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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 ROBERT WHITLAM
IN SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCION

I, Robert Whitlam under 28 U.S.C. § 1746 hereby declare:

1. My name is Robert Whitlam. 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 the state archaeologist for the state of Washington. I was hired in 1982 by the Washington State Historic Preservation Office (“SHPO”), now known as the Washington Department Archaeology and Historic Preservation (“DAHP”) as the State Archaeologist. I earned a PhD in Anthropology in 1981 from the University of Washington. I am a member of Society of American Archaeology. I have 50 years of professional experience in the archaeology of Washington state and in the state and federal regulatory framework for historic preservation.

1 3. The Point Roberts landscape and the surrounding Salish Sea represent a complex and rich
2 archaeological area, encompassing thirteen recorded archaeological sites and over 3,000
3 individual archeological features within the 4.9 square miles of Point Roberts that has been
4 occupied since time immemorial by Lummi Nation. The two sites discussed below are treated as
5 eligible for listing on the National Register of Historic Places (“NRHP”) and protected under
6 Washington State law 27.44 and RCW 27.53 from disturbance without a permit from DAHP.
7 Human remains representing at least eighteen individuals had been previously documented from
8 the site in 2009, 2010, 2016, and 2019. A true and correct copy of the final damage assessment
9 is attached as Exhibit 4.

10 4. In my capacity as the State Archaeologist for DAHP, I have been actively involved in the
11 effort to bring Whidbey Telecom’s construction projects at Point Roberts into compliance with
12 local, state, and federal law since April 2023.

13 **Community Connect Project**

14 5. On April 27, 2023, James Macrae (a colleague at DAHP), alerted me that active trenching
15 was occurring near archaeological site 45WH560, a known burial ground eligible for listing on
16 the NRHP. Macrae had visited the site on April 27 to confirm where the utility project was
17 located, whether the project had disturbed the known burial site, and what company or agency
18 was carrying out the project. A true and correct copy of two photographs taken by James Macrae
19 on April 27, 2023, showing Whidbey Telecom pot holes and spoil piles with dark midden soil
20 and shell midden debris are attached as Exhibits 9 and 10. A true and correct copy of an excerpted
21 page from the Whatcom County Inadvertent Discovery Plan sent by Whidbey Telecom to James
22 Macrae on April 27, 2023, is attached as Exhibit 11.

1 6. The following day, on April 28, 2023, Macrae sent an email informing me, Whatcom
2 County Project manager Spencer Robbins, Whidbey Telecom Project Manager David Fletcher,
3 Washington State Department of Ecology (“ECY”) Environmental and Cultural Resources
4 Review Coordinator Liz Ellis, as well as several Tribal Historic Preservation Officers
5 (“THPOs”), that a Whidbey Telecom crew had trenched through 45WH560, that the project
6 would require review under Section 106 of the National Historic Preservation Act (“NHPA”),
7 and that the disturbance triggered a stop work order.

8 7. Neither DAHP nor Lummi Nation’s THPO received confirmation from RUS or Whidbey
9 Telecom that work had stopped at the site until May 10, 2023. RUS did not provide a formal
10 notice of the disturbance to 45WH560 until June 20, 2023. RUS did not convene a meeting with
11 DAHP and Lummi Nation about the site disturbance at 45WH560 until July 18, 2023.

12 8. The damage assessment, which was ultimately incomplete, began on January 22, 2024,
13 ten months after Whidbey Telecom crews disturbed 45WH560. Whidbey Telecom and RUS
14 limited the scope of work for this assessment to only four open potholes, their associated spoil
15 piles, and the spoil pile of soil from a fifth pothole. Exhibit 4 at v, 56-57, 67. It did not include
16 an assessment of the near 1,000 foot trench running through 45WH560, or an assessment or
17 survey of the entirety of the approximately 2.8 miles of project construction for additional
18 impacted cultural resources. A true and correct copy of the RUS-produced map of site 45WH560
19 and Whidbey Telecom’s Community Connect project area is attached as Exhibit 5.

20 9. Despite the limited scope of the incomplete damage assessment, on January 25, 2024,
21 three days after field work began, archaeologists informed DAHP they had recovered human
22 remains while carrying out the incomplete damage assessment. By the time the archaeologists
23 completed the initial field work and provided a preliminary report, they had recovered seventeen
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1 fragments of human remains with a minimum number of three individuals in the areas disturbed
2 by Whidbey Telecom.

3 10. On February 1, 2024, Lummi Tribal Historic Preservation Officer (“THPO”) Lena Tso
4 requested expanding the incomplete damage assessment to include screening of soil piles left by
5 the Whidbey Telecom crew, which had been sitting exposed since April 2023. Screening of these
6 piles of soil did not begin until April 23, 2024.

7 11. Beginning in February 2024, RUS convened biweekly meetings with the Nation’s THPO,
8 DAHP, and Whidbey Telecom. I attended these meetings on behalf of DAHP, Lena Tso attended
9 as THPO for the Nation, and Nate Rypstra, Service Operations and Logistics Manager, and
10 Joshua Land, Whidbey Telecom’s Tribal Liaison, attended on behalf of Whidbey Telecom. RUS
11 abruptly cancelled these meetings in October 2025, but they had already stopped occurring
12 regularly by July 2025.

