources, undertake cultural resource inventories, alter, collect, excavate, disturb, or remove cultural resources or otherwise cause an adverse effect to cultural resources or historic properties shall apply to the Lummi *Sche'lang'en* Department for a Lummi Cultural Resources Permit outlining the proposed activity. The Department Director may issue a permit to any qualified individual, subject to appropriate terms and conditions.

(a) Each application must be accompanied by a written outline of the proposed work. The application must contain the following: the name(s) of the individual(s) or group(s) making the request and their addresses and telephone numbers; the proposed start date for the field work; the proposed project time frame; the person who will have immediate charge of the work; whether examination, excavation, or gathering the material(s) which are the subject of the permit are to be permanently preserved; the manner of preservation; and acknowledgment that all material(s) removed shall remain in tribal custody and be properly stored within a Reservation facility. In the event that off-Reservation examination is requested, the applicant shall provide a written description of the material(s) proposed to be examined, the type of examination to be conducted, the length of time required for the examination, the location where the

examination is to take place, the identity of the person(s) who will conduct the examination, the identity of the person(s) responsible for transporting and returning the material(s) to the Department, and a signed agreement that the Department shall be provided a copy of any examination report.

(b) The application must be accompanied by a sketch map and a legal description of the particular site or area to be affected so that it can be located on a map with accuracy. The application must provide the identity of the owner of the property, and the written consent of the owner if the applicant is not the owner.

(c) Each application shall be accompanied by a completed Cultural Rights and Resources Checklist signed by the applicant, the *Sche'lang'en* Director, and the Planning Director.

(d) Each application shall be verified by oath or affirmation and shall contain the promise of the applicant to abide by all of the provisions of this Code and other laws of the Lummi Nation.

(e) Each application for a permit must be filed with the Commission, the *Sche'lang'en* Department Director, and a courtesy copy shall be submitted to the Planning Director.

40.05.020 Interim Permits

Persons who have received approval from the Lummi Indian Business Council for proposals that may cause adverse effects on any cultural resources or historic properties prior to the date of enactment of this Code may receive an interim permit to continue work during the period that their application for a permit is pending before the Department according to the following procedures:

(a) Within thirty (30) calendar days after the date of enactment of this Code, such person shall file with the Department a declaration stating the time the approval was received, the location of the property, the purpose of the work, and the work completed. The declaration shall be accompanied by an application for a permit.

(b) Upon filing of the declaration and the

application, and after determining that the prior approval was appropriately obtained, the Department shall issue an interim permit.

(c) Such interim permits shall be in effect until the Department approves or denies the application for the permit.

40.05.030 Criteria

A permit may be issued pursuant to a completed application if the Department Director, or his designee, determines that:

(a) The activity pursuant to such permit is consistent with the requirements of this Code and the regulations and policies of the Department, including any management plan applicable to the lands concerned.

(b) The applicant has demonstrated that they are qualified to carry out the proposed activity by submitting both references and a resume to the Department Director showing prior successful experience in cultural resource/archaeological field work, including site survey, recording, excavation techniques, and reporting skills.

(c) Adequate mitigation efforts are provided to guarantee avoidance of any adverse effects on properties included or eligible for inclusion on the Lummi Cultural Resource Register or the National Register. The Department Director shall determine whether the proposed mitigation will prevent adverse effects on such properties and whether the proposed mitigation is in the best interest of the Lummi Nation.

(d) The applicant has signed an agreement that the cultural resources or historic properties that they are proposing to excavate or remove shall remain the property of the Lummi Nation.

40.05.040 Time Frame for Processing Permit Applications

The *Sche'lang'en* Department Director shall make the decision to issue or deny a permit within ninety (90) calendar days after the date a completed application is filed. The Director may extend this date up to an additional ninety (90) calendar days, but must provide the applicant with a written explanation of the factors requiring the extension. The

Director's decision to issue or deny a permit shall be in writing and shall be sent to the applicant(s) by certified mail, return receipt requested, to the address of the applicant listed on the application. Any applicant denied a permit may file a request for a hearing before the Commission within ten (10) working days after the applicant receives notice that his application for a permit has been denied. The hearing procedures in Section 40.05.080 shall apply to hearings concerning the denial of a permit.

