

TOWARD SELF-GOVERNANCE IN INDIAN COUNTRY

A REPORT

TO

UNITED STATES SENATE

SELECT COMMITTEE ON INDIAN AFFAIRS

THE HONORABLE DANIEL K. INOUE, CHAIRMAN

ON

PROGRESS IN THE SELF-GOVERNANCE PLANNING PROCESS

During the Period

December 22, 1987 through March 31, 1989

BY

THE LUMMI INDIAN NATION

MARCH 31, 1989



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LUMMI INDIAN BUSINESS COUNCIL

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DEPARTMENT: _____

EXT. _____

March 31, 1989

The Honorable Daniel K. Inouye, Chairman
United States Senate
Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510-6450

Dear Chairman Inouye:

Enclosed is the progress report for the Lummi Indian Nation's Self-Governance Demonstration Project for the first years planning phase. We have also outlined in this report the goals for the second year of planning.

A request for a continuation of the planning process was submitted to the U.S. Department of Interior on February 17, 1989. The Lummi Nation has achieved many of our initial goals. However, fully planning and preparation for the initiation of a Self-Governance Demonstration period and negotiations with the United States require a second year effort.

The Lummi Indian Business Council has actively taken the initiative to formulate internal and external approaches for assessing the prospect of entering into an agreement with the United States Government. Tribal governments which elected to enter into the planning phase of the Self-Governance Demonstration Project determined early, that on some matters, joint cooperation would be desirable. Toward that end, the Lummi Indian Business Council entered into a cooperative agreement in principle with several governments to establish a Joint Planning process which would focus on "cross-tribal" legal, budgetary, organizational, planning and reporting activities. The joint planning process is designed to augment and support the internal planning process.

The Lummi Indian Business Council has formulated a comprehensive internal planning process which centers on tribal government, and community participation in the examination of budgetary, legal, organizational, and procedural factors affecting the future self-government of the people of the Lummi Nation. The Lummi Nation is striving to build upon the strengths of the Lummi Community

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and to reaffirm traditional values to insure survival of the culture, cultural pride, self-esteem, positive community values, and mutual respect. It has been necessary to take a fresh look at the problems that have been inhibiting the progress of the Tribe and our members; economically, culturally, and organizationally.

The Self-Governance Demonstration Project upon success will allow the peoples of the Lummi Nation to become truly self-sufficient and self-determining. The Project is also of great significance to all Indian Nations in that it will affirm the Government-to-Government relationship between the United States and Indian Sovereign Nations. While we are aware that there are still many difficult times ahead, we are confident that our goal will be achieved. We thank you for your continued support of our efforts toward self-governance.

Yours Sincerely,

Larry G. Kinley, Chairman
Lummi Indian Business Council

LUMMI SELF-GOVERNANCE DEMONSTRATION PROJECT

I. PROJECT OVERVIEW

The Lummi Nation has prepared this report pursuant to a request from the Senate Select Committee on Indian Affairs and as required under the terms of the first year planning grant.

This report will identify the progress in the first year for the following objectives:

- A. Legal and budgetary research
- B. Internal Tribal government planning and organizational preparation
- C. Negotiation

On October 27, 1987 the House Interior and Related Agencies Appropriations Subcommittee held an oversight hearing to review the Arizona Republic's allegations of "Fraud in Indian Country" and the Tulsa Tribune's "A Vanishing Trust," documenting the BIA's systemic mismanagement of resources owned by tribal governments and individual Indians. These hearings were to review the allegations and to explore possible solutions to the mismanagement of Indian Affairs.

Interior Department officials at that hearing proposed to carry out a "demonstration project" with selected Indian Tribes which would transfer BIA resources and management responsibilities to these Tribes. On November 3, 1987, the Interior Department sent letters to the 13 Tribes that appeared at the October 27 hearing. These letters invited the tribes to participate in a "demonstration project" during FY 1988 based on tribally designed budgets. The Lummi Indian Business Council determined at this time that the offer to participate in this project provided an opportunity for the Lummi Tribal Government to truly exercise its powers of self-governance. The project will address a critical deficiency of the Indian self-determination process.

Since the passage of P.L. 93-638 in 1975, the Lummi Nation has pursued management control over major BIA programs on the reservation. As one of the twelve tribes in the Puget Sound Agency, we reached an unresolvable impasse with the Agency over contractability of a number of functions several years ago. Due to a limited number of agency personnel performing functions for twelve tribes, the Agency Superintendent determined those functions unavailable for Lummi Tribal contracting. In several instances, such as law enforcement Investigation Operations, the Lummi Tribe asserted that these multiple staffed functions were indeed contractible based on statistical evidence of need in comparison to other tribes. The Agency Superintendent made a determination that these functions were not separable from his Agency staff. One of the goals of the Self-Governance Demonstration Project will be to resolve this controversy in a

manner consistent with (PL 100-472) that will not affect services received by other Tribes.

