

003913

MEMORANDUM OF UNDERSTANDING

**FOR ESTABLISHING PROCEDURES FOR THE ADMINISTRATION OF A
COOPERATIVE LAND USE PLANNING PROGRAM
BETWEEN
THE SWINOMISH INDIAN TRIBAL COMMUNITY
AND
SKAGIT COUNTY**

This Memorandum of Understanding (MOU) is made by and between the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, hereinafter the "Tribe", and Skagit County, a political subdivision of the State of Washington, hereinafter the "County", both hereinafter collectively referred to as "governments."

This Memorandum of Understanding represents good faith commitments which are being made by each of the parties in a spirit of cooperation and are not intended as obligations that may be compelled by either party if both parties are not in full agreement. Rather, this MOU represents the belief that these commitments will be of mutual benefit to the parties.

WHEREAS, the Tribe and the County recognize that a common interest exists between the two governments with respect to growth management and land use regulations on the Swinomish Indian Reservation in that the Tribe claims regulatory authority over all lands within the Reservation and the County claims regulatory authority over non-trust property within the Reservation; and

WHEREAS, the interest of the Tribe extends to all lands within the exterior boundaries of the Swinomish Indian Reservation and to land use activities in areas beyond the exterior boundaries of the Swinomish Indian Reservation that may affect or have impacts on Reservation lands; and

WHEREAS, the interests of the County extends to non-trust lands within the exterior boundaries of the Swinomish Indian Reservation; and

WHEREAS, the Tribe and the County have, with assistance from the Northwest Renewable Resources Center, cooperatively developed a Joint Comprehensive Land Use Plan for the Swinomish Indian Reservation pursuant to a Memorandum of Understanding passed by the Skagit County Board of Commissioners and the Swinomish Indian Senate in March, 1987; and

WHEREAS, the Tribe adopted a Land Use Comprehensive Plan on August 6, 1996 and the County adopted the Skagit County Comprehensive Plan pursuant to the Growth Management Act (RCW 36.70A) on June 1, 1997 and having done so the County identified the Swinomish Tribal Community/Skagit County Joint

cc: Planning, J. Moffat

Comprehensive Plan as a priority item requiring further studies, reports, recommendations, and implementation under Ordinance #16550; and

WHEREAS, the Tribe and the County agree that it is in both their interests to cooperatively manage growth and administer associated land use regulations while continuing to build on the cordial government-to-government relationship established through the collaborative planning process; and

WHEREAS, the Tribe and County agree that in order to address conflicts that may arise in managing growth and administering implementing land use regulations, the Tribe and the County should adopt an administrative procedure that involves joint review and consultation regarding proposals for land use actions so that mutually agreeable decisions which acknowledge the broad interests of the community, both Indian and non-Indian, may be reached, and jurisdictional disputes avoided; and

WHEREAS, the Tribe and the County affirm that cooperative problem solving and consensus decision-making will be the preferred means of reaching consensus decisions relating to growth management, land use planning and regulatory activities on the Swinomish Indian Reservation; and

NOW THEREFORE, the Tribe and the County agree to proceed as follows:

I. AREAS OF INTEREST

Those lands covered by this agreement are shown as such on the attached map (Attachment A).

II. SWINOMISH PLANNING ADVISORY BOARD

A Swinomish Planning Advisory Board, (hereinafter referred to as the "Advisory Board"), is a citizen board established to settle disagreements regarding land use actions by means of cooperative problem-solving and consensus-based negotiations. The Board will also make recommendations to each government's Planning Commission regarding land use activities on the Swinomish Reservation. The Advisory Board will be comprised of five members, with two appointments made by the Tribe, two appointments made by the County, and one made jointly. The Advisory Board will facilitate the resolution of disputes stemming from any jurisdictional conflicts regarding growth management, land use planning, and related regulatory codes. The Advisory Board will also monitor the progress of the cooperative planning processes and make recommendations to the County Planning Commission and the Swinomish Planning Commission to improve the future effectiveness of these processes.

III. COMPREHENSIVE PLANS AND ZONING ORDINANCES

Both governments have adopted comprehensive plans and have or are implementing ordinances such as, but not limited to, zoning and subdivision ordinances. It is the intent of the parties that these land use policy documents become compatible and consistent with the Joint Comprehensive Land Use Plan for the Swinomish Indian Reservation pursuant to a Memorandum of Understanding passed by the Skagit County Board of Commissioners and the Swinomish Indian Senate in March, 1987, subject to the studies and a report, public review and comment, and recommendations based on applicable federal, state and local laws and plans and that any future modification to these documents take place through the joint review process established in this Memorandum of Understanding. Notwithstanding the fact that existing or future land use policy and regulatory documents are or become compatible, they remain separate and distinct codes of each government.

