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TITLE 44A

LUMMI NATION CODE OF LAWS

FOOD SOVEREIGNTY CODE

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TITLE 44A
LUMMI NATION CODE OF LAWS
FOOD SOVEREIGNTY CODE

Chapter 44A.01 Purpose

44A.01.010 Purpose

(a) The Lummi people have experienced the negative impacts of industrialized food systems on the health of our community. The purpose of this Code is to protect our inherent rights to exercise food sovereignty. Food sovereignty is the right to develop and maintain the capacity to obtain, prepare and process, distribute, and consume culturally and traditionally relevant foods. Culturally and traditionally relevant food is the lifeline of the Lummi people.

(b) The Lummi Nation, as signatory to the Treaty of Point Elliot of 1855, recognizes the importance of protecting our inherent right to exercise food sovereignty through establishing legal protections for our foods, as well as the many natural and human resources utilized to safeguard the health and general welfare of our people, our culture, our economy, and our natural resources.

(c) This Code provides the policy framework and delegation of administrative authority for the Food Sovereignty Compliance Officer to address the promotion, protection, and preservation of our cultural and traditional foods, our medicines for future generations, and the natural environment of these resources.

(d) The Lummi producers and processors will benefit from these developed standards to maintain the quality and safety of their product through adherence to food safety protocols.

(e) The Lummi fishers will benefit from these developed standards that will improve the quality of their harvest and add value to their product.

(f) This Code shall be liberally construed and applied to promote the health and general welfare of the Lummi Nation’s people, culture, economy,

and natural resources through food and agricultural production.

44A.01.020 Applicability

The provisions of this Code and any regulations in accordance with this Code shall be applied to all individuals, businesses, and LIBC departments, entities, divisions, and programs within the exterior boundaries of the Reservation and within the exterior boundaries of all lands held in trust for the Lummi Nation by the United States regardless of location.

Chapter 44A.02 Definitions

44A.02.010 Definitions

(a) “Agriculture or agricultural” means the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes or community distribution as well as the raising of domestic animals and wildlife in domestication or a captive environment.

(b) “Commission” shall mean the Food Sovereignty Commission or any other commission designated by the LIBC.

(c) “Dairy Product” means any product including milk that is produced from the milk of ungulate mammals (mammals that chew cud) such as dairy cows, goats, sheep, and other such animals.

(d) “Fish or shellfish” means fresh or saltwater animals including finfish, crustaceans, mollusks, echinoderms, coelenterates or parts thereof intended for human consumption. Other animals having substantial semi or wholly aquatic life histories such as reptiles, aquatic turtles and

amphibians such as frogs are also included. All birds and mammals are excluded from this definition and category. Microscopic organisms are excluded from this definition and category.

(e) “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum and traditional foods as outlined below, including but not limited to, fish or shellfish, wild game, plants, fruits, grains, vegetables, dairy products, and poultry.

(f) “Food Sovereignty Compliance Officer” shall mean the official appointed by the Commission to enforce this Code and any regulations promulgated hereunder, or authorized designee.

(g) “Fruit” means the edible, non-seed portion of the fruiting body of a plant.

(h) “Grain” means the seed or parts thereof from the seed head of grass or grass-like a plant such as wheat, rice, flax, millet barley, oats, or corn that are produced in the absence of a fruiting body. Typical grain products include flours and meals (ground seeds) and kernels such as corn and rice. Finished products include such items as breads, pastries, meals, rice, and corn.

(i) “Health Advisor” shall mean the individual designated by the commission to serve as technical assistance to the Compliance Officer for the enforcement and interpretation of this Code and any regulations promulgated hereunder.

(j) “LIBC” shall mean the governing body of the Lummi Nation pursuant to the Constitution and Bylaws of the Lummi Tribe of the Lummi Reservation, Washington as amended.

(k) “Permit” means permit or license issued by the Lummi Nation.

(l) “Plant” means any photosynthetic or fungal plant organism or any part thereof. Microscopic organisms such as yeast are included in this definition and category. Edible plant means any

plant or part thereof means intended for human consumption. Plant-derived products such as cooking oils, spices, beverages, and condiments are excluded from this definition and category.

