Tribal Planning as Strategic Political Action  
A Case Study of the Swinomish Indian Tribal Community  

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Abstract  
The pursuit of tribal self-determination is dependent upon a tribe's ability to manage the affairs of its reservation territory and its natural resources. Contemporary tribal community planning must be primarily concerned with historic events that caused the diminishment to a tribe's control over its affairs, especially when non-tribal interests usurp such control. A strategy of political action that intervenes in and reverses political subjugation is necessary to advance effective tribal planning. This paper examines selected strategies of the Swinomish Tribe of Washington State in its attempt to advance tribal interests by applying its inherent authority to reservation affairs.

Mediating Historic Tribal-State Conflicts  
The search for effective forms of conflict resolution to the historic divisions existing in Indian-non-Indian relations, as alternatives to litigation, begins with the search for ways to form meaningful dialogue between the participants in conflict. As a way of mediating disputes and differences between tribal political communities and the interests that lie external to those communities, the process towards meaningful dialogue must begin with a commitment to social learning from those relationships.

The formulation of Washington State's Indian Policy emerged immediately following the federal court mandate for implementation of the landmark Supreme Court decision in U.S. v. Washington. In an attempt to reach agreement for the implementation of the fisheries decision, the court essentially mandated that the state and the tribes cooperate. New forms of dialogue were urged by the court, which launched the parties into a newfound method of dispute resolution to resolve the question of fisheries co-management. The dramatic shift in intergovernmental relations between the State of Washington and Indian tribes has since extended to include several other areas of governmental cooperation. The approach has resulted in institutional changes affecting the nature of the political, social, and economic relationships between the tribes and federal, state, and local governments.

intergovernmental approach successful in fisheries and natural resources management, the intent of the Accord was to formalize the cooperative relationship and encourage its use in other areas. The resulting new policy establishes a government-to-government relationship to address complex problems under a new philosophy based on mutual respect. Natural resource management, social welfare concerns, economic development, and issues of governmental jurisdictional cooperation not previously addressed were incorporated into a broad approach under the Accord.

The negotiated approach to natural resources conflict resolution between tribes and the State of Washington necessitated a broader public policy response that opened avenues for tribal participation in many new areas of state-tribal interaction. The experiences illustrated the process of tribal political development that began with the assertions of treaty rights and evolved to utilitarian and cooperative relations for resolving long-standing disputes related to fisheries harvest and habitat protection interests. While these experiences were motivated by interests to protect off-reservation tribal treaty rights within the jurisdiction of the state, the process was later expanded to demonstrate its effectiveness in fostering resolution to on-reservation issues involving the state and local governments. This approach is particularly prevalent to reservations exhibiting high degrees of incorporation (the historic state-infringement upon tribal sovereignty, lands and resources) as many Puget Sound area tribes containing land alienation have participated in some form of intergovernmental negotiation.

In the past decade, the radical transformation in the relationship between the tribes and state and local governments offer a promising avenue to overcoming obstacles to the tribes' pursuit of self-determination. The new precedent favoring negotiated solutions through expanded and inclusive dialogue offers a path to the long-sought reconciliation of other forms of conflict that tribes face in local and regional governmental relations. This paper examines the strategies employed by the Swinomish Tribe to overcome past jurisdictional subjugation and conflict in land use jurisdiction and management of water resources and utility delivery services for reservation lands.

A Case Study of the Swinomish Indian Tribal Community

Members of the Swinomish Indian Tribal Community are descendants of the Swinomish, Kikiallus, Samish, and Lower Skagit Tribes. The ancestors of these groups lived in the Skagit River valley and on the coastline and islands around the river's delta. They shared the Coast Salish language. The culture and economy of the inhabitants of the Skagit region were centered around natural resources, including salmon, shellfish, and upland resources. There were a variety of abundant resources in the region, and the aboriginal groups often traveled over long distances to obtain them (Draft Swinomish Comprehensive Plan 1990).

The first non-Indians to enter the Skagit region were Spanish, British, and Russian explorers who arrived in the late 1700's. These explorers were received cordially by the people of the Skagit region. When fur traders began to establish permanent residences, conflicts began to arise. The arrival of early settlers introduced smallpox, measles, and tuberculosis, all of which proved devastating to the Indian population: it is estimated that
80-90% of the native population died from these diseases (Roberts 1975). Settlers and miners began moving into the Skagit region in the late 1840's. This marked the beginning of a period of increasing conflict arising over the challenge to Indian rights to both land and natural resources. These tensions eventually led the non-Indians to demand treaties to confine Indians to remote reservations. The Treaty of Point Elliott served that objective by relocating tribes from the Skagit region to the Swinomish Reservation.

The Swinomish Indian Tribal Community voted to reorganize its structure of government under the provisions of the Indian Reorganization Act of 1934. A Tribal charter, constitution and by-laws were adopted by the Tribal general council and approved by the Secretary of the Interior. The people of the Swinomish Indian Tribal Community have retained many aspects of their traditional culture. The importance of the social community and its members' relationship to it are integral to the Tribe's cultural identity. Many members continue to practice Seowyn, the traditional religious and cultural practices, and fishing continues as a central group activity, providing important points of cultural and economic association. The Tribe has sought to diversify its economy over the past two decades through community and economic development planning (Swinomish Overall Economic Development Plan 1994). The sharp increase in income producing activities over the past decade reflects the growing diversification of the Tribal economic base. The primary economic assets include marine waterfront lands that are largely leased to non-Indian users, limited scale timber harvest, and a commercial development district located adjacent to a state highway. Continued expansion of the Tribal economic base is intended to provide opportunities for the economic enrichment and individual betterment of future generations.

