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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUMMI NATION,
Plaintiff,

vs.

WHIDBEY TELEPHONE COMPANY, et al.,
Defendants.

Case No. 2:26-cv-01435-KKE

DECLARATION OF LENA TSO IN
SUPPORT OF PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION

I, Lena Tso under 28 U.S.C. § 1746 hereby declare:

1. My name is Lena Tso. I am over the age of 18 and competent to testify. I have personal knowledge of the matters stated herein and could and would testify competently thereto if called as a witness.

2. I am a citizen of Lummi Nation and the Lummi Nation Tribal Historic Preservation Officer (“THPO”) with 20 years of professional experience in the protection of Lummi Nation’s cultural resources and the archaeology of Washington State. I have held the position of THPO since 2005. As THPO, I am also the Nation’s Repatriation Manager and oversee all matters involving the return and reburial of ancestors.

1 3. Prehistorically, my family ties to Point Roberts stem from one of the main villages, and
2 another branch of my family has ties to the development and use of reef net fishing technology,
3 a historic salmon-harvesting practice still employed at Point Roberts by the Lummi people. My
4 work is not just about protecting a site; it is about protecting my family—past, present, and future.
5 It has been an honor to have a small part in helping to preserve Lily Point, a sacred area of Point
6 Roberts that the Lummi call *Chelhtenem*, and my office has reviewed and consulted on many
7 legally-compliant projects at Point Roberts over the course of my tenure as THPO.

8 **Community Connect**

9 4. On April 26, 2023, Lummi Nation’s Tribal Historic preservation office and the State
10 Historic Preservation Office (“SHPO”) received a general notice from a third-party archaeologist
11 that there was an active utility project occurring near a known burial site, but without any project
12 specifics. The Nation alerted Whatcom County about this notice, and on April 28, 2023, after a
13 site visit by SHPO archaeologist James Macrae, our office learned that the disturbance had
14 occurred at 45WH60 and that the SHPO had issued a stop work order.

15 5. In the ensuing days, the SHPO confirmed that the project in question (“Community
16 Connect”) was funded by the United States Department of Agriculture – Rural Utilities Service
17 (“RUS”) and that it was operated by Whidbey Telecom. On May 2, 2023, state archaeologist
18 Robert Whitlam informed RUS that the project did not appear to have undergone Section 106
19 review or consultation, as required by the National Historic Preservation Act (“NHPA”).
20 Whitlam also requested that the site be stabilized and secured and for RUS to contact consulting
21 parties as soon as possible.

22 6. Whidbey Telecom’s records indicate Whidbey Telecom started working within the
23 boundaries of site 45WH560 in mid April. The records also indicate, however, that after the
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1 SHPO issued a stop work order for Community Connect on April 27, 2023, Whidbey Telecom
2 violated the stop work order and carried out project construction activities within the boundaries
3 of 45WH560 on May 2, 2023. A true and correct copy of the relevant excerpted pages from the
4 contractor “as-built” day-by-day accounting of work are attached as Exhibits 1 and 2.

5 7. I did not receive confirmation that work had completely stopped at 45WH560 until May
6 10, 2023. I did not receive formal notice of the disturbance to 45WH560 until June 20, 2023,
7 and RUS did not convene a meeting with the SHPO and Lummi Nation about the site disturbance
8 at 45WH560 until July 18, 2023.

9 8. Upon information and belief, Whidbey Telecom and RUS did not ensure that the trenches
10 left at 45WH560 were not completely backfilled until February 7, 2025, which means they left
11 the damaged portion of the site open and exposed for almost two years.

12 9. In February 2024, RUS began convening biweekly meetings with representatives from
13 Whidbey Telecom, including Nate Rypstra and Joshua Land, and Robert Whitlam, SHPO
14 archaeologist. I attended these meetings as the Lummi THPO until they were abruptly cancelled
15 by RUS in October 2025.

16 10. It was not until January 22, 2024, ten months after the disturbance, that professional
17 archaeologists began a damage assessment at 45WH560. Ultimately, the damage assessment did
18 not include an assessment of all of the damage from the project, and it remains incomplete. A
19 true and correct copy of an image of Whidbey's Community Connect trench within the
20 boundaries of 45WH560 showing very dark midden soil and probable artifacts recovered by the
21 archaeologists on January 30, 2024 is attached as Exhibit 3.