(m) “Potentially Hazardous Food” means a Food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(n) “Poultry” means non-wild bird (avian) or bird products produced via agriculture. This classification includes the edible portions (meat, internal organs, and eggs) of avians. Examples of poultry include chickens, turkeys, geese, ducks, pigeons, Cornish game hens, and ostriches.

(o) “Tribal Court” means the Lummi Tribal Court established under Title 1 of the Lummi Code of Laws (LCL).

(p) “Trust Land” means all lands held in trust for the Lummi Nation by the United States regardless of location.

(q) “Vegetable” means the non-seed, non-fruit edible portions of a plant including, roots, stems, leaves, and other such non-seed and non-fruit edible portions of plants.

(r) “Wildlife” means all naturally-produced mammals, birds, and all other animals not otherwise classified as “Fish or Shellfish”, above. Microscopic organisms are excluded from this definition and category.

(s) “Wild game” means all wildlife animals intended for human consumption.

Chapter 44A.03 Food Sovereignty Administration and Authority

44A.03.010 Food Sovereignty Compliance Officer Duties

The Lummi Indian Business Council hereby creates the position of the Lummi Food Sovereignty Compliance Officer (“Compliance Officer”) who shall be subject to the direction and

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supervision of the General Manager, or designee. The Compliance Officer shall be an employee of the Lummi Nation, subject to the personnel policies of the LIBC. The Compliance Officer, or authorized designee shall:

- (a) Develop and maintain, in consultation with the Office of Reservation Attorney, for adoption by the Commission and approval by the LIBC, such regulations as may be necessary to administer and enforce this Code;
- (b) develop the administrative and technical capabilities of the Food Sovereignty Compliance Officer to promote the effective implementation, maintenance and enforcement of this Code;
- (c) prepare plans and develop programs in accordance with the purpose of this Code;
- (d) develop criteria, standards, forms, and a fee structure for permits; administer the permitting processes required to implement this Code; and, when necessary, coordinate permit review in cooperation with other departments and agencies of the Lummi Nation;
- (e) receive technical assistance and support from the Health Advisor and Public Health Director for the purposes of interpreting and enforcing the Code and any regulations promulgated hereunder;
- (f) consult with LIBC committees, commissions, and boards as necessary on the administration and enforcement of this Code and regulations promulgated hereunder;
- (g) coordinate with local, state, and federal health departments regarding an outbreak that may affect individuals outside the reservation;
- (h) conduct inspections to determine whether the requirements of this Code or regulations promulgated hereunder are being fulfilled;
- (i) enter, or designate staff members to enter, upon lands and other property within the external boundaries of the Lummi Reservation and trust lands, at all reasonable times or after obtaining an order from the Tribal Court if the owner, lessee,

sublessee, assignee, or permittee refuses to consent to entry, for the purposes of conducting investigations and ensuring compliance with permits, this Code, and any regulations promulgated hereunder;

- (j) impose corrective actions, fines, and issuance of such orders, including emergency restraining orders and cease and desist orders, as may be necessary to enforce the provisions of this Code; of any regulations promulgated hereunder; or of any permit, order, plan, determination, policy, guideline, or rule developed in accordance with this Code;
- (k) initiate, in consultation with the Office of Reservation Attorney, enforcement proceedings before the Tribal Court or in other courts of competent jurisdiction for violations of this Code, including injunctive relief, and appear in proceedings before the Tribal Court, Tribal Court of Appeals, and any other court of competent jurisdiction;
- (l) conduct conferences and, by subpoena, compel the attendance and testimony of persons and the production of any books, records, and papers of any person, and examine under oath, either orally or in writing, any person or agent, or any other witness; and
- (m) exercise all other authority delegated by law or as may reasonably be necessary in the administration or enforcement of this Code and the regulations promulgated hereunder.

44A.03.020 Cultural and Health Advisor

The Commission may appoint a Health Advisor to assist the Compliance Officer in interpreting and enforcing the Regulations. The Commission shall appoint an individual from the *Sche'lang'en* Department as the Cultural Advisor to assist the Compliance Officer.

44A.03.030 Cultural Preservation

The Food Sovereignty Administration shall promote cultural resources and historic preservation efforts. In doing so, the Administration shall interpret and enforce this Code and any regulations promulgated hereunder consistent with the requirements of Title 40 Cultural Resources Preservation Code of the Lummi Code of Laws.