40.05.050 Terms and Conditions

Any permit shall contain the following terms, and such conditions as the Director deems necessary to carry out the purposes of this Code and the regulations and policies of the Department:

(a) Each permit shall identify the individual(s) who shall be responsible for carrying out the terms and conditions of the permit, and for otherwise complying with this Code and other applicable laws, regulations, and policies. The property owner, if the owner is not the applicant, shall be equally responsible for carrying out the terms and conditions of the permit.

(b) The permit shall contain provisions requiring restoration of the site to its former condition.

(c) Every permit will be issued in the name of the applicant regardless of outside contract services.

(d) No permit shall be transferable unless the Director gives written approval for such a transfer.

(e) The Department may require that a bond be posted as a prerequisite to issuance of a permit, pursuant to bonding requirements approved by the Commission. The bond may be waived if requested by the Lummi Indian Business Council in the form of a Resolution.

(f) The duration of each permit shall not exceed twelve (12) months. The Director may renew a permit, under the original or modified terms and conditions, for a period of time not

to exceed twelve (12) months for work that has been diligently pursued but is not completed.

(g) Failure to begin work under a permit within six (6) weeks after the permit is granted, or failure to diligently pursue such work after it has begun, shall make the permit void. The applicant must re-apply for a new permit if they desire to continue the work.

40.05.060 Duties of Permittees

During the course of the Undertaking, each permittee shall report monthly and quarterly to the Department. The director shall provide copies of all monthly and quarterly reports to the Commission. Monthly reports shall contain a brief summary statement of the work performed during the month. Quarterly reports shall contain a catalog of collections and photographs made during the quarter. Each permittee shall cooperate fully with all inspections conducted by the *Sche'lang'en* Department or the Commission. No part of any collection shall leave the Reservation without the express written consent of the Department in the form of a Temporary Removal License. Such license shall at all times accompany the materials while off the Lummi Reservation. A bond may be required upon recommendation of the *Sche'lang'en* Department Director.

40.05.070 Suspension and Revocation of Permits: Grounds

The Department may suspend or revoke a permit based on any of the circumstances listed below. A suspension shall be in effect until the Director determines that the cause for suspension has been corrected or is no longer applicable. Such a suspension shall not prevent a permittee from holding or obtaining other permits. Furthermore, suspensions and revocations are made without liability to the Lummi Nation, its agents or employees.

(a) A permit may be suspended or revoked upon a determination by the Director that continuation of activities under a permit would not be in the best interests of the Lummi Nation or its people. The Director must provide the permittee a written explanation for such suspension or revocation. An example that may support such a

determination by the Director includes, but is not limited to, new information coming to the Director's attention that the permittee has failed to comply with conditions of a land-use permit involving cultural resources or a cultural resources permit granted by any tribal, federal, state, or local governmental agency.

(b) A permit may be suspended or revoked if the permittee has violated the terms and conditions of the permit, this Code, or other applicable laws, regulations, and policies.

(c) A permit may be suspended or revoked upon a determination by the Director that the relevant circumstances have changed since the granting of the permit so that the application no longer meets the criteria of Section 40.05.030 above.

(d) A permit may be suspended or revoked if the Director determines that material misrepresentations were contained in the permit application.

(e) A permit may be suspended or revoked if the Director determines that the permit was improperly granted and did not follow standard review and/or approval processes required by this Code.

40.05.080 Notice and Hearing

The Director of the Department or the Lummi Tribal Prosecutor shall prepare a written notice specifying the grounds to suspend or revoke a permit. This notice shall be filed with the Commission and a copy personally served on the permittee, if possible, or mailed by certified mail, return receipt requested, to the address of the applicant listed on the application.

The permittee may request a hearing before the Commission by filing a written request for a hearing with the Commission within ten (10) working days after receiving the notice of suspension or revocation. A copy of the request for hearing shall also be delivered to the Department Director or the Tribal Prosecutor.