Tribal governments, through their participation in the Self-Governance Demonstration Project are entering a process that will allow the Tribe to regain control over our own authority to govern ourselves. By re-establishing the government-to-government relationship between the Lummi Nation and the United States Government a new political relationship is being established that has not existed for more than 116 years. This has created additional responsibilities for the original ten participating Tribes of the Self-Governance Demonstration Project. The Lummi Nation has worked closely with the other participating nine (9) Tribes to coordinate activities with Congress with respect to the P.L. 100-472 and the development of regulations for implementation. It was important that the appropriate legislation be developed that reflected the Tribes perspectives and that the Trust Responsibilities of the United States Government to Indian Nations not be jeopardized.

We have achieved many of our initial goals during this first year of planning however, the legal and budgetary research, internal tribal government planning and organizational preparation will require a second years effort.

II. PROJECT PROGRESS AND SECOND YEAR PLANNING

A. LEGAL AND BUDGETARY RESEARCH

1. Budget Research

The LIBC has assigned staff to analyze budgets and functions at the Agency and Area levels. A budget data request was forwarded in mid-August 1988 to the BIA Portland Area office with a request for BIA criteria identification of budget functions eligible for self-governance consideration. A massive package of budget documents were supplied to the tribe in mid-September 1988, with no clarification of budget criteria. Lummi staff met with Portland Area office staff in early December with minimal success in budget identification for self-governance purposes.

During the month of January 1989, a member of the Lummi Demonstration Project Task Force spent three days in the Portland Area Office to identify the budget allocation criteria that was used in determining resources that are allocated for specific Tribes. It was most disturbing to realize that, at the area level, there was not any accumulation of information with regards to actual expenditures by SPECIFIC Tribes. At the Area level, Tribal identity is not apparent and the Tribe can only be referred to as one of twelve. This information creates a severe problem for the implementation of the Lummi Tribal Self-Governance Demonstration Project. It is going to be extremely difficult to identify appropriate budget categories and amounts which apply to the Lummi Nation.



Tom Stangl, former Director of Administration for the BIA, was retained under a consultant contract with the Lummi Indian Business Council (LIBC) to; outline BIA budget policies and procedures; obtain information about current services of BIA to Tribes; provide technical assistance in providing budgetary requests to the Department of the Interior and to Congress; development of a line item table showing the Tribal share of BIA funds for fiscal years 1984 through 1988; and to provide a comprehensive report on the review and analysis of the information that is received from the BIA.

As of March 31, 1989, the following tasks have been completed; a consolidated budget request has been prepared; an analysis of the BIA budget structure and historical data for fiscal years 1984 through 1988 has been completed; a detailed funding table has been developed to be used as a worksheet for review of BIA appropriations; an analysis of current BIA programs was completed; and there are on-going contacts with the BIA Central and Area Offices. Stangl, as a representative of the Self-Governance Tribes, attended the annual BIA budget planning meeting in Washington, D.C. in February 1989. Because of a continuing delay in obtaining the necessary information from the BIA additional time is needed to complete a comprehensive analysis regarding the specific funding allocations for the Lummi Nation.

The LIBC plans to apply increasing pressure at all BIA levels to access meaningful budget figures during the first six months of the second year planning. We expect to analyze these agency/area budget numbers and prepare a detailed proposal for reallocation of resources at the agency level considering longitudinal budget distributions for FY 84-89.

Stangl will provide technical assistance in the planning, preparation and strategy in the submission of future tribal budget requests to the Department of the Interior and/or the U.S. Congress.

2. Legal Research

The Lummi Indian Business Council (LIBC) retained the legal services of Paul Alexander through a Tribal and BIA approved contract to provide advice and counsel to Tribal leadership and staff at critical stages in the Self-Governance Demonstration Project Process.

The first draft of regulations and guidelines for the Self-Governance Project have recently been completed. Yet to be completed is the analysis of the interrelation of Title III to general Public Law 93-638; a working paper summarizing research and conclusion of Trust Law; the legal requirements/potential liability relative to the delivery of services will be analyzed; and the analysis of the relationship between pre-emption analysis and the Self-Governance Demonstration Project will be completed.