The Swinomish Indian Reservation

The Swinomish Indian Reservation occupies the southeastern portion of Fidalgo Island in Skagit County, WA, set aside by the 1855 Treaty of Point Elliott as a homeland for exclusive Swinomish Tribal Community use and further redefined by Executive Order in 1873.

One of the important normative differences between Indian and non-Indian cultures since first contact concerned attitudes towards land and landownership. Where non-Indians generally viewed land as a commodity, and incorporated it within a general system of free enterprise and individual ownership, Native Americans almost uniformly recognized the importance of communal sharing of land. The Allotment Act ignored this cultural conflict by transferring reservation lands from collective Tribal ownership to individual ownership. The allotted lands were held in trust for a period of 25 years, after which time they were eligible for transfer to fee-simple title. The Swinomish Tribal Community was severely disturbed by the results of allotment. Allotments on the Swinomish Indian Reservation were frequently of insufficient size for economic use, often found unproductive for agricultural uses, and conflicted with Indian notions of land utility. Over time, as Indian allottees were granted fee title to their lands, the fee patent allotments were sold to non-Indians to provide cash for poor families or to pay debts. The process of reservation land division and alienation occurred over a relatively short period of a few decades to result in the current checkerboard pattern of landownership.
The current land tenure condition is the consequence of the imposition of alien cultural values as manifested in past federal Indian policies. Despite recent social development gains in many areas, the economic conditions on the Reservation continue to be depressed. Consequently, establishing a viable, self-sustaining Reservation economy is the primary challenge facing the Swinomish and other tribes, a challenge complicated by a wide variety of historic obstacles. Land tenure patterns emerge as a central cause of inter-jurisdictional conflicts, and have impeded the ability of the Tribe to effectively use and control its land and its natural resources. Regaining that control is viewed by the Tribe as a necessary prerequisite to the advancement of its political and economic interests.

**Competing Jurisdictional Interests in Reservation Affairs**

Jurisdictional interests operating within the boundaries of the Swinomish Indian Reservation have become highly complex, and include the active presence of the State of Washington and local governments in civil and criminal jurisdictional matters, hunting and fishing regulation, natural resource allocation and management, taxation and gaming regulation, and the regulation of the land base. The inherent right of the Tribe to exercise exclusive jurisdiction over these matters has been pre-empted through the intrusion of state and local authority.

**Water Resources** - One of the Reservation's most important natural resource is its surface and groundwater supply. The total groundwater storage capacity is estimated at 6.3 billion cubic feet (Swinomish Water Plan 1990). Under natural conditions the hydrologic system is in a state of dynamic equilibrium. On a long-term basis, inflow to the system is equal to outflow, and there is no change in the amount of water in storage between the land surface, the unsaturated zone, or in the groundwater reservoir. Precipitation is the major source of the Reservation groundwater and of all naturally occurring surfacewater. The Reservation groundwater aquifer is believed to be a sole source aquifer, contained entirely within the exterior boundaries of the Reservation.

The factors that affect the Reservation groundwater quality and quantity include several non-Indian industrial, commercial, agricultural, forestry, and residential developments permitted to locate on the Reservation by county and state, rather than tribal, authorization. These uses include a nearby petrochemical facilities that injected contaminants into deep wells adjacent to the Reservation that pose a threat to the Reservation aquifer; impacts from a former petroleum waste disposal site located on Reservation fee lands, used between 1960-1970; failing shoreline residential septic systems; crop debris and pesticides from agricultural activities occurring on fee and leased trust lands; extensive timber harvesting and urban conversion practices authorized under state approval; saltwater intrusion into the groundwater aquifer resulting from state approved but largely unrestricted individual well withdrawal; and state granted groundwater withdrawal rights to several state-created community water associations.

Groundwater also provides a primary supply source to the Tribal water utility system that today delivers water to a large proportion of the Reservation population, and the Tribe has prioritized the development of a centralized management scheme for the
groundwater resource. In the past, the Washington Department of Ecology has appropriated the Reservation groundwater to support, in part, urbanization patterns inconsistent with the Tribe's land use policies. Recently, the Tribal government intervened in the state's unilateral actions in water appropriations by declaring its primacy and sole authority for the regulation and appropriation of all Reservation waters and requiring compliance with Tribal land use policy.

**Forestry** - 75% of the uplands of the Reservation contain mixed deciduous/coniferous forest. The Swinomish culture and livelihood have historically been linked to the forest and its timber resources. The Coast Salish Indian lifestyle depended heavily on forest products that continue to remain important in many religious and cultural activities. The management of forest practices is identified by the Tribe as crucial for maintaining the cultural integrity and essential character of the Reservation homeland. However, private landownership coupled with the State's preemption of Tribal regulation of fee lands has created conflicts between forest practices and land use conversion, and Tribal land use policies. Further, the management of the trust forestry resource had historically been performed by the federal government, which encouraged the harvest of timber resources favoring economic criteria rather than the cultural preferences favoring sustainability of the resource.