44A.03.040 Establishment of the Food Sovereignty Commission

(a) The Food Sovereignty Commission is hereby created to exercise authority over food sovereignty and shall adopt by-laws under which it shall operate internally. The by-laws shall be approved by resolution of the LIBC.

(b) The Commission shall consist of five (5) members, one LIBC council member, and one elder, one Cultural Resources Preservation Commission representative, one youth representative, and one fisher, who are appointed by LIBC.

44A.03.050 Powers and Duties of the Food Sovereignty Commission

The Commission is charged with the power and authority to:

(a) adopt regulations to administer and enforce this Code, including requirements for issuing permits and establishing a schedule of civil fines and fees for violations of this Code, inspections, and permits, subject to approval by the LIBC;

(b) recommend to the LIBC proposed amendments to this Code;

(c) consult with the Food Sovereignty Compliance Officer and the General Manager’s Office on the preparation of a proposed budget for the administration of this Code, such budget shall be approved annually according to the

requirements of Title 28 of the Lummi Code of Laws;

(d) administer oaths; conduct hearings to resolve appeals by persons affected by decisions and actions of the Compliance Officer; make decisions, determinations, and judgments permitted or require by this Code; issue subpoenas to compel the attendance and testimony of persons and the production of books, records, and papers of any applicant or permittee; and examine under oath, orally or in writing, any affected person or their agent or any other witness;

(e) exercise all other authority delegated by law or as may be reasonably necessary in the administration of this Code.

44A.03.060 Promulgation of Regulations

(a) Regulations. The Compliance Officer shall promulgate regulations in consultation with the Office of Reservation Attorney as needed to administer and enforce this Code.

(b) Notice. Before final adoption of a regulation by the LIBC, the Food Sovereignty Compliance Officer shall post notice of the proposed regulation for public review and comment on the LIBC website and in at least three public places, inviting written comment and stating a deadline for their submission of not less than thirty (30) days after the posting of notice. The notice shall inform the public where copies of the proposed regulations may be obtained. The Food Sovereignty Compliance Officer may, but is not obligated to, hold a public hearing; in that event, he or she will announce the time and place at which oral testimony will be heard.

(c) Adoption. After the closure of the public notice and comment period, or closure of the public hearing if one is held, the proposed regulations and all comments received shall be presented to the Commission for its review. The Commission may approve, amend, or disapprove of the proposed regulations, or the Commission

may direct the Food Sovereignty Compliance Officer to prepare revisions to the proposed regulations and/or provide for further public review and comment. Proposed regulations approved by the Commission shall be submitted in a timely manner to the LIBC for review and adoption by the Council.

(d) Effective Date. Upon approval by resolution of the LIBC, a regulation shall become effective on the date specified in the resolution. If no date is specified, the effective date shall be the date the resolution is approved by the LIBC.

(e) Available for Inspection. A copy of applicable regulations will be filed and made available for public inspection on the LIBC website.

(f) Emergency Regulations. If the Commission finds that immediate adoption of a regulation is necessary for the protection of the public health, safety, or welfare and that complying with the notice and comment requirements of this Code would threaten the health or the public interest of the Lummi Nation, the Commission may dispense with such requirements and immediately adopt a regulation as an emergency regulation. An emergency regulation shall be effective upon the date of its adoption by the Commission. Notice of the emergency regulation may be posted on the LIBC website but such posting is solely to inform the public of its adoption, and nothing in this Code shall be construed to prevent the implementation of the emergency regulation upon its adoption by the Commission in accordance with this Section. An emergency regulation shall expire one hundred and eighty (180) days after its adoption, unless approved as a permanent regulation by the LIBC.

44A.03.070 Public Notices

(a) The Compliance Officer shall work in consultation with the Public Health Director to inform the community members when a food product presents a health risk because of

contamination or has caused an outbreak of illness. The notice to community members shall include how to protect themselves during the outbreak or emergency and what actions are being taken to control the outbreak or emergency.

Chapter 44A.04 Permit System

44A.04.010 Permits

(a) Purpose of Permit System. The purpose of the permit system is to protect the health, safety, and welfare of all residents and visitors within the Reservation, and to exercise food sovereignty.

(b) Development of Permit System. The Food Sovereignty Compliance Officer shall develop a permitting system for individuals, businesses, and LIBC departments, entities, divisions, and programs to store, sell, or otherwise provide food or potentially hazardous food within the Reservation.