In coordination with local legal counsel the following tasks are being undertaken: a review of the Lummi Constitution has determined that it is necessary that some revisions be completed. A Constitution Committee was formed to review the present Constitution and to develop a draft revised Constitution. An initial draft was completed in September of 1988. However, this draft is now in the process of being revised. An analysis of the present Constitution, as well as an analysis of the draft Constitution has been completed. The Lummi Constitution Committee is now in the process of formulating a second draft that is more reflective of the type of Tribal Government the Lummi Nation chooses to operate under. Upon completion of a finalized draft of the Constitution, the document will be presented to the Lummi Indian Business Council and to the Tribal Community for consideration of formal approval. It is intended that this be accomplished through public hearings and that explanatory materials will be developed. Upon completion of a revised Constitution Tribal codes, By-Laws and ordinances will be reviewed and revised as necessary to follow the approved revised Constitution.

The Lummi Indian Business Council has found it of critical importance to complete a legal, political, and historical review of PL 280 and its impacts on the Lummi Reservation. To accomplish this task legal and legislative research of PL 280 is to be completed by June 10, 1989.

It has also been determined that an in-depth analysis of our Point Elliot Treaty of 1855 is needed to thoroughly evaluate what the Treaty provides for the Lummi Indian Nation with regards to the implementation of the Tribal Self-Governance Demonstration Project. This analysis is scheduled to be completed before the negotiation phase of the project.

B. INTERNAL TRIBAL GOVERNMENT PLANNING AND ORGANIZATIONAL PREPARATION

1. INTERNAL PLANNING

Presently, the Lummi Tribal governments structure has been organized to follow grants and contracts, rules and regulations, and general operational guidance superimposed on the Tribe. The organization under it's present structure, may not be suitable for the internal appropriation allocation process that will be necessary to implement the Tribal Self-Governance Demonstration Project. The Lummi government realizes that it will be necessary to re-evaluate existing operations and establish new tribal policies which will guide the resource acquisition, allocation, and utilization, and impact evaluation. We envision this as an important initial step in the process of implementing programs that meet our peoples needs.

During the initial phases of the Tribal Self-Governance Demonstration Project, a Demonstration Project Task Force was

formed. The Task Force Committee consists of key members of the Lummi Administrative staff and LIBC representatives. The Task Force has established a draft budget appropriation process as a working plan for the LIBC. Included in this draft are two optional internal appropriation processes. In this process, the inadequacies of the internal organizational structure have been identified, as well as a review of existing programs and a listing of changes that will be needed in the organizational structure. Also identified, were the plans that need to be developed and policies that will need to be changed. The Task Force also identified current problems, and barriers necessary to self-governance and a basic plan for the Governmental structure to successfully implement the Tribal Self-Governance Demonstration Project. The initial plan has outlined a six month review process of programs in order to evaluate program achievements and program expenditures in relation to program projections.

The Lummi Indian Business Council is now working in coordination with Fremont Lyden from the University of Washington to focus upon organizational and financial management issues. A transitional plan is to be developed for moving the organization from its existing structure to the planned operation, once clearly identified. A simplified organizational structure that would establish clear-cut lines of responsibility and communication is needed. This is to be defined by accomplishment of the following tasks; centralize policy making to allow for the gain of fiscal control of operations and programs; a process that allow the LIBC to focus it's activities and efforts towards policy level decision making; identification of a procedure that will focus on the management of conflict within and between tribal groups that may affect the functioning of tribal governance, resource management and control; a menu of evaluation criteria and performance measures for potential programs; identification of a priority system for the reallocation of BIA funds; and methods and alternatives defined for the determination of dollar amounts for reallocation.

During the month of February 1989, the eleven members of the Lummi Indian Business Council and key staff members participated in a three day retreat focused upon Lummi Tribal Self-Governance. The purpose of the retreat was for the Lummi Tribal Council to assess the current tribal government and determine what is necessary to insure that the Tribe will be able to progress and to successfully enter into and to complete the Self-Governance and Demonstration Project.

Members of the Tribal Council were assigned committees to work with staff in developing short and long term goals and working plans to achieving those goals. Drafted recommendations are scheduled to be completed by mid-May. The following subjects are to be considered; roles and responsibilities of the Council officers as well as individual Councilmen; review of the entire Tribal organization; issues as they relate to our land and our reservation boundaries; strengthening the family unit; education;



economics; culture; housing; communications; natural resources; and budget concerns.

A definition of the Tribal Council's policy role and staff's management responsibilities will be developed. We deem it extremely important to develop a structure that will facilitate the achievement of family oriented and community goals, as determined by the Lummi Nation.