**Tidelands & Fisheries** - Salmon runs and the Tribe's commercially valuable fishery resources are dependent, in part, on the marine vegetation and water quality on and surrounding the Reservation. The abundance of eelgrass and kelp beds adjacent to the Reservation is important resources for supporting juvenile fish. Surrounding the Reservation are several water bodies important for fish habitat and migration. Diking and drainage to thousands of acres of wetlands both on and off the Reservation for non-Indian cultivation, coupled with waterway diversions serving marine commerce, all contributed to a diminished fishery habitat throughout the region.

Shellfish are important subsistence and commercial resources for the Tribe. Cultivation of shellfish, through aquaculture and enhancement strategies, is planned to provide viable commercial and enhanced subsistence value. Areas with intertidal shellfish enhancement potential include all of the marine waters surrounding the Reservation. Abundant shellfish found on the Reservation are dungeness crab and several clam species. Due to water quality pollution linked to residential development occurring adjacent to the marine waters of the Reservation, most of the productive shellfish areas had been closed to harvesting pending the abatement of point and non-point sources of pollution. In addition, several waterfront fee land property owners have challenged the Tribe's claim of ownership to the Reservation tidelands, physically preventing Tribal member access to traditional harvest beds on certain Reservation beaches. The clarification of title to tideland ownership continues unresolved pending future legal action.

**Land Ownership** - The General Allotment Act of 1887 divided the Swinomish Indian Reservation into parcels ranging from 40 to 160 acres for individual member ownership. The only lands remaining in collective ownership are the tidelands surrounding the Reservation and an 80-acre parcel containing the traditional Tribal
Village, several smaller individual parcels, and two recently acquired larger parcels. The tidelands were never allotted with the division of lands under the Act, remaining in federal trust. The only exception is to tidelands lying in northern Similk Bay that were willingly sold by the Tribe, with Secretarial approval. The allotment system resulted in the transfer of land ownership from Indians to non-Indians, and approximately half of the Reservation has become alienated from Indian ownership. Presently, landownership on the Reservation includes Tribal community holdings of 275 acres, or 4% of uplands and approximately 2,900 tideland acres. 50% of the land base is owned by individual Tribal members, of which approximately 20% is leased to non-Indians on a long-term basis. Fee simple, non-Indian owned land on the Reservation accounts for 46% of the total land base. The majority of fee title conversion occurred in the first two decades of the century.

**Land Use and Population** - Land use on the Reservation can be characterized as rural, commercial, forestry and agriculture, and waterfront residential. The only town is the Swinomish Indian Village that has been continuously inhabited for over 2,000 years and today contains the densely populated mixed-use urban center of the Reservation. About 75% of the 7,169-acre Reservation, or 5,355 acres, is in active forestry use; agriculture occupies 1,150 acres (16%); residential areas occupy 572 acres (8%); and industrial and commercial uses constitutes about 92 acres (about 1%). The enrollment of Tribal members is estimated to be 665, with 495 of these members living on the Reservation and 170 living off-Reservation (Swinomish Employment Rights Office, 1995 Statistical Report). The Reservation population is projected to grow at a rate of 2 to 3% annually.

**Housing** - The Indian population primarily occupies the Swinomish Village with several Indian residences scattered throughout the Reservation. The non-Indian population is concentrated in Shelter Bay, a private residential development largely located on leased trust lands, and along the western shore of the Reservation, located on leased trust and fee lands. Housing is provided by either the private sector or the Swinomish Housing Authority that operates to provide public housing to Indian families. The remaining residences are privately owned and provide housing to both Indians and non-Indians living within the Reservation boundaries. The Sewer District no. 1 subdivisions of Sneeoosh, Shorewood, Sunnyslope and Reef Point together contain 101 homes on 150 lots. The Kiket Beach subarea consists of 50 residences, mostly beach homes, on 85 lots. The Pull and Be Damned leased land subarea has 125 residences on about 298 leased lots. Shelter Bay contains 508 residences on 935 lots. Altogether, about 875 housing units exist within the Reservation boundaries.

**Cultural Resources** - Swinomish ancestors have inhabited the Reservation area for more than two millennia. Numerous known archaeological sites are located within the Reservation boundaries, and several historic villages and midden sites have been identified around the Reservation coastline (Onat 1992). Qaliqet, located at the north end of the Swinomish Channel, was a permanent aboriginal village. At the site of the present Swinomish Village was Twiwok, a 2,000-plus year old Indian settlement. Lone Tree Point was the location of a campsite where the Lower Skagits occupied a seasonal village. The southernmost point of Eagles Nest also was a historical campsite.
Preservation of these non-renewable cultural resources is important to the Tribe, as the data from these sites serve as an archaeological record of the Swinomish heritage. Deadman and Little Deadman Islands located in Skagit Bay are the sites of historical Indian burial grounds.