44A.04.020 The Permit System

(a) Nature of Permit Rights. All permits issued under this Code are provisional and shall not be construed to create an entitlement in the permittee beyond the provisional period specified in the permit nor to allow reliance thereon by any other person. A permit issued by the Compliance Officer does not replace any permits required by other agencies of the Lummi Nation for an activity, and is strictly limited to the activity described in the permit. All permittees must comply with all applicable federal and Lummi Nation laws and regulations as a mandatory condition of their permits.

(b) Registry of Permits. The Compliance Officer shall create and maintain a registry of permits. Permits shall be subject to periodic review by the Compliance Officer.

(c) Types of Permits. The Compliance Officer may issue the following types of permits,

consistent with the requirements of this Code and regulations adopted pursuant to this Code:

(1) Food Service Permit. Any person who shall sell or distribute food as defined in § 44A.02.010(e) on Trust Land, shall be required to possess a valid Food Service Permit from the Lummi Nation. To qualify for a permit, the permittee must meet the requirements of any regulations as adopted under this Code. Permits shall be issued by the Food Sovereignty Compliance Officer or as delegated in conformity with such regulations.

(2) Fish and Shellfish Permit. Any person who sells or distributes fish or shellfish, may apply for a Fish and Shellfish Permit from the Lummi Nation. To qualify for a permit, the permittee must meet the requirements of any applicable regulations as adopted under this Code.

(3) Other Permit. The Food Sovereignty Compliance Officer may require other permits as needed to enforce and administer the intent of this Code.

44A.04.030 Permit Application Procedure

(a) Permit Application. Permit applications shall be made on forms developed by the Food Sovereignty Compliance Officer, containing such information and facts that, in the judgment of the Food Sovereignty Compliance Officer, are required for the proper processing of such applications, including food service handling permits, business licenses, and business plans as may be appropriate. A fee schedule for permit applications shall be paid in advance to the Lummi Accounting Department.

(b) Receipt of Application. Upon receipt of a permit application, the food sovereignty compliance officer shall endorse on the application the date of receipt and keep a record of the application. Upon receipt of the application, the food sovereignty compliance

officer shall determine whether the application is complete and correct. If the Food Sovereignty Compliance Officer determines that the application is incomplete or incorrect, the Compliance Officer shall reject and return the application as incomplete and request additional information from the applicant.

(c) Time Period for Approving and Denying Permit Applications. The Compliance Officer shall make a determination on approving or denying a permit application within forty-five (45) days of receipt of the application. If no determination is made on the application within the prescribed time periods, the permit shall be deemed denied. Any denied permits may be appealed to the Commission in accordance with § 44A.06.010.

(d) Temporary Permits. The Compliance Officer shall have the authority to establish temporary permits by regulation as adopted under this Code.

44A.04.040 Revocation and Suspension of Permits

(a) Grounds for Revocation and Suspension of Permits. The Compliance Officer may revoke or suspend a permit, in whole or in part, permanently or temporarily as follows:

- (1) For any material false statement in an application to obtain or modify a permit;
- (2) For violation of this Code, any regulation promulgated hereunder, or any condition of a permit;
- (3) For an imminent health hazard; or
- (4) Upon the written consent of the permittee.

(b) Notice. The Compliance Officer shall provide written notice of intent to revoke or suspend a permit by certified mail, return receipt requested, to the permittee at the last known address contained in the Compliance Officer's records. If the permittee cannot be so served with

a notice, the permittee may be served by posting notice on the LIBC website for three (3) consecutive weeks or by publication in a newspaper of general circulation once each week for three (3) consecutive weeks.

(c) Decision. The permittee shall have ten (10) days from the day the notice was delivered, or from the date of last publication, to show cause in writing why the permit should not be revoked or suspended. The Compliance Officer shall issue a decision whether to revoke or suspend the permit within thirty (30) days of receipt of the permittee's written statement.

(d) Emergency Revocation or Suspension of Permits. In the event of an imminent health hazard, the Compliance Officer may temporarily revoke or suspend a permit without prior notice for a period not to exceed thirty (30) days.