Currently, the Lummi government responds and reacts to the restrictive statutes and regulations that accompany each grant and contract under Tribal management. Programs designed to follow these rules and regulations create fractionated programs that don't meet our needs. Current BIA programs have become generic for all Tribes across the Nation, in that they have not been specifically designed for needs of a specific Tribe. There has not been consideration of the fact that each Tribe is very different from all others, with their own culture, values, customs, traditions and NEEDS. It is for these reasons that a comprehensive needs assessment is necessary. Upon completion, the Lummi Tribal government will be able to better comprehend the true needs of its people and to develop programs and services to meet those needs.

We are now in the process of developing the needs assessment in coordination with various tribal entities and programs. As the needs of the people of the Lummi Community are comprehensively identified a prioritization process will have been developed which will aid the LIBC in the allocation of interdepartmental and programmatic budgets.

C. NEGOTIATION

A model funding agreement will be drafted by Paul Alexander, with the assistance of the Lummi Tribal Attorneys, Raas and Johnsen, based upon the review of existing 638 contracts, and with the incorporation of the legal research that will have been completed.

The draft agreements will provide a legal framework for negotiation based upon the services and functions the LUMMI Nation chooses to undertake in the agreement.

D. COMMUNICATIONS, PUBLIC RELATIONS AND EDUCATION

During the first phase of planning, research and organization the Lummi Government has worked with Tribes nationally and locally to inform them of the scope of the Tribal Self-Governance Demonstration Project; how it came about and what the Lummi Nation expects to achieve by participating in the Project. In March of 1988 the Lummi Tribal Chairman met with Tribes from United Southeastern Tribes (USET) to discuss the Tribal Self-Governance Project. Also, in March, a presentation was made to the members of the National Indian Education Association, and individuals who represented Tribal Community Colleges. In March



of 1988 the Tribal Chairman made a presentation to the National Congress of American Indians. In March, of 1988 a Task Force was formed that established a national network with over two hundred Indian Tribes in the United States. At this time the Lummi Task Force informed Tribes about the concept of the Tribal Self-Governance Demonstration Project. In June, of 1988 a presentation on the development and progress of the Project was presented to the Affiliated Tribes of Northwest Indians. Two members of the Treaty Protection Task Force participated in two community meetings to discuss the project; one at the Evergreen Community College and one on the Quinault Indian Reservation.

During the second phase, the Lummi Nation recognizes that continued communications are key to the success of the Tribal Self-Governance Demonstration Project. This success still depends on how the project is perceived and how it may affect people, other Tribal governments and Federal agencies, particularly in the Pacific Northwest. It will be of critical importance that the Tribe be able to communicate the positive aspects of an Indian Nation exercising its full powers of self-government. This education and public relations process will require the development of publications and materials focused to the following peoples, governments and agencies: the Lummi Tribal Government and community, the local (non-Indian) public community, Tribes locally as well as nationally, city, county and state governments, Bureau of Indian Affairs (local agency, area office and central office), and the staff of the Indian Health Service (local and agency levels) and other federal and state offices and departments involved with the Lummi Nation.

The Lummi Nation recognizes that how we communicate the importance of this demonstration project, and how it will be administered, will translate into the relative success in the formulation of positive cooperation with potentially affected Tribes, Communities, Governments and their Agencies.

Public relations and communications with Tribes directly affected by the self-governance project at the agency/area levels is a priority effort in this pioneer initiative. Misunderstandings, gossip, plotted and strategically planted lies, fear of change, inter-tribal jealousies, and BIA mischievous sabotage were expected and have already been experienced in the initial planning stage of the self-governance project. In November 1988, the Lummi Tribe co-hosted a self-governance seminar with the Quinault Indian Nation and James-Klallam Tribe at the Evergreen College for Northwest Tribal leadership, presentations were made by tribal leaders at five Affiliated Tribes of the Northwest Indians meetings since January, 1988.

The Lummi Nation plans an intensive public relations and information dissemination campaign on the self-governance demonstration initiative during the second planning year phase. Two symposiums are planned on self-governance targeted for the Portland Area Office Tribes. Presentations will also be made at regional and national Indian forums and conferences. Our mission



will be to convince affected Tribes that the reduction in personnel and changes in BIA Area/Agency operations will streamline the bureaucracy for everyone's benefit. We expect, after initial budget proposals are presented to the Agency and Area, to meet with Tribal Councils and technical staff to explain our plans, discuss potential implications, and resolve differences and misunderstandings. As one of the first tribes to attempt self-governance, we expect a most challenging second planning year in resolving inter-Tribal issues due to our, multi-Tribe agency/area situation.