Historical sites on the Reservation built since treaty times include the Catholic Church, built in the Swinomish Village in 1868, and the fish trap, acquired and rebuilt in the early 1930's north of Deadman Island and operated until the late 1960's. The fish trap was the last remaining Indian trap permitted to operate in the continental U.S. The Tribe was forced to close its community operated fish trap enterprise during the 1960's, following the decline in salmon migration resulting from the construction of a jetty on the north fork of the Skagit River. The U.S. Army Corps of Engineers navigational improvement project was intended to reduce channel maintenance costs by diverting sediment laden river flows to deeper marine waters. The consequence of the project directly affected Tribal proprietary interests.

Public Services and Utilities - The Swinomish Tribe provides law and order protection to all Reservation residents. With the passage of the Public Law 280 Retrocession Bill in 1988, additional funds for enforcement activities have provided an expanded Tribal law and order capability to assume civil and limited criminal jurisdiction. State and federal law enforcement agencies also maintain jurisdiction under specified circumstances. Cross-deputization agreements with local law enforcement agencies and the Skagit County Sheriff have been approved to overcome jurisdictional uncertainty and foster effective law enforcement services to all Reservation residents.

Water service is provided to the residents of the Reservation by a number of water supply systems and by individual wells. The Tribal public water system serves the Swinomish Village and the western shore of the Reservation. The Swinomish Utility Authority, established in 1984, extracts groundwater from a Tribal well field. The Utility has a secondary supply source agreement with the City of Anacortes, serving as a supplemental source. The Tribe voluntarily agreed in 1983 to participate in regional water supply planning and coordination as part of its strategy to end the state's historic and unilateral control of the Reservation water supply. The Skagit Coordinated Water Supply Plan (CWSP) now recognizes the Tribe as the sole purveyor for all lands located within the exterior boundaries of the Reservation. The regional water systems of Anacortes and LaConner are each interconnected with the Tribal system, as recommended in the CWSP, that further serves as a coordinating agreement between Skagit County, the State, and each water purveyor in the region. The plan represents an agreement that respects the geographic service area of each water purveyor. Prior to the adoption of the plan, the Swinomish Indian Reservation was divided among the service areas of the City of Anacortes, the Skagit P.U.D., and the Town of LaConner.

Tribal Response to Regain Control Over Reservation Resources

Competition for Reservation resources and the continued application of County and State jurisdiction over Reservation lands and resources have resulted in frustrating the exercise of Tribal governance. A strategic approach was employed by the Tribe to
identify and counter external interventions that pose a challenge to the exercise of Tribal regulatory authority over the Reservation environment.

The Tribe sought to overcome external interventions in its territorial affairs by expanding its exercise of self-governance to enact sufficient powers to pre-empt state-asserted jurisdiction, and by entering into interlocal cooperative agreements. The first approach was directed to affirm the Tribe's authority to control the delivery of utility services, regulate surface and groundwater resources, manage timber harvesting practices, expand its law enforcement authority, and establish comprehensive land use policy and environmental regulatory programs. A comprehensive plan for the Reservation, adopted in the early 1970's, introduced the earliest modern-day exercise of Tribal control over its resources. The utilization of Reservation resources is dependent upon the Tribe's ability to control decisions affecting the Reservation territory.

As a planning strategy, the Swinomish approach advances Tribal goals through the exercise of political action to direct Reservation development. The Swinomish community development approach consists of a range of planning activities. First, the approach encompasses comprehensive planning, land use regulation, resource management, environmental protection, public safety, health and welfare protection, and the development of capital facilities and infrastructure to support the orderly development of the Reservation. These activities, similar to those practiced in local government, are supported under the Tribe's inherent police powers, subject to its own constitution. Secondly, the approach encompasses a role for stimulating economic growth. In that role, the Tribe functions as the focal point for directing actions and resources, and assuming risks, to develop the Reservation economy. In this respect, the Tribe provides a financing and entrepreneurial function in lieu of a private Tribal economy to stimulate capital formation in economic development. Thirdly, Swinomish planning is concerned with the preservation of the community's cultural identity. Tribal planning adapts its activities in a manner that advances the community's cultural priorities and preferences. Tribal planning, then, seeks to balance continued Reservation development to advance the welfare of its community while assuring that development does not threaten to impede the preservation of the community social fabric.

Following decades of continued jurisdictional challenge to its land use and resource management authority, the Tribe recently sought to reconcile jurisdictional conflicts through a path of cooperative dialogue with State agencies and local governments in Skagit County. Several important inter-local agreements have been executed over the past several years. Each agreement was structured to advance government-to-government relations as a basis for cooperating in regional planning and resource management. Those agreements recognize the cultural priorities as well as the political sovereignty of the Tribe. A regional water supply coordinating agreement provides for cooperation in public water supply delivery and recognizes the Tribe's authority for all Reservation lands. An agreement for the administration of the federal National Pollution Discharge Elimination Systems permit between the Washington Department of Ecology and the EPA provides for joining the technical capability of state agencies with the jurisdictional authority of the Tribal and federal governments.
Wastewater treatment and water supply agreements with the City of Anacortes and the Town of LaConner provide physical connections of regional utility systems. Finally, a cooperative land use agreement that is intended to resolve conflicts in land use regulation with Skagit County sought to overcome future conflicts in the application of concurrent and conflicting zoning schemes.

