

AN OPEN LETTER TO AGENCIES AND OFFICIALS WITH PURVIEW OVER GOVERNMENT PROCEDURE, INDIAN AFFAIRS AND THE ENVIRONMENT

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The Port of Bellingham has reached a "framework" accord with the Lummi Nation. Such cooperative agreement ought to auger well for public policy and the advancement of important issues - but not always. At issue is if development certainty or clean water should command priority, and whether that decision should be based on open public process.

This Port/Lummi accord was secretly negotiated for months, under signed confidentiality agreements, including unqualified executive sessions. It was announced late on Thursday, July 30, and respectively signed on Tuesday, August 4. The Lummi Indian Business Council meeting location was changed and the time moved hours ahead, reportedly at the request of the Port. Their meeting was closed to the public.

RCW 53.08.240 (Joint exercise of powers and joint acquisition of property -- Contracts with other governmental entities), gives Ports the power to *"...enter into any contract with the United States, or any state, county, or municipal corporation, or any department of those entities..."* Tribes are not specifically noted, though they are for other agencies such as the Gambling Commission and the Horticultural Pest and Disease Board. The statute further stipulates that when port contracts involve another *"state"* (or nation?), that action will be taken *"...only after a public hearing of which notice has been published in a newspaper of general circulation within the district at least ten days in advance..."* This did not occur. Even after adoption, the Port of Bellingham continues to withhold records of the negotiations based upon attorney/client privilege.

The Port of Bellingham cites RCW 39.34 as their authority for the accord. However, RCW 39.34.050 (Duty to submit agreement to jurisdictional state officer or agency), requires intergovernmental agreements that *"...deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control... as a condition precedent to its entry into force..."* to be submitted for review to any *"...state officer or agency having such power of control."* The Port /Lummi accord may require such review on many grounds, though it likely will not be submitted.

At issue for tribes is the executive abrogation of the Lummi Nation's sovereign and state rights both as treaty signatories and as early, continuous public participants with objections to key elements of the Port's waterfront redevelopment plan. The accord extends to a host of other projects as well. The Port pays the Lummi for a promise to not interfere. Citizens of the Lummi Nation were afforded no more opportunity to participate in this agreement than citizens of the port district.

The Port of Bellingham was determined to build a marina in Georgia-Pacific West's (G-P) wastewater treatment facility even prior to their acquisition of the G-P properties on Bellingham's waterfront. The commission initiated condemnation proceedings on the lagoon for the specific "public purpose" of a new marina. Promotional materials for the waterfront redevelopment disingenuously refer to the facility as an "IndustrialWaste Lagoon", though the Port's own consultants say the facility could continue in use for water treatment. The president of the Port Commission publicly "scoffs" at the prospect of using the facility for water treatment. The editorial board of the local paper calls it an "outlandishly out-of-touch idea". But the issue has never been studied.

Instead, the Port of Bellingham intentionally manipulated their SEPA review to avoid studying how the facility might be used to meet future water treatment requirements, better protect our nearshore habitat,

support jobs or save money – the most basic environmental, economic and social impacts. The proposed marina was originally included in the “No Action” alternative of their EIS. Scoping comments that dealt with treatment issues were refused because the marina was deemed a no-action item. Then, after a political rift over tedious planning issues, the Port and City of Bellingham struck a similar “framework” accord (April 20) that summarily added the marina to the “Preferred Alternative” for final review. However, this revision of scope was not open for public comment; therefore questions regarding treatment potential remain excluded from review.

At issue for citizens, whether tribal, non-tribal, tax or rate payer is whether the G-P lagoon site could save money and improve aquatic habitat. Could it support jobs, capture nearby sewage overflows, treat urban runoff, and better protect our marine waters? We know we will need additional capacity. The municipal sanitary system is at 85% of capacity. It already overflows –a stones throw from the G-P lagoon. The lagoon is ideally located at the bottom of the drainage for most of Bellingham’s developed areas. It has 26 acres and might be simply subdivided or redesigned to accommodate clarifiers for various treatment regimes. It includes a long outfall to a mid-bay diffuser and state-approved mixing zone far from the nearshore habitat. The City provides a large stainless steel industrial water supply to these waterfront redevelopment properties. This asset becomes useless if the treatment facility is destroyed. Months of document inspection at both the Port and City of Bellingham reveal that none of the foregoing issues have ever been considered. Instead, a pattern of systematic avoidance has been repeatedly evidenced. A marina may be beneficial, but at what cost? This process has become irrationally focused on a single outcome – at any cost.

Do ports have the authority to secretly negotiate contracts with First Nations? Do First Nations’ and Ports have any obligation to open public process - public meetings, records, advertisement and hearing? How long can records be withheld? What oversight exists for port contracts when negotiated in secret?

Neither the Lummi Nation nor port district residents should have to choose between clean water or development without the benefit of adequate, objective analysis. The potential of the G-P wastewater treatment facility, the property, location and discharge infrastructure should be studied. Failure to do so could forever compromise our community’s environmental integrity and economic potential. It could saddle the public with staggering costs to meet future treatment needs. Citizens expect officials and agencies with purview to consider the importance of proper public procedure and objective consideration of alternatives. Legal tedium aside, clean water is the foundation of a healthy bay.

Please help assure that this important analysis is required, whether through statutory review of the accord, during the Port’s continuing SEPA process, or both. I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to be 'Liz' or similar, written in a cursive style.

Links to the Port/Lummi Agreements and Resolutions:

http://www.portofbellingham.com/content/ArchivesItem_17_1899_v

Links to the Port/City Agreement:

<http://cob.org/issues/waterfront.aspx>