IV. ADMINISTRATIVE RESPONSIBILITIES FOR JOINT PERMIT REVIEW

In order to avoid the economic burden on each government and the general public of independently administering separate permit review processes, both governments agree that a unified procedure for the administration of permitting services will be established providing for coordination of the planning departments of each government for accepting and administering permit applications. It is in the interest of achieving the joint implementation of the plan and related codes to reduce unnecessary duplication in administration while providing for the fullest participation of each government agency.

V. FILING APPLICATIONS FOR JOINT PERMIT REVIEW

Application for a land use permit may be initially filed with both or either agency. If an application is filed with one agency (the "recipient agency"), that agency shall forward to the planning department of the other government (the "receiving agency") a copy of the entire application file within five (5) working days from the filing of the complete application and request comments on the application. If the application file satisfies the application requirements of the receiving agency, then said application shall be considered a complete application for the receiving agency. If additional information is required by the receiving agency, that agency shall directly notify the applicant accordingly.

In the event that the recipient agency does receive written comments back within the 15 working days from the date the application was originally sent, the application will be presumed acceptable to the other government and the recipient agency will process the application pursuant to its prescribed procedures. Either the recipient agency or both agencies may elect to issue a separate permit under their respective authorities.

In the event receiving agency comments are submitted to the recipient agency, technical staff review pursuant to Section VI shall take place. The recipient agency shall give full consideration to the other government's concerns and make every attempt to address them. If the concerns cannot be resolved at the technical staff level, Advisory Board review pursuant to Section VII shall take place.

The planning departments of each agency may enter into subsequent agreements concerning the sharing of permit fee revenues to (a) fairly reimburse each agency for their permit review, and (b) to minimize, to every extent possible, the burden of a dual application fee to applicants. In addition, the agencies shall jointly develop flow charts to depict the cooperative review process and timelines required for joint review and final decision(s).

VI. CONSULTATION PROCESS

In the event that either government provides written comments, concerns and/or recommendations, they will be conveyed within the time prescribed in Section V, thereby triggering a staff-level consultation meeting. The consultation process will provide the opportunity for both governments to come together and discuss the various issues related to the specific application under review. The intent is to provide a procedural mechanism through which to voice concerns, identify problems, and explore solutions in a professional review manner, during the early stages of the permit process.

VII. RESOLUTION OF DISPUTES

Should agreement not be reached at the staff-level through the consultation process, each government will prepare a staff report for submittal to the Advisory Board which will seek to bring about a mutually acceptable resolution. The Advisory Board will assist the governments in their search for agreement and will use conciliation, mediation, fact-finding, or any other method deemed appropriate, to reach a resolution.

In the event the Advisory Board is unsuccessful in bringing about agreement, it will forward its recommendations to the County Planning Commission/Hearing Examiner, and the Tribal Planning Commission. Each planning commission will follow its own prescribed procedures for decision-making and will forward its recommendations to the respective governing bodies. Should the recommendations be in conflict, the Tribal Senate and the Board of County Commissioners may decide to confer on the issue and may call a special meeting for that purpose. In the event that consensus is not reached, each government will issue its decision and be free to pursue its interests independent of the other government.

VIII. ANNUAL REVIEW

The Advisory Board will report to both governments after one year, biannually thereafter, regarding its activities. A joint review of the cooperative planning process will be conducted after two years. Based on the results of the review, as well as recommendations from the Advisory Board, the process will be refined as needed.

IX. AMENDMENTS

The provisions of this Memorandum of Understanding may be amended by parallel resolutions of the respective governing bodies.

XI. JURISDICTION

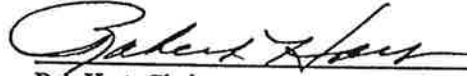
Nothing in this Agreement shall limit or waive the regulatory authority or jurisdiction of either party. Likewise, nothing in this agreement nor any decision made by the Tribe or the County, whether or not the decision is consistent with this Memorandum of Understanding, shall give any third party any cause of action or claim. This Agreement is not intended to provide any remedy not already provided by law.