The activity of Tribal community development planning operates on a multi-dimensional level representing the three distinct forms of Tribal authority: treaty proprietary rights; inherent sovereignty; and federally delegated authority. Hence, tribes, then, can be understood as possessing governmental authorities similarly exercised at the local, state, and federal levels of government. Table 1 illustrates the scope of activities that constitute Swinomish community development planning. The programs identified in the first column represent major functional areas of government exercised by the Tribe. The activity column identifies illustrative program activities performed under the major areas of authority. The third column identifies the general source of authority supporting the conduct of the activity. The fourth column indicates the forms of non-tribal jurisdiction that challenge or pre-empt the exercise of Tribal authority. Finally, the fifth column summarizes forms of conflict dispute resolution employed by the Tribe to resist and overcome the conflicts posed by the independent variables. The model forms a generalized framework to represent the field of tribal planning.

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Prior historic events that resulted in the allotment and alienation of the Swinomish Indian Reservation coupled with the pre-emptive jurisdiction imposed by state and county governments create a modern condition that constitutes a high degree of Reservation incorporation. Efforts by the Tribe to reverse the preemption of Tribal authority began over a decade and a half ago when interaction was initiated with both the State of Washington and Skagit County. The following summarizes the results of the Tribe's efforts to resist the imposition of external forces and reverse the incorporation of the Reservation.

**Development of the Tribal Land Use Regulatory Authority**

In 1855, members of the four Skagit River tribes or bands, among others, entered into the Treaty of Point Elliot, and agreed to cede to the United States all claims to their ancestral lands and reserved for themselves "for present use and occupation" the land area of the Swinomish Indian Reservation. Article 2 of the Treaty states in part:

All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the said Tribes or bands...

The Treaty of Point Elliot represented the first form of land use control on the Swinomish Indian Reservation by recognizing the reserved right of the Tribe to control land use and by establishing a U.S. trust status for the reserved Indian lands. The General Allotment Act was the first major Act of Congress to interfere with the reserved Tribal right to exclusively regulate land use on the Reservation. The effect of the Act was to alter the formally exclusive status of Reservation lands and obscured the exclusive jurisdiction of the Tribe to control land use.

The Indian Reorganization Act (IRA) of 1934 repudiated the practice of further allotments of Reservation lands and restored inherent Tribal government powers, including the right to control the use of land within the Tribal territory unless expressly limited by Treaty or federal legislation. In 1972, the Tribe conducted a review of federal legislative and court decisions to ascertain the extent to which the federal government has
exercised its plenary powers to provide federal zoning on the Reservation or by transferring this power to the State of Washington and determined that no such actions occurred. The analysis further examined federal legislation conveying to the states the power over Indian reservations. Public Law 280 provided for the assumption of limited power by the states over Indian reservations, including criminal jurisdiction on the Swinomish Reservation and civil jurisdiction in certain enumerated areas. However, zoning and land use planning were not enumerated delegations of power under the scope of Public Law 280. The Swinomish legal analysis concluded that the power of the Tribe to control Reservation land use remained fully intact, "unfettered by treaty, direct federal legislation, or federal executive orders." Further, the Indian Civil Rights Act applies elements of constitutional law to the governmental acts of tribes.

The Swinomish Indian Senate approved a comprehensive land use plan in 1972 to "maintain a quality environment, not succumbing to the shortsighted growth and development processes that other areas in the Puget Sound region have bowed to." The Tribe exercised its inherent power by enacting the Swinomish Zoning Ordinance in 1978 to apply to all lands within the exterior boundaries of the Reservation, regardless of ownership type. The stated primary purpose of the Tribe's enacted zoning ordinance is to "provide guidelines and definitions for comprehensive plan implementation and to promote the health, safety and general welfare of tribal community members and others living on Reservation lands." The zoning ordinance, hence, meets two important tests as later established in the Montana decision. On the one hand, it applies equal general protection for all residents of the Reservation, regardless of whether they are members of the Tribe or occupy trust or fee lands. On the other hand, it attempts to maintain the "essential character" of the Reservation. Section 2 of the ordinance establishes land use districts and appropriates approximately 70% of the Reservation land area to "forestry and rural" uses. This designation provides for the maintenance of the predominantly forested and rural Reservation character, designates land areas for residential uses that reflect the pre-existing residential use pattern along the shoreline areas, and provides an adequate supply of land to accommodate future residential growth and industrial and commercial development to support future economic activities.

The ordinance provides for outright permitted uses under each land use designation and establishes a review procedure for proposed development projects under a "contract zone" provision when the project is found to present a significant impact. Further, variance procedures entitle property owners to request relief from burdensome regulatory restrictions when demonstrated to "deprive a property owner of rights and privileges enjoyed by other properties under similar zoning classifications."

Although the Tribe has exercised its zoning authority since its enactment in 1978, two obstacles have prevented the full implementation of the code. The first obstacle is presented by Skagit County's exercise of zoning authority over Reservation fee lands under delegated powers presumed valid under Washington State's Planning Enabling Act at Chapter 36.70, as amended. The resulting "checkerboard" regulatory scheme has created jurisdictional problems as the Tribe applies its jurisdiction over both fee lands and trust lands. This situation has caused problems due to the concurrent application of conflicting regulations. The second obstacle is presented by the complex federal review
that is required in the enactment of Tribal legislation. Formal verification of the federal government's approval of the zoning ordinance was received on September 11, 1984, almost seven years following the Tribe's initial enactment of the code. Because of the provisions in the Swinomish Constitution, the review of certain forms of Tribal legislation by the Secretary of the Interior is required.