13 12. I urged RUS and Whidbey Telecom to provide information and maps to all parties for the
14 entirety of Community Connect, so that we could understand the potential scale of damage to
15 45WH560, as well as any other known site within the project corridor.

16 13. During the regular meetings, I noted the importance of robust consultations with the
17 Nation and requested that RUS provide participation funding to the Nation, since this ongoing
18 biweekly meeting and the adverse effect to the archaeological and cemetery site extended beyond
19 the routine Section 106 consultation effort.

20 14. In addition, I repeatedly recommended a comprehensive damage assessment of
21 Community Connect’s construction corridor. This recommendation supported the professional
22 archaeologist’s recommendation in the Damage Report. “Additionally, 2.8 miles of trenching
23 occurred north of the project area. ASM recommends an archaeological survey of the trenching
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1 to identify if additional portions of 45WH560 or any other sites were impacted. For any portions
2 of 45WH560 impacted by this 2.8 miles of trenching, ASM recommends a damage assessment
3 and recovery of any ancestral remains and funerary objects.” Exhibit 4 at 67.

4 15. Although I am aware that archaeologists conducting the incomplete damage assessment
5 developed a scope of work for the full 2.8 miles of the constructed portion of Community
6 Connect, Whidbey Telecom never authorized this work. Instead, in July 2024, RUS and
7 Whidbey Telecom shifted the focus of our meetings to discussing the completion of Whidbey
8 Telecom’s Community Connect through the use of an aerial buildout.

9 16. On August 2, 2024, the archaeologists who conducted the incomplete damage assessment
10 produced a preliminary report detailing the results. In addition to seventeen fragments of human
11 remains, they reported recovering 1,194 artifacts, including items commonly found in burials.
12 The archaeologists provided DAHP and Lummi Nation with the final version of the report on
13 January 15, 2026.

14 17. Upon information and belief, Whidbey Telecom did not backfill the trenches left open at
15 45WH560 until February 7, 2025.

16 **ReConnect Project**

17 18. On February 28, 2024, DAHP and Lummi Nation learned that there was a second RUS-
18 funded project at Point Roberts, ReConnect, that had damaged another known burial ground and
19 NRHP-eligible site with a fiber utility trench running approximately 2,100 feet through the
20 length of site 45WH525. A true and correct copy of the RUS-produced map of site 45WH525
21 and Whidbey Telecom’s Community ReConnect project area is attached as Exhibit 6.

1 19. Despite repeated requests from me and Lena Tso, Lummi THPO, for additional
2 information about ReConnect, Whidbey Telecom did not provide substantive information about
3 the project or conduct a damage assessment at 45WH525.

4 20. Lena Tso, Lummi THPO, repeatedly requested stop work orders for all RUS-funded
5 Whidbey Telecom projects, including ReConnect, until Section 106 review of the projects was
6 complete. These requests were not met.

7 21. I have not received any communication from RUS or Whidbey Telecom about these
8 projects since September 20, 2025. Neither Community Connect nor ReConnect has successfully
9 completed the necessary consultation process to bring them into compliance with federal law,
10 state law, or Whatcom County Code. This ongoing failure leaves Lummi Nation’s ancestors and
11 cultural patrimony at risk and denies Lummi Nation the opportunity to lay their ancestors to rest.

12 **Middle Mile Project**

13 22. I have also been involved in the Section 106 process for Whidbey Telecom’s Middle Mile
14 project, funded by the Nation Telecommunication and Information Administration (“NTIA”).

15 23. On April 12, 2024, Lena Tso, Lummi THPO, requested more information about Middle
16 Mile, and a meeting to discuss the project, in an email to DAHP and Nate Rypstra of Whidbey
17 Telecom.

18 24. I received the initial Section 106 coordination for this project on October 6, 2025, and
19 provided an initial response on October 6, 2025.

20 25. On October 6, 2025, I learned that Whidbey Telecom contracted Westland Resources, a
21 Cultural Resource Management Firm, to conduct a pedestrian survey at Point Roberts for Middle
22 Mile. On November 6, 2025, while conducting the survey, Whidbey Telecom’s subcontractors
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1 found a human cranial fragment, and due to delays in recovery of the fragment by the Whatcom
2 County Sheriff's Department, the fragment has been lost and is not recoverable.

3 26. Given the discovery of human remains in the project corridor, the known frequency and
4 extent of archaeological deposits at Point Roberts, and DAHP's concerns that Middle Mile may
5 encounter additional human remains, I provided additional stipulations for avoiding further
6 damage from the project. In a concurrence letter to NTIA dated March 11, 2026, I detailed
7 recommended measures for site avoidance, professional archaeological monitoring, and for an
8 unanticipated find plan, and I requested any correspondence or comments from concerned tribes
9 or other parties received during consultation.

10
11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed this 7 day of May, 2026, in Olympia, WA.

13
14 *Robert Whitlam*

15 _____
16 Robert Whitlam