003913

AGREED TO THIS 14TH DAY OF April, 1998 BY:

SKAGIT COUNTY

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON


Bob Hart, Chairman


Harvey Wolden, Commissioner


Ted W. Anderson, Commissioner

ATTEST:


Patti Chambers, Clerk of the Board

APPROVED AS TO CONTENT:


Tom Karsh, co-Director
Planning and Permit Center

APPROVED AS TO FORM ONLY:

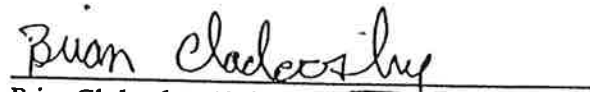
by 
for John Moffat, Chief Civil Deputy
Prosecuting Attorney's Office

APPROVED AS TO INDEMNIFICATION:


Dave Fleming, Risk Manager

SWINOMISH INDIAN TRIBAL COMMUNITY


APPROVED BY:


Brian Cladoosby, Chairman
Swinomish Indian Senate

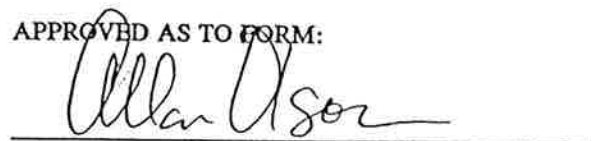
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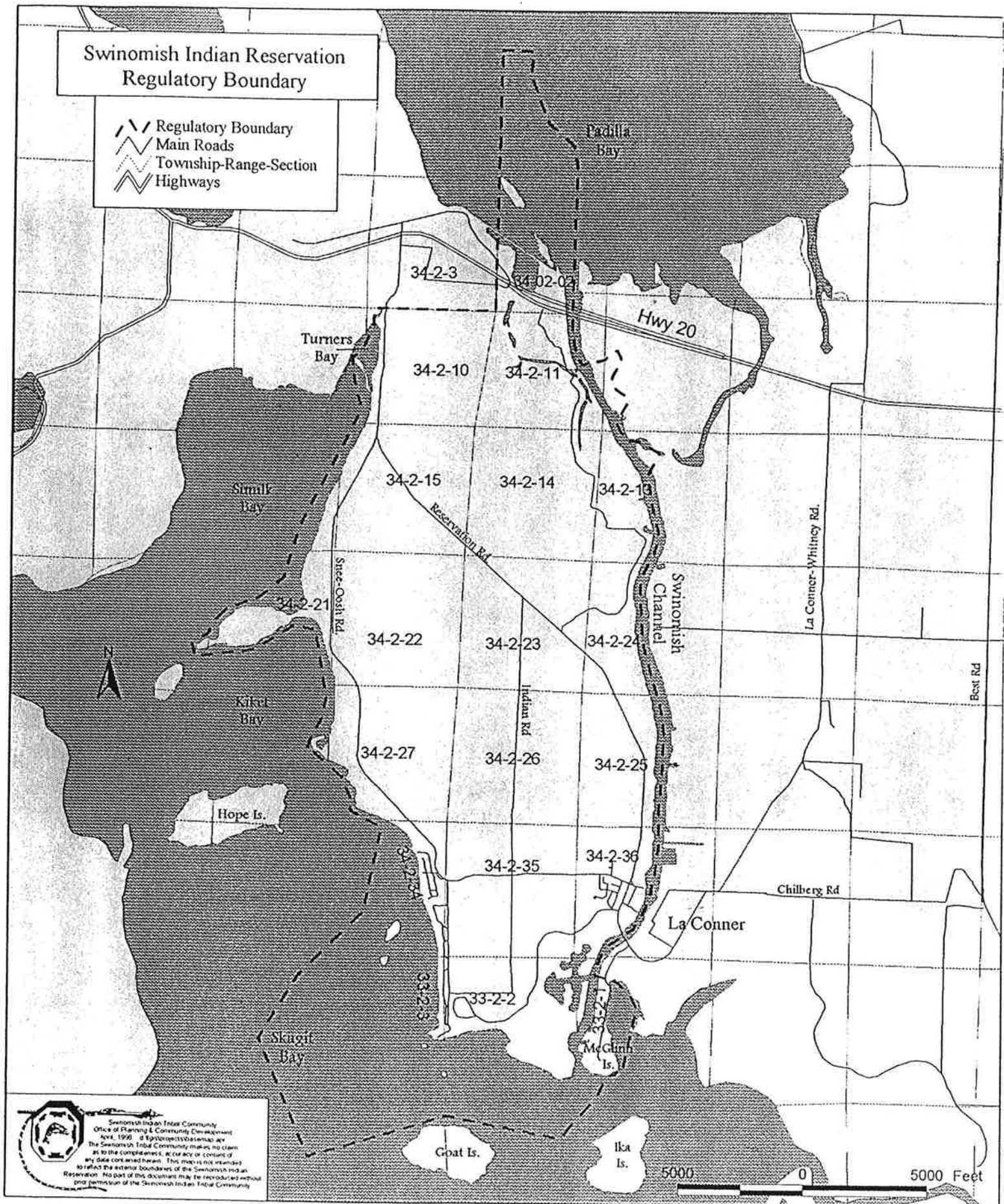