Subsequent to the seven year effort to clarify the Tribe's ability to enact its land use regulatory powers, rather than follow the recommendations of the Department to resubmit the ordinance again for substantive review and approval, the Tribe elected instead to further exercise its inherent sovereignty. This was accomplished by submitting a Constitutional amendment before the Tribal membership in 1985 to remove the Constitutional provision requiring Secretarial approval for land use legislation enacted by the Tribe. The amendment was approved by the voters and ratified by the Secretary, resulting to remove the requirement for the federal trustee's review and approval of any future enactments and amendments of land use regulations.

Strategies for Coordination in Regional Land Use Planning

The resultant checkerboard land tenure on the Swinomish Indian Reservation has created jurisdictional problems in the application of two separate regulatory schemes, as both the Tribe and the County administer zoning programs that affect Reservation fee lands. Rather than litigate the jurisdictional issue to overcome conflicting land use regulations, the Tribe and the County agreed in 1986 to attempt to resolve the conflict by embarking on a joint planning program. The philosophy guiding the effort sought to overcome inconsistencies through a mutually agreeable land use policy for the Reservation. The effort was also intended to address cooperation in the administration of the separate, but concurrent, land use policies.

Representatives from the Tribe and the County began discussions on issues of mutual concern, acknowledging that historic events had created a situation wherein Indian and non-Indian interests were both present on the Reservation. They further acknowledged that neither government could successfully act unilaterally without incurring objection from the other party and the likelihood for litigation to follow. Both agreed that it would be advantageous to avoid costly litigation by resolving differences under a formal government-to-government relationship. They also recognized that an accommodation would facilitate the development of a longer term working relationship that could help to address other mutual concerns. Following discussions over a six-month period, the Swinomish Indian Senate and Skagit County Board of Commissioners entered into a Memorandum of Understanding (MOU) in 1987 agreeing to pursue a process leading to the coordination of land use planning and regulatory activities on the Reservation. A comprehensive land use plan would be jointly developed with implementing ordinances and administrative procedures. The plan would be developed on the basis of sound planning principles that incorporated the distinct normative values of the Tribe, with questions of landownership and jurisdiction taking a secondary position. The Tribe and County also affirmed that cooperative problem solving and consensus decision-making would be their preferred means of reaching joint decisions.
As specified in the MOU, a nine-member Advisory Planning Board comprised of four Tribal appointees, four County appointees, and a neutral facilitator was established to oversee the effort. Before addressing substantive issues, the Board attended a series of educational sessions on federal Indian policy and law; functions of tribal and county government; history of tribal and non-tribal culture to examine respective values and world views; and consensus-based negotiating and cooperative problem solving techniques. This early process served as a form of social learning that was intended to prevent misunderstanding about the parties' individual concerns and to foster a commitment to work towards a utilitarian end. A comprehensive land use plan for the Reservation was developed and forwarded to the Tribal and County Planning Commissions for consideration.  

"It is a plan for the future which reflects Indian traditions, protects ancient and hallowed values and maintains a sense of present day reality. It balances the interests of Indian and non-Indian while acknowledging the reservation as an Indian homeland." (Draft Swinomish Comprehensive Plan, 1990). The Swinomish Joint Comprehensive Plan was the first comprehensive planning effort attempted between a tribe and a county in the nation. The process that was followed was based on the willingness of two governments to address the difficult problems of overlapping interests through mutual cooperation rather than through confrontive litigation.

The Swinomish Comprehensive Plan articulates goals and establishes policies to guide the stewardship of the land and resources of the Swinomish Indian Reservation, and outlines a framework for an implementation strategy. Each jurisdiction relies on its own perceived jurisdictional authority, agreeing to defer questions of absolute jurisdiction, when necessary, to a future time. The approach recognizes that successful regional planning is the desired outcome, unobtainable under the application of uncoordinated regulation. The Plan expresses the cultural significance of the Reservation as a homeland: "a finite resource that binds its history, culture, traditions, and identity" (Draft Swinomish Plan 1990). As a finite resource, the Plan acknowledges the irreplaceability of the Reservation homeland, and seeks to insure that future uses and development is both deliberate and responsive to basic community needs.

The coordinated planning approach sought to advance Tribal self-determination through a Reservation plan that supports the inclusion of interests reflecting the non-Indian population. The approach strengthens meeting the criteria as set forth in the second Montana exemption as well as the Brendale test. Although not tested in litigation where such arguments may be advanced, the Tribe's planning approach was cognizant of the importance emphasized in these court rulings for the reasonable consideration of non-Indian property rights interests in regulating the Reservation. Although the process is primarily intended to foster utilitarian relations by accommodating County interests and avoiding impending conflict, it also contributes to altering social behavior through a process of learning about the diverse values that are reflected in both cultural populations. The ultimate goal is the acceptance of cultural and political plurality. While the application of the plural construct remains initially confined to the Reservation community, it nonetheless sets forth a new paradigm for a conception of a unified and cooperating region that is inclusive of self-maintained social and political enclaves.
Strategies for Regional Coordinated Water Supply Planning