If the permittee timely requests a hearing, the suspension or revocation shall be stayed pending the outcome of the hearing. If a timely request for hearing is not submitted, the

suspension or revocation shall take effect ten (10) working days after the permittee received notice of the suspension or revocation.

If a timely request for hearing is filed, the Commission shall schedule a hearing to determine the matter and shall notify the permittee and the Director or the Prosecutor of the date, time, and place of the hearing. The hearing shall be no less than five (5) working days, and nor more than thirty (30) working days after the Commission's receipt of the permittee's request for hearing.

The permittee shall be entitled to an opportunity to appear at the hearing in person and through a representative of his choice, to hear the evidence presented by the Tribal Prosecutor or the Director in support of the suspension or revocation, and to provide evidence in support of his or her actions.

The hearing shall be recorded. A copy of the hearing tape recording shall be provided to any party at that party's expense.

The Commission shall decide the matter based on the evidence and testimony presented at the hearing. The Commission decision shall be made within ten (10) working days after the hearing is concluded, shall be in writing, and shall explain the basis of the decision. A copy of the decision shall be provided promptly to all parties by the Commission.

40.05.090 Emergency Suspensions/ Revocations: Cease & Desist Orders

Upon finding that a delay in suspending or revoking a permit for the period required by a hearing would be contrary to the tribal interest in preserving cultural resources or historic properties, the Director or Tribal Prosecutor may issue a written "Cease & Desist" Order directing the permittee to immediately cease and desist all excavation, removal, or other activity being conducted pursuant to the permit. Such notice shall be personally served on the permittee. If the permittee cannot be located, the notice shall be served on any employee or agent of the permittee and posted on the site where the permittee's activities are being conducted. It shall be unlawful for any person to disobey a "Cease & Desist" Order. In all

cases where a "Cease & Desist" order has been issued, the Commission shall immediately schedule a hearing to determine the matter. The hearing shall be within no less than two (2) working days nor more than ten (10) working days after the date of the "Cease & Desist" order unless continued by the Commission upon motion of the permittee. Except as otherwise stated in this section, the hearing procedures in Section 40.05.080 shall apply to an emergency hearing on a "Cease & Desist" Order.

Chapter 40.06 Damaging or Adverse Effects Prohibited

40.06.010 Prohibited Acts

(a) No person shall excavate, remove, damage or otherwise alter, deface, destroy, or adversely effect any cultural resource or historic property on land within the Lummi Reservation unless such activity is conducted pursuant to the terms and conditions of a permit issued under this Code. This prohibition shall not apply to Lummi Nation employees engaged in official business relating to cultural resources management activities approved in accordance with Department rules and procedures.

(b) No person shall sell or offer to sell, purchase, exchange, transfer, transport, receive or possess any cultural or historic resource if such resource is excavated or removed from land within the exterior boundaries of the Lummi Indian Reservation without a permit issued under this Code. This prohibition shall not apply to Lummi Nation employees engaged in official business relating to cultural resources management activities approved in accordance with Department rules and procedures.

(c) No cultural property on Lummi Nation lands may be visited or investigated by a non-member of the Lummi Nation except those designated as open to the public within the boundaries of a Lummi Nation Park or a National Park or Monument unless such visit or investigation is pursuant to a permit issued under this Code or written authorization from the Department Director. This prohibition shall not apply to Lummi Nation employees engaged in official activities.

(d) No person may engage in ethnographic research on the Lummi Reservation, except when such activities are conducted pursuant to the terms and conditions of a permit issued under this Code or written authorization from the Department Director.

(e) No person shall disclose information concerning the nature and location of any cultural resource or historic property on the Lummi Reservation without the express written consent of the Department Director after a determination has been made that such disclosure does not create a risk of harm to the cultural resources or the site at which such resources are located. This prohibition shall not apply to Lummi Nation employees engaged in official business relating to cultural resources management activities approved in accordance with Department rules and procedures.

Chapter 40.07 Enforcement

40.07.010 Violations

It shall be unlawful for any person to perform any act which is prohibited under this Code, or to fail to do any act that is required under this Code.