Lydia Charles, Secretary
Swinomish Indian Senate

APPROVED AS TO CONTENT:


Nicholas Zafematos
General Manager/Director of Planning

APPROVED AS TO FORM:


Allan Olson, Attorney



RESOLUTION NO. 98-4-88

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH
SKAGIT COUNTY TO JOINTLY ADMINISTER A LAND USE PLAN**

WHEREAS, the Swinomish Indian Tribal Community is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934; and

WHEREAS, the Swinomish Indian Senate is the governing body of the Swinomish Indian Reservation located near the Town of LaConner, Washington; and

WHEREAS, Article VI, Section 1 (a), of the Swinomish Constitution and Bylaws of the Swinomish Indian Tribal Community provides the authority for the Swinomish Indian Senate to enter into agreements with federal, state, and local governments; and

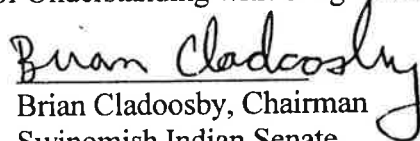
WHEREAS, In 1987, the Swinomish Indian Senate entered into a Memorandum of Understanding with Skagit County to establish a process for undertaking joint land use planning for lands within the Swinomish Indian Reservation in order to overcome historic problems associated with the application of conflicting and overlapping dual land use jurisdiction; and

WHEREAS, the Swinomish Indian Senate and Skagit County each adopted their jointly developed comprehensive land use plans in 1996 and 1997 respectively, pursuant to their individual and independent authority; and

WHEREAS, The Swinomish Indian Senate is desirous of furthering its good faith commitment to cooperate with Skagit County in the joint administration of the comprehensive land use plan;
NOW THEREFORE,

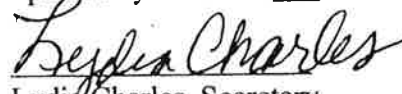
BE IT RESOLVED by the Swinomish Indian Senate that the attached Memorandum of Understanding establishing a procedure for the cooperative administration of a land use planning program with Skagit County has been determined to be consistent with the Senate's desire to foster good faith inter-governmental cooperation; and

BE IT FURTHER RESOLVED by the Swinomish Indian Senate that the Chairman of the Senate is hereby authorized to enter into the Memorandum of Understanding with Skagit County on behalf of the Swinomish Indian Senate.


Brian Cladoosby, Chairman
Swinomish Indian Senate

C E R T I F I C A T I O N

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing resolution was approved at a Regular Meeting of the Swinomish Indian Senate held on the 8th day of April, 1998, at which time a quorum was present and the resolution passed by a vote of 9 FOR, 0 AGAINST, and 0 ABSTENTIONS.


Lydia Charles, Secretary
Swinomish Indian Senate

**Memorandum of Understanding
for Establishing a Coordinated Tribal/County
Regional Planning Program**

between

**The Swinomish Indian Tribal Community
and
Skagit County**

This Memorandum of Understanding is made by and between the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 ("Tribe") and Skagit County, a political subdivision of the State of Washington ("County"). The Tribe and County (collectively referred to as "governments") hereby acknowledge and agree as follows:

Introduction

Following a series of meetings held between November, 1986 and February, 1987, and coordinated under the Land Tenure Project of the Northwest Renewable Resources Center, the Tribe and the County reached mutual understanding concerning the development of a Coordinated Regional Planning Program and a definable government-to-government relationship.

Mutual Points of Understanding

1. That the Tribe and the County are implementing separate comprehensive land use policy programs regulating land use activities on the Swinomish Indian Reservation; and
2. That the Tribe has assumed regulatory jurisdiction for all land areas within the exterior boundaries of the Swinomish Indian Reservation, regardless of ownership type, and that the County has assumed partial regulatory jurisdiction for those lands held in fee title lying within the exterior boundaries of the Swinomish Indian Reservation; and
3. That both parties recognize the need for due process representation of all residents of the Swinomish Indian Reservation; and
4. That in order to alleviate the potential conflict which may result from the concurrent application of both regulatory programs within the exterior boundaries of the Swinomish Indian Reservation, the parties to this Memorandum of Understanding agree to initiate a coordinated land use planning process for land areas contained within the exterior boundaries of the Swinomish Indian Reservation; and

5. That the coordinated regional planning effort is not intended to transfer any degree of jurisdiction held by one party to the other party, nor is it to be misconstrued as a recognition of jurisdiction which either party may duly claim; and

6. That it is in the interest of the residents of Skagit County and the Swinomish Indian Reservation, that a coordinated regional planning process be established whereby the Tribal and County cooperate and share resources in the promotion of land use planning within Skagit County, and

7. That in order to implement a coordinated regional planning process, the parties recognize that voluntary cooperation and an attitude of good faith towards the joint planning process is a prerequisite for successful coordinated planning.