22 11. Despite my repeated requests that the damage assessment include the entirety of the 2.8
23 miles of the constructed portion of Community Connect, Whidbey Telecom authorized a very
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1 limited and incomplete assessment of four pothole trenches dug by their crews. On February 1,
2 2024, I requested screening of all the piles of soil left exposed to the elements by Whidbey
3 Telecom’s crews for additional human remains and burial goods. This did not begin until April
4 23, 2024.

5 12. On January 25, 2024, only three days into the field work, archaeologists recovered human
6 remains in one of the trenches they were assessing.

7 13. The archaeological firm that conducted the incomplete damage assessment produced a
8 preliminary report in August 2024. In addition to seventeen fragments of human remains, they
9 recovered 1,194 artifacts, including items commonly found in burials.

10 14. The SHPO and the THPO both received the final report for the incomplete damage
11 assessment on January 15, 2026. This damage assessment covered only four potholes and five
12 spoil piles. The report stated that only approximately 275 feet of construction remained
13 unassessed within 45WH560, when, in fact, Whidbey Telecom’s construction route indicates
14 that Whidbey Telecom trenched and bored through at least 1,000 feet of 45WH560. The entirety
15 of the 2.8 miles of construction for Community Connect has never been assessed for damage to
16 Lummi burial grounds or cultural resources. A true and correct copy of the final damage
17 assessment is attached as Exhibit 4. A true and correct copy of a RUS-produced map to overlay
18 the boundaries of 45WH560 on the Whidbey Telecom’s construction for Community Connect
19 is attached as Exhibit 5.

20 15. I continued to request that Whidbey Telecom carry out a comprehensive damage
21 assessment, including the entire 2.8 mile constructed portion of the Community Connect project,
22 but, instead, in July 2024, RUS and Whidbey Telecom suggested moving the project forward
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1 with a redesign that would complete the project with an aerial buildout and abandoned further
2 discussion of the incomplete damage assessment.

3 **Reconnect Project**

4 16. In May 2023, RUS sent me a link to a map of the project areas for other RUS-funded
5 projects at Point Roberts. These maps did not provide detailed project information, such as the
6 project's developers, but they indicated where the projects were operating on the peninsula. On
7 May 4, 2023, I informed RUS that this map showed that RUS-funded projects in other culturally
8 sensitive areas of Point Roberts and requested additional information about these projects.

9 17. I continued to ask about these additional projects over the course of the following weeks,
10 months, and years. On February 28, 2024, in a meeting with Whidbey Telecom, RUS, and DAHP,
11 RUS shared a map of Whidbey Telecom's ReConnect project, for which the company had dug
12 approximately 2,100 feet of fiber utility trench through 45WH525. Before this meeting, the
13 Nation and the SHPO had received no notice of ReConnect's construction at Point Roberts. A
14 true and correct copy of a RUS-produced map to overlay the boundaries of 45WH525 on the
15 Whidbey Telecom's construction for Reconnect is attached as Exhibit 6.

16 18. On August 14, 2024, Whatcom County confirmed that it had never reviewed the
17 encroachment permits for either Community Connect or ReConnect for the presence of the
18 Nation's sacred and cultural sites. A true and correct copy of a letter from the Whatcom County
19 Public Works Department to the Lummi THPO is attached as Exhibit 7. A true and correct copy
20 of the permit application and the issued permit to Whidbey Telecom for the portion of the
21 Community Connect project that shows the intent to trench within the boundaries of 45WH560
22 are attached as Exhibit 8.

1 19. I have not received any communication from RUS or Whidbey Telecom about these
2 projects since the last biweekly meeting held between RUS, Whidbey Telecom, the SHPO, and
3 my office on September 20, 2025. Defendants have not completed the consultation process
4 required by federal law and Whatcom County Code for Community Connect or Reconnect.
5 This ongoing failure leaves Lummi Nation's ancestors and sacred historic sites at risk and denies
6 Lummi Nation the ability lay their ancestors to rest, in violation of Washington's Indian Graves
7 and Records Act.