Since 1984, Skagit County, the Swinomish Tribe, the City of Anacortes, the Town of LaConner, Skagit County Public Utility District No. 1 and other local water districts have worked cooperatively to develop a comprehensive and integrated water delivery system for Fidalgo Island. Pursuant to the State Water System Coordination Act, Skagit County designated Fidalgo Island and the water service area of the Town of LaConner as a Critical Water Service Supply Area (CWSSA) in 1982. Although not required under state law, the Swinomish Tribe participated in the development of the Anacortes-Fidalgo Island Coordinated Water System Plan (AF-CWSP), and became a signatory to the AF-CWSP Interlocal Water Utility Future Service Area Agreement in 1984. The Tribe's decision to enter into cooperative negotiations in this process was supported by its desire to reverse the County's historic pre-emptive authority to provide water services on the Reservation, and its readiness to develop a Reservation-wide utility infrastructure under its inherent political jurisdiction. In 1986 the Skagit County Board of Commissioners imposed a moratorium on residential and other construction on Fidalgo Island, including the Reservation fee lands, as a result of the water shortage. Although it is the Tribe's position that the County moratorium is not applicable to lands within the exterior boundaries of the Reservation, the County's action evidenced a serious health problem associated with the lack of sufficient amounts of safe drinking water.

Following adoption of the water plan, Skagit County expanded the AF-CWSP to include the entire county in the Skagit County Coordinated Water Supply Plan (CWSP). Skagit County, the Swinomish Tribe and the other signatories to the AF-CWSP have worked cooperatively to implement their agreement over the last 11 years. Under the provisions of the water plan, the Swinomish Tribe is the designated water purveyor for all lands within the Swinomish Reservation. Under the agreement, the Tribe accepted the responsibility for providing water to all land uses of the Reservation that conform to Tribal policies.

During the eleven years that have elapsed since the signing of the AF-CWSP, the Swinomish Tribe has formed a Utility Authority and completed a number of phased construction projects. The Tribe enacted Ordinance No. 51 in 1986 creating the Swinomish Utility Commission. The Commission was formed to oversee the construction and development of a water supply system for the delivery of safe drinking water to all residents of the Swinomish Indian Reservation and provides for representation on the Utility Commission by non-member residents of the Reservation, overcoming some of the past objections to a Tribal governance system that normally limits its officers to the Tribal membership. In phase I, two Tribal wells were drilled to provide groundwater to a storage reservoir and water lines were extended to service the more densely populated southern end of the Reservation including the Tribal Village where most of the Tribal residents live. In the second phase, water lines were extended to the western shore (Westshore) of the Reservation servicing fee simple lands. This area was subject to a County building moratorium imposed as a result of water shortage. In the third phase, contracts for the supply of supplemental water from the Skagit River were entered into with the City of Anacortes and a water transmission line was constructed connecting the Anacortes water supply to Tribal reservoirs. The fourth phase
extended service to non-tribal homes on the southwest shore of the Reservation located on fee and Indian owned leased land. The Swinomish Utility Department now serves all but a small portion of the Reservation. The extension of water service to the last remaining populated area is planned in the near future.

The engagement by the Tribe in regional water supply planning resulted in the recognition of the Tribe's declared jurisdiction for water service delivery on the Reservation by County, State, and regional water purveyors. The Utility Authority works in tandem with the pending Water Resources Protection Ordinance No. 113 to advance the Tribe's political authority to assure that the future development of the Reservation conforms with the Tribe's land use goals and policies. As an example of the cooperative approach to jurisdictional conflict resolution, the Tribe's effective participation in regional coordinated planning fully reversed the incorporation of the Reservation's public utility services to restore the Tribe's authority over its territorial affairs.

Tribal planning strategies sought the intervention to the incorporation of water delivery and appropriation by State and County governments. Demand for water combined with the Tribe's dormant authority facilitated the exercise of non-Tribal regulation over the Reservation waters. The Tribe employed several political actions that resulted to first resist, and then to reverse these incorporation processes. Tribal political action began with the declaration of exclusive authority to regulate both the delivery of public waters and the appropriation of groundwater. In enacting its water code, several instances of compromise occurred as the Tribe sought to overcome concerns of the federal government in a legal matter that continues to be surrounded by jurisdictional uncertainty. Several amendments to the ordinance provided an accommodation to federal concerns by basing Tribal jurisdiction on its regulatory authority rather than its exercise of proprietary reserved rights over Reservation waters. This approach avoided confronting the State's position where, for all waters exceeding the reserved right, the State's authority was thought to prevail. This approach also was effective in sidestepping the necessity for a lengthy reserved rights adjudication process. The accommodation approach also served to avoid a potential conflict challenging prior State actions by "grandfathering" pre-existing water rights. The strategy further accommodated State interests by providing an avenue for the direct participation of the State as well as non-member users of Reservation waters in code implementation.