Strategic Activities for Coordinated Planning

The parties further recognize and have identified the following strategic activities that must be completed in order to bring about such a coordinated regional planning process:

8. The Tribe and the County do mutually recognize the benefits of entering into a Memorandum of Understanding to establish a long term, government-to-government planning and regulatory relationship in order to jointly commence a process for the update of the Tribal and County Comprehensive Land Use Plans; to formulate a single synthesized Comprehensive Plan; and to investigate alternative methods for the administration of the land use plan and other land use related regulatory codes for those land areas lying within the exterior boundaries of the Swinomish Indian Reservation;

9. The Tribe and the County recognize the benefits of actively pursuing future joint planning studies addressing regional concerns to both the County and the Tribe, which may include water quality studies in Skagit Bay and other such studies;

10. The Tribe and the County recognize that, for the purposes of initiating a coordinated comprehensive planning update process, that an Advisory Planning Board should be appointed, representing both the Tribe and the County, for purposes of identifying updating requirements to both the County Plan and the Tribal Plan in an effort to attain compatibility between plans;

11. The Tribe and the County recognize that in order to facilitate a coordinated comprehensive planning process for

the Reservation area, the County should modify its existing "Island Sub-Area" and redesignate those land areas within the Swinomish Indian Reservation as a new sub-area known as the "Swinomish Indian Reservation Sub-Area";

12. The Tribe and the County recognize that an operational and organizational strategy for jointly administering a land use policy should be established which will consider: 1) the jurisdictional claims to land use regulation by both parties, and 2) each government's concern with respect to fair and adequate representation of all people residing on the Swinomish Indian Reservation. Said organizational strategy will outline a procedure for implementing the provisions of a comprehensive land use plan;

13. The Tribe and the County recognize that the independent, third party assistance provided through the Northwest Renewable Resources Center (NRRC) is considered both helpful and necessary for the timely implementation of a joint planning effort, and the governments hereby request the ongoing participation of NRRC to assist in facilitating the joint-planning effort. The governments further request NRRC to seek and provide funds for retaining a Coordinator to assist the parties in completing a joint comprehensive land use plan update process;

14. The parties mutually agree that efforts to initiate a joint planning process for the purposes of updating the Tribal and County Comprehensive Land Use Plan should commence during the summer of 1987;

Planning Process

Pursuant to this Memorandum of Understanding, the Tribe and the County acknowledge their commitment to pursue a process leading towards the coordination of land use planning and regulatory activities on the Swinomish Indian Reservation, and have identified the following three major elements of a program to commence during the summer of 1987 as follows:

A. Commitment for a Coordinated Planning.

(1) The Tribe and the County will consider entering into a Sphere of Influence Agreement as an interim measure of land use coordination while the planning process is underway;

(2) The Tribe and the County will formulate an Advisory Planning Board representing the Tribe and the County, which shall oversee the implementation of a joint comprehensive planning process.

(3) Both the County and Tribe shall provide professional staff support to the Advisory Planning Board to facilitate the process of updating both Tribal and County

Comprehensive Plans.

(4) The Advisory Planning Board shall initiate review and drafting of the plan document and shall present recommendations to the County and Tribal Planning Commissions for public review and adoption by their respective governing bodies.

B. Composition of Advisory Board:

(1) The Advisory Board shall be comprised of nine (9) members, with appointments made mutually by the Tribe and the County. The positions on the Board shall be filled as follows: A representative of the Skagit County and Swinomish Planning Commissions (2 positions); The Planning Directors of the respective governments (2 positions); the NRRC Coordinator, serving as Chairperson (1 position); Two Positions appointed at-large and nominated by the County (2 positions); and Two positions appointed at-large and nominated by the Tribe (2 positions).

(2) The Board shall serve at the discretion of, and shall make their recommendations to, the Tribe and the County.

(3) The Board shall complete their assigned tasks and responsibilities within the one (1) year anniversary of their appointments.

C. Operational Procedures.

(1) In order to administer an updated Comprehensive Land Use Plan and subsequent regulatory codes, an administrative procedure shall be drafted by the Advisory Planning Board and shall outline procedures for joint administration of the Plan and associated regulations.

(2) The Advisory Planning Board shall serve as a representative board making recommendations to each government's Planning Commission regarding land use activities on the reservation.

(3) The Planning Board shall investigate alternatives for the resolution of any disputes, if any, between the Tribe and County in the implementation of the Plan and regulatory codes on the reservation and make recommendations on such procedures to each government's governing bodies.