40.07.020 Criminal Penalties

The procedures established for criminal offenses under the Lummi Nation Code of Laws shall apply to criminal offenses charged under this Code. Persons subject to the criminal jurisdiction of the Lummi Nation may be subject to the following criminal penalties for violating the provisions of Section 40.06.010 of this Code. In the event a defendant pleads guilty or no contest, or is found guilty of committing one of the acts prohibited by Section 40.06.010, the Tribal Court may impose one or all of the following penalties:

- (a) A fine of not more than \$5,000.
- (b) A jail term not to exceed one year.
- (c) Forfeiture of any article seized by reason of illegal activities prohibited by this Code pursuant to applicable forfeiture laws of the Lummi Nation.

40.07.030 Civil Assessments

(a) Individuals violating the prohibitions in Section 40.06.010 of this Code shall be subject to civil assessments imposed by the Commission in accordance with procedures adopted by the Commission expressly for this purpose. The Commission shall adopt such procedures within ninety (90) calendar days of the adoption of this Code. In the absence of such procedures, the Notice and Hearing requirements of Section 40.05.080 shall apply.

(b) Violations of the provisions of Section 40.06.010 shall be grounds for withdrawal of the privilege of doing business with the Lummi Nation. The Commission shall consider whether or not to recommend to the Lummi Indian Business Council that any individual found to be in violation of this Code shall lose the privilege of doing business with the Lummi Nation.

(c) Any person not a member of the Lummi Nation who visits or inspects cultural properties within the exterior boundaries of the Lummi Reservation without a valid permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Commission, shall be assessed a civil forfeiture of not to exceed \$500 for the first offense and not to exceed \$1,000 for any subsequent offenses. For the purposes of this part, each visit to or inspection of a cultural site, area or property of any property within the exterior boundaries of the Lummi Reservation shall be considered a separate offense. The Commission may, at its discretion, recommend to the Lummi Indian Business Council that any person found to be in trespass be excluded from the lands of the Lummi Nation.

(d) Any person not a member of the Lummi Nation who engages in cultural resources inventory activities on the Lummi Reservation without a valid permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Commission, shall be assessed a civil forfeiture not more than \$2,000 for each offense. For the purposes of this section, each inventory on lands within the Lummi Reservation shall be considered a separate offense. The Commission may at its discretion, recommend to the Lummi Indian

Business Council that any person found to be in violation shall be excluded from the lands of the Lummi Nation.

(e) Any individual within the exterior boundaries of the Lummi Reservation who alters, collects, damages, defaces, destroys, excavates, removes or sells cultural properties or who collects ethnographic data without explicit permission or valid permit, or as permitted under the exceptions provision, or who engages in activities in violation of the terms and conditions of a valid permit shall be liable, after a hearing before the Commission, to the Lummi Nation for civil damages as determined by the Commission as follows:

(1) Assessment of Actual Damages. The Commission shall impose the civil assessments based upon actual damages in accordance with “Standards for Assessing Damages to Cultural Properties” that the Commission shall adopt expressly for this purpose. The “Standards for Assessing Damages to Cultural Properties” shall include, but need not necessarily limit considerations to:

(A) Full costs of restoration of the cultural resources;

(B) Enforcement and administrative costs associated with the civil action;

(C) Costs of dispositions of cultural properties, including as appropriate, costs of curation in perpetuity;

(D) Costs associated with documentation, approved testing and evaluation of the cultural property in order to assess the characteristics of the cultural resource and plan for its restoration; and

(E) Costs of any additional mitigation measures the Commission deems appropriate.

(2) Assessment of Treble Damages. In addition to the actual damages, the Commission may, at its discretion, assess damages of up to three times the amount of the actual damages.

(3) Seizure of Equipment and Cultural Resources. The Director, or his designee, or any Lummi Law and Order Officer, shall seize all cultural resources in the possession of any individual cited for violating Section 40.06.010 of this Code, together with any other property used for or related to the violation in the possession of the individual cited, as the Director or officer may deem necessary to obtain payment of any civil assessment.