Chapter 44A.05 Prohibited Acts and Enforcement

44A.05.010 Prohibited Acts

It is civilly prohibited for any person to:

- (a) Commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the lawful administration of this Code;
- (b) Falsify or make any material misrepresentation in any permit application or other document, or intentionally withhold data required to be submitted under this Code;
- (c) Violate the provisions of this Code, any regulations promulgated hereunder, the conditions or stipulations of permits issued hereunder, or any order of the Food Sovereignty Compliance Officer or Commission issued hereunder; or
- (d) Engage knowingly in any act that obstructs or otherwise interferes with the

performance by Lummi Nation employees of their lawful duties under this Code.

44A.05.020 Judicial Enforcement

(a) Tribal Court Jurisdiction. Except as otherwise provided in this Code, the Lummi Nation Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of this Code; provided, however, that nothing in this Code is intended nor shall it be interpreted to preclude prosecution, or enforcement of Tribal Court judgments, in state or federal court pursuant to any applicable state or federal law.

(b) Civil Enforcement and Remedies. The Compliance Officer, with consultation with the Office of Reservation Attorney, is authorized to enforce the provisions of this Code by filing a civil action in the Tribal Court in the name of the Lummi Nation against any person engaged in an activity or activities prohibited by this Code or the regulations promulgated thereunder, and may recover monetary damages, civil penalties, restitution, injunctive or declaratory relief, affirmative remedial action, court costs, investigatory and enforcement costs, attorney's fees, and/or any other relief that is just and equitable under the circumstances, including, but not limited to, orders for the person:

- (1) To perform community service and to be informed about the need for compliance with this Code;
- (2) To pay a civil penalty not exceeding Five Thousand Dollars (\$5,000) per day for each prohibited act for failing to comply with any order of the Compliance Officer or the Tribal Court issued pursuant to this Code;
- (3) To make restitution to the Lummi Nation and to affected persons for the cost of damages and restoration;
- (4) To pay the Lummi Nation any monetary benefit derived from the violation of this Code.

(c) Preliminary or Permanent Injunctions. Upon the filing of a motion for a preliminary or permanent injunction by the Compliance Officer, or upon its own initiative, the Tribal Court shall issue a preliminary or permanent injunction on the following grounds:

- (1) When an emergency restraining order has been issued by the Compliance Officer under this Code, the Compliance Officer has moved for a preliminary or permanent injunction, and it appears by the pleadings or affidavits on file that the Compliance Officer is entitled to the relief requested;
- (2) When it appears by the pleadings or affidavits on file that the commission or continuance of some act would produce great or irreparable injury to the public health, safety, or welfare;
- (3) When it appears that the person sought to be restrained is doing, threatening to do, or is about to do, or is procuring or suffering to be done some act in violation of this Code or a federal or Lummi Nation law, regulation, ordinance, order, or permit; or
- (4) In all cases where an injunction would be equitably appropriate.

The Tribal Court’s rules of civil procedure shall otherwise govern the procedures for issuing preliminary or permanent injunctions.

(d) Exclusion. For good and sufficient cause found, the Tribal Court may exclude from the Reservation and trust lands any person who engages in an activity or activities prohibited by the Code or the regulations promulgated hereunder to the extent such exclusion is not inconsistent with applicable federal and Lummi Nation laws.

44A.05.030 Non-Judicial Enforcement

(a) Corrective Measures. Upon finding a violation of this Code, or of the Regulations adopted under this Code, the Compliance Officer

is authorized to administratively order corrective measures in accordance with the Regulations.

(b) Cease and Desist Orders. If the Compliance Officer has denied, revoked, or suspended a permit under this Code, the Compliance Officer may issue an order for the person whose permit has been denied, revoked, or suspended to cease and desist his or her unauthorized activities. The order shall be in writing, describe the unauthorized activity, and advise the person of his or her right to appeal the Compliance Officer’s decision denying, revoking, or suspending the permit as provided for in this Code and to show cause why the person should not be ordered to cease and desist from the activity. If the person continues the violation after the Compliance Officer issues a cease and desist order, the Compliance Officer may apply to the Tribal Court for a temporary restraining order or preliminary injunction.

(c) Civil Fines. The system of civil fines for violations of this Code, the regulations promulgated hereunder, and the permits issued hereunder, may be established by the Commission, subject to approval by the LIBC; provided that no fine shall exceed five thousand dollars (\$5,000) per day per violation and that the imposition of a fine shall constitute a final decision by the Compliance Officer and be subject to the appeal procedures set forth in this Code. The violation schedule shall be developed by the Compliance Officer for approval by LIBC.