D. Additional Planning Coordination:

(1) The Advisory Planning Board may pursue funding for special topical planning studies of mutual interest to the Tribe and County and may oversee the conduct of such studies.

Term of Memorandum of Understanding

This Memorandum of Understanding shall commence on the date that it is approved by both the Tribe and County, and shall remain in effect for a period of eighteen (18) months. Either party may terminate this Memorandum of Understanding provided written notification of such intent to terminate is transmitted to the other party within thirty (30) days of actual termination. It is anticipated by the parties that following the Term of this Agreement, a subsequent Agreement shall be drafted and approved whereby the parties will mutually agree on methods for coordinated administration and maintenance of a coordinated land use policy.

Jurisdiction

Nothing in this agreement shall limit or waive the regulatory authority or jurisdiction of either party.

IN WITNESS WHEREOF, this Memorandum of Understanding serves to document an understanding between the Swinomish Indian Tribal Community and Skagit County with respect to establishing a coordinated regional land use planning process by and between the parties, and the parties hereto have executed this Memorandum of Understanding on the day and year of the last date of signature below:

PASSED by the Board of Skagit County Commissioners this 17th day of MARCH, 1987.

SKAGIT COUNTY BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Otto M. Walberg, Jr.
Otto M. Walberg, Jr. Chairman

William Vaux, Commissioner

Dave Rohrer, Commissioner

Attest: _____
Clerk of the Board of
County Commissioners

APPROVED AS TO CONTENT:

Robert C. Schofield
Planning Director

APPROVED AS TO FORM:

John Moffat
Chief Civil Deputy Prosecuting Attorney

PASSED by the Swinomish Indian Senate this 17 day of March, 1987.

SWINOMISH INDIAN SENATE
SWINOMISH INDIAN TRIBAL COMMUNITY

By: Robert Joe, Sr.
Robert Joe, Sr., Chairman
Swinomish Indian Senate

ATTEST:

Liddie Grossglass
Liddie Grossglass, Secretary
Swinomish Indian Senate

APPROVED AS TO CONTENT:

Nicholas C. Zafaratos
Planning Director/General Manager

APPROVED AS TO FORM:

Allan Olson
Allan Olson, Attorney
Swinomish Indian Tribal Community

LOCAL

SECTION
6 pages
Wednesday, June 20, 1990

B

Tribe, county honored for cooperative planning

By TIM CHRISTIE
Staff Writer

LA CONNER — A unique joint planning effort by the Swinomish Tribal Community and Skagit County has been honored by professional planners — but the plan still must pass muster with the public and with decision makers.

The cooperative planning effort by the Swinomish Land Use Advisory Board recently received the award for special inter-governmental coordination from the Washington chapter of the American Planning Association and the Planning Association of Washington.

The nine-member planning board, composed of tribal and county representatives and private citizens, has been working on joint comprehensive plan since 1987, when the Skagit County Commissioners and the Swinomish Indian Senate approved a memorandum of understanding to work cooperatively for the Swinomish Indian Reservation.

The planning process, which began in

March 1987, is believed to be the first of its kind in the United States. It seeks to resolve conflicts over jurisdiction through a cooperative planning effort.

"The joint process is a relatively simple idea," Robert Joe Sr., chairman of the Swinomish Indian Tribal Community, said in a prepared statement. "It involves talking about our mutual concerns, our visions about the future, about finding a common base to our interests."

"It is about discovering what is really important about our quality of life and protecting those values. It is about breaking down the walls which have historically separated our communities. It is our hope that this will lead to a broadened and enriched reservation community."

The planning board is scheduled to meet later this month to review final revisions to the plan, said Nick Zaferatos, Swinomish planning director.

Once that is done, a series of community meetings would be scheduled on the reservation this summer, he said. The plan

would then be submitted to the county and tribal planning commissions, and then on to the Skagit County Commissioners and the Swinomish Indian Senate for final approval, perhaps in the fall.

Gary Christensen, a Skagit County associate planner, noted the planners' award was for the process itself, not the end product.

"The award wasn't for a finished product," he said. "It's not a done deal. There's still a lot of work that needs to be done."

Tribal officials nominated the joint planning board for the award on their own, without county participation.

Both county and tribal officials are anxious to get the comprehensive plan ready for public review, Christensen said.

While acknowledging that the plan may run into some opposition, Zaferatos predicted its biggest advocates would be reservation residents, both Indian and non-Indian.

"I think the overriding majority of the

reservation population will be real excited about this process," he said. "It will put them at ease to know the two governments are committed to working together."

The Swinomish reservation covers about 10 square miles on the east side of Fidalgo Island, west of Swinomish Channel. Just less than half of the land has been sold out of federal trust ownership to non-Indians, Zaferatos said in an interview last year. The balance is still held as trust land.