Similarly, the Tribe initiated its control over the delivery of Reservation waters by first declaring its interest as the Reservation water purveyor followed by its participation in the regional water supply plan. Regional governments cooperated by acknowledging the Tribe's authority and responsibility to service the Reservation service area. By participating in regional planning, the Tribe assumes its share of responsibility for furthering the goals of the regional plan, while, concurrently, insuring that future water service adheres to Tribal policies. This process advances Tribal interests by preempting the unilateral application of County jurisdiction that now requires a Tribal determination of water service availability prior to issuing development permits. The effect of the cooperative agreement, then, reverses Reservation incorporation by creating a dependency relationship on Tribal decision-making. Further, the regional water service
agreement ended the State's encroachment onto the Reservation by removing from the Reservation the authority previously exercised by non-tribal water purveyors.

**Conclusion**

Tribal community development approaches that provide for a strong political role within its Reservation planning situation can effectively reverse the historic tendency of jurisdictional usurpation by non-tribal governments. In the Swinomish experience, the utilitarian relationships between the tribe and state and local governments are represented in a co-regulatory or "concurrency" model where tribal and non-tribal authorities are simultaneously applied to guide development activities occurring within the Reservation. While this approach provides for the avoidance of jurisdictional conflict by fostering a regional public policy inclusive of tribal interests, it does not preclude future litigation that would clarify the extent of jurisdiction possessed by the parties. Tribal interests can be effectively advanced through a process that begins with tribal political action to assert tribal interests, followed, then, by the application of approaches that enable the inclusion of those interests in decisions affecting the reservation.

The exercise of the Swinomish Tribe's authority represented a first step to reversing Reservation incorporation by creating several confrontational situations to resist the external forces. In an effort to resolve other long standing disputes encountered under the application of concurrent jurisdiction, the Tribe and Skagit County agreed to work towards developing utilitarian relations in order to avoid continued confrontation through cooperative planning. Although the cooperative model is still early in its implementation, the approach represents the second step to reversing incorporation by entering agreements intended to overcome conflicting public policy. Negotiated resolution to confrontation may become formalized in agreements that either defer to Tribal authority or form a political pluralism in regional government. Hence, the major outcomes of the negotiated approach are summarized in the following typology:

*Concurrency* - representing the joint application of dual government authority, recognizing regional political pluralism;

*Cooperation* - as an advanced form of the concurrency model, agreement is reached to overcome conflict in public policy through joint planning or other means. The cooperative approach may then become further advanced by agreements that minimize duplication by deferring to a single system of administration;

*Preemption* - the outcome represented a change in circumstances that advanced one government's jurisdiction while the other government retreats in its jurisdiction; and

*Deferment* - this outcome occurs when one competing governmental interest voluntarily agrees to defer the application of their authority to the other government, as demonstrated by the Tribe's designation as the Reservation water purveyor.
A three-phase model depicting the process of Tribal engagement in its external-planning situation is presented in a series of propositional statements:

*Isolationism Created a Situation of State Incorporation* - Historic isolationism by the Tribal Political Community, resulting in part from historic federal Indian policy, created a situation where external interests arose to preempt a tribe's governance over its territorial affairs;

*Overcoming Incorporation is Largely Dependent Upon the Intervention of Tribal Political Action* - To alter and reverse the effects of external controlling influences in tribal affairs, a tribe must exercise political action to confront the unilaterally imposed actions. Confrontational means may employ litigation or other forces to resist the intruding authority. The exercise of Tribal political action over its affairs serves to diminish or replace the unilateral external force;

*Resolution of Jurisdictional Conflict Can Advance Tribal Goals* - Resolution of the ensuing conflict may be overcome through forms of negotiation to accommodate the various interests. Intergovernmental relations that result in utilitarian relations provide a mechanism for regional cooperation. The ultimate goal in cooperative relations is the development of political pluralism that provides for the integration of tribal political and cultural sovereignty within the political region to advance tribal objectives.
Endnotes


2 The State of Washington's water rights exemption for individual wells withdrawing less than 5,000 gallons per day creates an unregulated system of withdrawal. Further, the state has never instituted hydrologic analysis of the groundwater aquifer to ascertain its capacity to meet the growing withdrawal demands. A Reservation water supply study conducted by the United States Geologic Survey in 1979 identified over 150 wells drawing water without a water right from the Reservation aquifer.

3 The Tribe surveyed community members in 1986 to identify preferences in the management of the Reservation forestry resource. The survey indicated a strong preference for sustainable forest practices protecting cultural and religious uses of the forest, employing selective harvest over clearcut techniques, and preferring manual release to aerial application of herbicides.

4 In November 1995, the three tribes of the Skagit River, the City of Anacortes, and the Skagit County Public Utility District met to affirm their commitment to enter an agreement that, among other matters, establishes a minimum instream flow level for protection of fisheries habitat in the Skagit River, and provides 2.8 million gallon per day supply to the Swinomish Utility Authority through the City's water right permit. The tentative agreement and its implementation of minimum stream flows is subject to the approval of the Washington Department of Ecology and State Legislature.


11 Coincidentally, on June 29, 1989, the U.S. Supreme Court issued its decision in Brendale v. Yakima Indian Nation. The decision stated that the county, its jurisdictional authority notwithstanding, must consider the tribal interest in its actions affecting the reservation. The opinion encourages coordination, a course upon which the Swinomish Tribal Community and Skagit County embarked three years earlier.


13 Washington Revised Code. Sec. 70.116.


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