We plan to develop clear and concise presentations for the various types of audiences; including visuals, manuals, handbooks, brochures and various types of publications. The Lummi Nation is now coordinating the development of these materials with a firm that will be able to provide the professional expertise to successfully accomplish this goal.

There have been six community meetings for the Lummi Tribal Community to inform them on the Tribal Self-Governance Demonstration Project and to identify priority Community concerns. Lummi Community Task Forces have been established to address the following topics: Natural resources, Senior Citizens, Housing problems, alcohol and drug abuse, the Constitution revision plan, Cultural concerns, and Tribal employment matters.

III. MULTI-TRIBE AGENCY

The Multi-Tribe/Puget Sound Agency situation creates real frustrations for the Lummi Tribe. These frustrations have festered over the last several years and have culminated in our support for a self-governance demonstration initiative. Through public testimony and meetings with the Assistant Secretary, we have stated repeatedly our consternation over non-accountable Agency staff. Three full time Criminal Investigators have operated at their leisure out of the Puget Sound Agency and have very rarely followed-up on Lummi cases. An Education specialist dispenses scholarship and adult education monies to Tribes in Western Washington State without being accountable for allocation decisions to anyone, even the Agency Superintendent. Although these important Agency personnel positions remain unaccountable due to their multi-tribal impact, these individuals also cozily nestle in non-accountable roles within the BIA. We expect that the self-governance negotiations and Lummi assumption of Agency/Area/National functions will force a concise determination of personnel roles, responsibilities, and accountability.

We firmly believe a key element for the successful implementation of the Lummi Self-Governance Demonstration Project will be the BIA's willingness to work positively with Lummi and the other affected Tribal governments, particularly at the Puget Sound Agency and Portland Area Office levels. At these administrative levels, the reality of self-governance will face the true test due to actual fiscal and physical changes. The reduction,



relocation, or dismissal of personnel will be a painful, but an obvious, necessity to implement Lummi Self-Governance, as we see it. Whether BIA policy is a commitment to self-governance or willingness to allow BIA staff to create mischief with affected tribes will determine progress in self-governance.

IV. COORDINATION

The Lummi Indian Business Council (LIBC) retained SENSE, INC. of Washington, D.C., to provide technical support services for the Self-Governance Demonstration Project; including strategic planning, logistical coordination, preparation of documents/reports/correspondence, and general staff assistance relative to activities necessary to conduct the project. Coordination of activities will be, as necessary, targeting the Congress, BIA, other Tribes, organization, etc.

A Demonstration Project Coordinator was employed by LIBC in January of 1989. The Coordinator is responsible for the coordination of all activities, including management, organizing, and budgeting, associated with the Self-Governance Demonstration Project. A project work plan will be maintained to ensure that schedules, goals, and objectives are met within outlined times frames. A reporting system will be maintained to ensure that the Lummi Indian Business Council is informed on a regular basis of the progress of the Project. Regular monthly meetings of the Lummi Self-Governance Demonstration Project Task Force will be conducted to maintain internal program coordination.

It will also be the Demonstration Project Coordinators' responsibility to coordinate all attorney and consultant activities with the Lummi Indian Business Council, Tribal governments administrative staff, (and the Lummi Self-Governance Demonstration Project Task Force) as assigned.

V. SUMMARY

The Lummi Indian Business Council realizes that it will take the joint efforts by the Tribes and the United States to plan, research, negotiate, and develop the implementation phase. The Tribe is also concerned that this project is carefully planned, closely monitored, and successfully implemented to document and prove its feasibility. The bureaucratic reduction in personnel, including relocation or dismissal and the transfer of functions and resources to Tribes will be disruptive. The transfer of responsibilities may lead to criticisms and confusion. The negotiation between the Tribe and the United States government and the maintenance of trust functions by the Interior Department will be complex.

The goals of the Lummi Nation are to restore Tribal self-governance and management of its internal affairs and to re-establish the government-to-government relations with the United States Government. The acceptance by the House Interior Appropriations Subcommittee of the tribally sponsored proposal



for the initiation of a Self-Governance Demonstration Project marks one of the most important events in Indian Affairs legislative history. It is anticipated that this act will open a new age for Indian Nations to strengthen their political development and reinforce formal government-to-government relations with the United States Government. The Lummi government is ready to fully assume the obligations and opportunities that self-government presents for the people they represent.