(4) Forfeiture of Cultural Resources and Property. After hearing before the Commission:

(A) Any cultural resource or properties obtained in violation of this Code shall be forfeited to the Lummi Nation.

(B) Any other property seized in accordance with Section 40.07.030(3) shall be released to the owner upon timely payment of any related civil assessments; and

(C) Any seized property shall be forfeited to the Lummi Nation if the assessment has not been paid within fifteen (15) calendar days of the hearing at which the civil assessment was levied or pursuant to this Code, whichever is later. Any such forfeiture shall be limited to the amount of the civil assessment. Any property remaining after forfeiture of property up to the value of the assessment shall be returned to the owner.

(5) Forfeiture of any bond. The Commission may revoke any bond posted by the individual up to the amount of any civil assessment imposed by the Commission.

(f) Civil assessments imposed under this section shall be reserved solely for the purposes of restoring damaged cultural properties and for meeting the purposes of this Code and shall be deposited in the Lummi Historic Preservation Revolving Account for disbursement in accordance with the Lummi Nation Budgetary Procedures.

Chapter 40.08 Appeals

40.08.010 Judicial Review

Any person directly and adversely affected by a final administrative decision of the Department or the Commission, shall be entitled to judicial review of the decision in the Lummi Nation Tribal Court. Notice of an appeal must be filed with the Tribal Court within thirty (30) calendar days of receipt of notice of the final decision being appealed.

40.08.020 Transcript of Administrative Hearing

A transcript of the administrative hearing shall be prepared and filed with the Court at appellant's expense. A copy of the transcript shall be provided to the Director, Tribal Prosecutor, or other person representing the Department or the Commission. The expense of copying the transcript shall be paid by the Department. The parties may stipulate to an agreed statement of facts in place of a transcript.

40.08.030 Standard of Judicial Review

Judicial review by the Lummi Tribal Court shall be limited to:

- (a) A review of the administrative record to determine whether the decision being appealed from is based on credible evidence sufficient to support the decision;
- (b) A review of the decision being appealed to determine that it is not contrary to the requirements of this Code and the regulations, procedures, and policies of the Department;
- (c) Ensuring that the appellant received due process of law; and
- (d) Ensuring that all rights of the appellant under the Lummi Constitution and Lummi Code of Laws were observed.

Chapter 40.09 Code Implementation and Amendment

40.09.010 Regulations, Procedures, Policies, and Guidelines

The Lummi *Sche'lang'en* Department is

authorized to prepare regulations, administrative policies, and procedural guidelines and requirements to implement and achieve the purposes of this Code. Such regulations, administrative policies, and procedural guidelines and requirements shall not be effective until approved by the Cultural Resources Preservation Commission.

40.09.020 Code Amendment

The *Sche'lang'en* Department shall be required to periodically review this Code as follows:

(a) After annual review of preservation efforts and/or changes in federal or tribal law, the *Sche'lang'en* Director shall propose recommended changes of this Code to the Cultural Resources Preservation Commission for review and approval; tribal legal staff will review proposed changes and finalize recommendations to the Lummi Indian Business Council.

(b) Final approval of amendments to this Code shall be made according to the requirements of the Lummi Constitution, the Lummi Code of Laws, and procedures adopted by the Lummi Indian Business Council, including final certification by the Law and Justice Commission.

(c) Any proposed changes to this Code shall not change or undermine:

- (1) The Fiduciary Trust Responsibility of the federal government;
- (2) The Tribal sovereignty and jurisdiction of the Lummi Nation, including the spiritual, cultural, political, economic, legal, social and the territorial realms, and the right to subsist without interference from outside influences that impinge on Lummi Nation cultural survival;
- (3) Treaty Rights;
- (4) Lummi Nation efforts to protect our tribal tradition, spirituality and customs, traditional law or ceremony;
- (5) Other official tribal policy statements

enacted by the Lummi Indian Business Council.

Chapter 40.10 Miscellaneous

40.10.010 Severability

If any provision of this Code or its application to any person or circumstance is held to be invalid, the remainder of this Code or the application of the provision to other persons or circumstances shall not be affected.

Title40pub08