A decision handed down by the U.S. Supreme Court in June 1989 limited the power of Indian tribes to control, through tribal zoning laws, the use of land owned by non-Indians within reservation boundaries.

The ruling, which stemmed from a dispute on the Yakima reservation, said tribes may be forced to share zoning powers with state or county officials. At issue is whether tribal authorities can retain jurisdiction over lands once owned by tribal members but which have been sold to non-Indians.

A6 — Skagit Valley Herald

Friday, June 22, 1990

Cooperation pays dividends

Cooperation and negotiation have replaced controversy and bitterness in dealings between Skagit County and tribal officials. It is a trend that has been a long time coming and has a way to go, but it shows the importance of working together for mutual benefit.

EDITORIAL A joint planning effort between Skagit County and the Swinomish Tribal Community in La Conner recently received an award from the state chapter of the American Planning Association and the Planning Association of Washington.

The award honors a process to develop a joint comprehensive plan. For the past three years, a nine-member panel of county and tribal officials and private residents of the Swinomish reservation have been working on details of a plan to map out future land-use.

It just may be the only effort of its kind in the United States.

Other communities should take heed of this example, learn from it and use the idea.

"It involves talking about our mutual concerns, our visions about the future, about finding a common base to our interests," Swinomish Tribal Chairman Robert Joe Sr. said of the process.

It's quite a turn of events considering that not too many years ago, the county was threatening to sue the federal government over establishment of the 99-acre Upper Skagit Indian Reservation east of Sedro-Woolley. After the 1981 decision to establish the reservation, county officials complained of a potential lack of planning consistency and growth management.

A process like the one the county and the Swinomish tribe are using defuses such issues. With three reservations in this county, the Swinomish, Upper Skagit and Sauk-Suiattle, county officials will do well to continue their efforts to work with, rather than against, officials of all three tribes to meet the goals of all residents of the county to maintain a quality of life.

AN INNOVATIVE APPROACH TO INTERGOVERNMENTAL COORDINATION

SWINOMISH TRIBE AND SKAGIT COUNTY COOPERATION



THE SETTING

The Swinomish Reservation occupies the southern portion of Fidalgo Island, one of the many island jewels of Puget Sound. Promised to the four related Indian bands who lived in what is now called the Skagit Valley Flats by the 1855 Treaty of Point Elliott, the area was set aside by Executive Order in 1873.

Although the reservation was originally intended for exclusive Indian use, the General Allotment Act of 1887 completely changed that. Through the provisions of the Act, reservation lands were transferred from communal to individual ownership as part of a strategy to westernize and assimilate Indians into the mainstream of American society. Today, the tribe owns only four percent of the land base plus the 2,900 acres of tidelands around the fringe of the reservation. Individual tribal members own 50 percent of the land base, approximately 20 percent of which is leased to non-Indians for residential use under lease arrangements which extend for 50 years and longer. The remaining 46 percent of the land is in fee simple non-Indian ownership.

JURISDICTION: A SOURCE OF CONFLICT

The Allotment Act changed the communally-owned land base into a complex checkerboard pattern of landholdings and legal statuses. With regard to land use planning and regulating, this checkerboard pattern calls into question tribal authority to exert jurisdiction over all property on the reservation. The extent of tribal authority has not been dealt with definitively in federal statutes, but rather through the courts on a case-by-case basis. This absence of clear definition has impeded the tribe's ability to implement a reservation-wide, comprehensive land use plan and effectively extend its jurisdiction to activities on non-Indian owned land.

The Swinomish Tribal Community is in the process of assuming broader regulatory responsibilities as part of its drive towards self-governance. The Tribe views the ability to regulate land use activities on the reservation as one of its governmental functions and integral to its future. At present, both the Tribe and Skagit County administer zoning programs which include permitting and enforcement functions on the non-Indian owned land.

This situation has caused problems due to concurrent application of sometimes conflicting regulations. Rather than dispute the jurisdictional issue between Tribal and County government, both agreed that the best way to resolve such conflict was to embark on a joint planning program.