Chapter 44A.06 Appeals

44A.06.010 Appeal to the Commission from a Final Decision

(a) Notice of Appeal. An affected person or entity (“Appellant”) aggrieved by a final decision of the Compliance Officer may file a written Notice of Appeal with the Commission, through the office of the Compliance Officer, within

twenty (20) days of the Appellant's receipt of the Compliance Officer's decision or within twenty (20) days of publication of the decision, if applicable. Such notice shall identify itself as a Notice of Appeal and state with particularity the basis of the Appellant's claim that an action of the Compliance Officer is erroneous. The Appellant also shall file a copy of the Notice of Appeal with the Compliance Officer.

(b) Filing of Materials to Substantiate or Rebut Claim. An Appellant shall, within thirty (30) days from the date of receipt or publication of the Compliance Officer's decision, file with the Commission, through the Office of the Compliance Officer, a brief addressing the Appellant's points on appeal and any other materials, information, or evidence related to his, her, or its claim. A copy of the appeal materials shall be served on the Compliance Officer, who shall have twenty (20) days from such service to file with the Commission a responsive brief and any materials, information, or evidence supporting his or her final decision. An Appellant shall have ten (10) days from the receipt of the Compliance Officer's brief and materials to file a reply.

(c) Hearing and Notice. Following the time period for submission of materials provided for in this Section, the Commission shall schedule a hearing and give the Appellant and the Compliance Officer not less than five (5) days' prior written notice of the hearing. Where more than one person files an appeal from the same final decision of the Compliance Officer, the Commission may conduct a single hearing on all appeals, provided that each individual Appellant has the right to appear and participate in full.

(d) Hearing Procedures.

(1) At the hearing, an Appellant will be afforded the opportunity to present testimony and evidence and to examine witnesses. Appellants may appear at the hearing for themselves or, at their own expense, be represented by an attorney, certified or

registered public accountant, or other person authorized by the Appellant.

(2) The Compliance Officer shall have the same rights to participate in the hearing as the Appellant.

(3) Hearings shall not be open to the public, except upon request of the Appellant, and may be postponed or continued at the discretion of the Commission.

(4) All hearing testimony shall be given under oath. The Commission shall conduct the proceedings so that both complaints and defenses are amply and fairly presented. The Commission shall have the authority to administer oaths; issue subpoenas to compel the attendance and testimony of persons and the production of any books, records, and papers of an Appellant or any other affected person or party; and examine under oath, either orally or in writing, any Appellant or agent, or any other witness. The Commission may permit discovery, entertain and dispose of motions, and require written expositions of the case as the circumstances justify. Formal rules of evidence shall not apply; the Commission may accept such evidence as it finds relevant and credible. The Commission may require reasonable substantiation of statements or records.

(5) An audio recording of the hearing shall be kept, and shall be a permanent part of the hearing record.

(6) Without undue delay, the Commission shall enter a written decision in accordance with the law and evidence presented and shall state the basis for its decision. If the Commission finds that there was substantial compliance with procedural requirements and that the decision of the Compliance Officer was supported by substantial evidence in the record and justified by applicable policies, rules, laws, and regulations, it shall affirm the Compliance Officer's decision. If it finds to

the contrary, the Commission may overturn the Compliance Officer’s decision or any part thereof and/or remand the matter to the Compliance Officer with directions for further review. All decisions shall be signed by the Chair of the Commission or an authorized Commission Member. A copy of the decision shall be mailed to the Appellant via certified mail, return receipt requested, and shall inform the Appellant of the right to appeal the decision to the Tribal Court and of the consequences of a failure to appeal. A copy of the decision also shall be served on the Compliance Officer.

44A.06.020 Finality of Commission Actions

Any decision by the Commission on an appeal from a final decision of the Compliance Officer shall be final. If a timely appeal is not made to the Lummi Tribal Court, such decision will be final, binding, and enforceable, and will not be subject to any further appeal to the Commission or to any court.

44A.06.030 Appeals to the Lummi Tribal Court

(a) Appeals to the Lummi Tribal Court; Exhaustion of Administrative Procedure. The Lummi Tribal Court shall have exclusive jurisdiction to hear all appeals from final decisions of the Commission and, except as otherwise provided for in the Code, the procedural rules of that court, as set forth in the Lummi Code of Laws and applicable court rules for the Tribal Court, shall apply. No final decision of the Compliance Officer may be appealed to the Lummi Tribal Court unless an appeal therefrom has first been timely taken to and decided by the Commission.