8 **Middle Mile**

9 20. On April 12, 2024, I reached out to Nate Rypstra of Whidbey Telecom about a third
10 Whidbey Telecom project at Point Roberts, Middle Mile. Rypstra did not respond to my email
11 requesting information about the project.

12 21. During my next meeting with RUS, the SHPO, and Whidbey Telecom on April 24, 2024,
13 I asked the Whidbey Telcom representatives for additional information about both ReConnect
14 and Middle Mile. Robert Whitlam, SHPO archaeologist, also requested information about
15 additional Whidbey Telecom projects at Point Roberts. In response, Nate Rypstra told us that he
16 was not permitted to speak about these projects.

17 22. I continued to request information about all of Whidbey Telecom's projects at Point
18 Roberts but never received any substantive information. I also never received any formal Section
19 106 letter to initiate consultation on Whidbey Telecom's Middle Mile project, as required by the
20 National Historic Preservation Act.

21 23. Instead, in November 2025, Westland Resources (the cultural resources firm hired by
22 Whidbey Telecom to carry out the cultural resources surveys for Middle Mile) provided three
23 days' notice that they would carry out ground disturbing activities for Middle Mile directly east
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1 of 45WH525, the site Whidbey Telecom damaged during ReConnect. Three days is not an
2 adequate amount of time for a THPO's office to provide comments or express concerns about
3 the location of a project's activities.

4 24. Westland Resources immediately discovered human remains when it began project
5 activities for Middle Mile on November 6, 2025. Those remains were subsequently lost and can
6 never be reinterred.

7 25. From April 2023 until September 30, 2025, both in consultation meetings and via email,
8 I repeatedly asked both Whidbey Telecom representatives and RUS for fulsome information
9 concerning all of Whidbey Telecom's in-ground fiber projects at Point Roberts to understand
10 what projects were underway at what locations and whether any additional sites may have been
11 damaged. Whidbey Telecom repeatedly denied me this information or gave me incomplete
12 information.

13 26. Since July 18, 2023, I have repeatedly requested that work stop on Whidbey Telecom's
14 projects so that the process necessary to understand how many of our sacred sites have been
15 damaged—and to recover our ancestors for reburial—can be implemented. As a prerequisite for
16 this process, I have repeatedly asked Whidbey Telecom for comprehensive damage assessments
17 from their projects at Point Roberts. None of these requests have been honored or seriously
18 considered.

19 27. These projects have disturbed our ancestors' burials and remains and resulted in the loss
20 of human remains. They have left human remains and objects of cultural patrimony exposed to
21 the elements for years. Because there has never been a full damage assessment of any of the
22 projects, we do not know how many of our ancestors have been disturbed. We do not know if
23 human remains or cultural material, including grave goods, remain scattered across the areas
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1 where the trenches run through 45WH560 and 45WH525. Outside the bounds of these specific
2 recorded sites, there are potential impacts to unrecorded burial grounds and other Lummi cultural
3 resources along the projects' routes because of the density of cultural material at Point Roberts
4 and the fact that parts of the peninsula have not been surveyed for cultural resources. The Nation
5 remains unable to recover the remains of any additional ancestors who have been disturbed, their
6 grave goods and any other culturally sensitive objects.

7 28. I have thought multiple times about the effects a burial disturbance has on Tribal people
8 and Tribal communities. The best way I know how to describe it is by using this example:
9 imagine one minute, your child is right next to you, and a few moments later, the child is gone-
10 -nowhere in sight, not responding to your calls and out of sight. You wonder where they went
11 and how they could have disappeared so quickly, because they were just right here next to you.
12 Time passes, and the child still has not come home. You experience agony not knowing if the
13 child is okay. You wonder: are they hurt? Are they being mistreated? Will I ever see them again?
14 Will the authorities you called for help be helpful? Why is this happening? There's panic, doubt
15 and confusion. A disturbance has the same effect on Tribal people and communities, differing
16 only because some feel it directly, and others feel it indirectly, but everyone experiences the
17 feeling that someone, a family member, is missing. Tribal people have long memory and deep
18 connection to our ancestors, because we still sing their songs, dance their dances, and carry their
19 names and responsibilities with us. Contrary what you may read in a book, Tribal culture is still
20 very much alive. We are still connected.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of May, 2026, in Bellingham, WA.

Lena A. Tso

Lena Tso