(b) Filing a Notice of Appeal to the Lummi Tribal Court. Within twenty (20) days after receipt of a final decision of the Commission, if the Appellant is dissatisfied with the decision of the Commission, he or she may file an appeal to the Lummi Tribal Court. The procedure for perfecting an appeal to the Tribal Court shall be

as provided by the rules of that court. The party appealing the decision must serve a copy of the Notice of Appeal on any other party and on the Commission. Service shall be made in accordance with the Lummi Nation’s Rules of Civil Procedure governing service of process. The Lummi Nation may intervene in a proceeding for review, and, in its discretion, the Tribal Court may allow other affected parties to intervene in the proceedings. Thereafter, the Commission and Compliance Officer shall certify and transmit to the Clerk of the Court (a) the administrative record, including all documents, transcripts, and other information that formed the basis for the decision or ruling being appealed or (b) such portions thereof as the Commission, Compliance Officer, and the other parties may stipulate.

(c) Stay. The filing of a notice of appeal to the Lummi Tribal Court shall not operate as a stay of enforcement of the Commission’s decision, but the Tribal Court may order a stay upon such terms as it considers proper.

(d) De Novo Review Not Permitted. The Tribal Court shall consider the appeal only upon the same theories and evidence as were asserted before the Commission. All such appeals shall be upon the administrative record presented to the Commission and shall not be de novo except as otherwise provided in this Section. The Court shall give due weight to the experience, technical competence, and specialized knowledge of the Compliance Officer, as well as the discretionary authority conferred upon the Compliance Officer.

(e) Leave to Present Additional Evidence. If application is made to the Court for leave to present additional evidence, and if it is shown to the satisfaction of the Court that the additional evidence is material to the issues in the case, and that there were extraordinary circumstances and good reason for a party’s failure to present it to the Compliance Officer, the Court may order that such additional evidence be presented to the Compliance Officer upon such conditions as the Court deems proper. The Compliance Officer

may modify his/her findings and decision by reason of such additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modified or new findings or decision.

(f) Standard of Review. Upon appeal to the Lummi Tribal Court, the Court shall set aside a decision of the Commission only if it finds the decision to be:

- (1) arbitrary, capricious, or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with applicable law.

(g) Decisions of the Lummi Tribal Court. The Tribal Court shall issue a written decision on all appeals, which decision shall be final, unless a timely appeal is filed with the Lummi Tribal Court of Appeals. Appeals to the Tribal Court of Appeals shall be filed and served according to the civil rules for appeals in the Lummi Code of Laws and applicable court rules. The decision of the Lummi Tribal Court shall not be stayed pending an appeal to the Tribal Court of Appeals unless a request for stay is made to and approved by the Tribal Court of Appeals according to the civil rules for a stay and upon such terms as the Court of Appeals deems proper. The decision of the Tribal Court of Appeals on the merits of the appeal shall be final, binding, and enforceable.

Tribal Court of Appeals of the Commission's actions under this Code, provided that any such appeal must be timely and properly filed and provided further, that such waiver is made only to the extent necessary to subject the Compliance Officer and Commission to suit for the sole purpose of declaring and adjudging rights and obligations under this Code and the regulations promulgated hereunder and does not waive immunity with respect to suits for monetary damages. This waiver is strictly limited and specifically does not waive the sovereign immunity from suit of the LIBC, the Lummi Nation, or any officer, employee, or agent thereof.

44A.07.020 Severability

If any provision of this Code is found invalid, or application thereof to any situation or person shall be held invalid or unenforceable by the court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Code or the application of the invalid provision to other situations or persons differently situated.

44A.07.030 Effective Date

This Code shall take effect after its adoption by the Lummi Nation in a duly enacted resolution.

Chapter 44A.07 General Provisions

44A.07.010 Limited Waiver of Sovereign Immunity

The LIBC hereby waives the sovereign immunity from suit of the Compliance Officer and the Commission for the express and sole purpose of allowing review by the Commission and the Compliance Officer's actions and of allowing review only by the Lummi Tribal Court and the