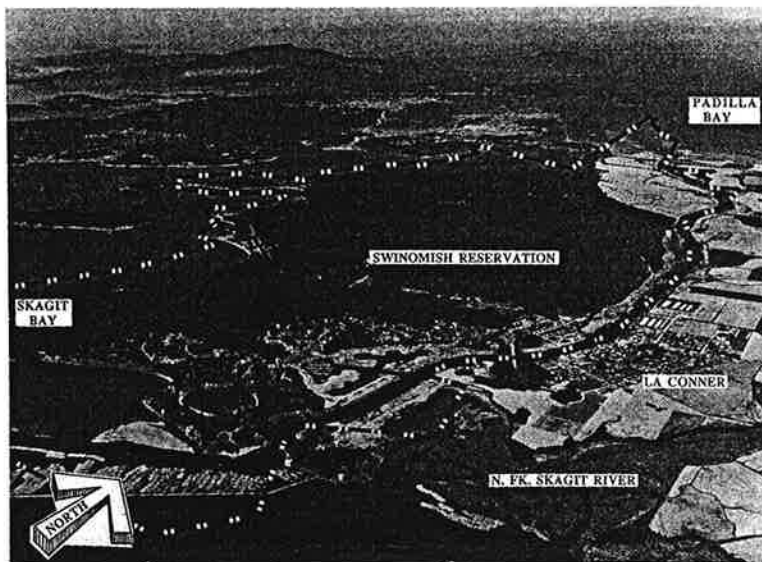


Both the Tribe and the County acknowledge that historic events have created a situation wherein Indian and non-Indian interests are intricately interwoven. They further acknowledge that neither entity can successfully act unilaterally without incurring substantial litigation costs. Both agree that it will be advantageous to develop a formal government-to-government relationship as both entities are regulating land use activities on the reservation. They recognize that an accommodation will facilitate the development of a working relationship and help establish much needed positive institutional linkages between the two governments.

TOWARD A NEW REGIONALISM

Because of its status as a "domestic dependent nation" the Swinomish Tribe has had a special affiliation with—and traditional reliance on—the federal government, a situation which has fostered a condition of extreme regional isolation. Now, however, in the second decade of self-determination and community development, the Tribe is entering an era of outward perspective. As a result, economic and environmental ties between the reservation and the region are projected to become more pronounced in the future. There is, therefore, a growing need to integrate tribal goals and objectives into

The Northwest Renewable Resources Center is a non-profit organization created in 1984 by corporate, tribal and environmental leaders to act as a catalyst and create a forum for resolving conflicts over the use and management of natural resources. The Center's Indian Land Tenure and Economic Development Project provides assistance to tribes so that they may better manage and utilize reservation resources despite mixed ownership and jurisdictional obstacles. For more information contact Shirley Solomon, 1133 Dexter Horton Building, 710 Second Avenue, Seattle, Washington 98104, (206) 623-7361.



regional thinking and to integrate the reservation into the regional planning perspective. At present, there are a number of issues which require a regional perspective, such as municipal service delivery, water quality and economic development, and others can be expected to emerge. Opportunities for regional decision-making must be created so that Tribal interests both on- and off-reservation, as well as County interests on-reservation, can be recognized.

INSTITUTING COORDINATION

Under the auspices of the Indian Land Tenure and Economic Development Project, developed by the Northwest Renewable Resources Center (NRRCC), the Swinomish Tribe and Skagit County agreed in September, 1986 to begin discussing issues of mutual concern with the assistance of a facilitator. Why the need for a third party? The Tribe and the County, although they have much in common, have not yet established lines of communication and working relationships. A non-aligned third party, acting as convener and intermediary, can open lines of communication between groups and provide a safer, low-risk environment in which to talk, explore, build familiarity, clarify positions and get down to issues.

Following talks which extended over a six-month period, the Swinomish Tribal Senate and Skagit County Board of Commissioners, in March 1987, passed a Memorandum of Understanding (MOU) committing to pursue a process leading to the coordination of land use planning and regulatory activities for the reservation and surrounding area. A joint comprehensive land use plan would be collaboratively developed together with implementing ordinances and administrative procedures.

Work has been underway since October, 1987. As specified in the MOU, a nine-member Planning Advisory Board

comprised of four tribal appointees, four county appointees and a facilitator from NRRCC was established to oversee the effort. Before addressing substantive issues the Board attended a series of education and orientation sessions designed in part to build familiarity. Topics included federal Indian policy and law; functions of tribal and county government; history of the Tribe and the County; culture, values and world view; and consensus-based negotiating and cooperative problem-solving. Board members also adopted a set of protocols as a means of structuring their conduct and facilitating the collaborative process upon which they are embarked.

A PLAN AND A PROCESS

A draft comprehensive land use plan has been prepared and will be presented to the Swinomish Planning Commission and the Skagit County Planning Commission in mid-1989. The intent of the plan is to balance Tribal and County interests on the reservation and surrounding region while acknowledging that the reservation is, in fact, the sovereign dominion of the Swinomish Tribal Community and the last vestiges of their ancestral homeland.

Both the Tribe and the County have agreed in concept to a set of procedures for administering the coordinated program. The Tribe and the County will adopt an administrative approach which requires joint review of proposals for land use actions and consultation so that mutually agreeable decisions may be reached. Furthermore, the Tribe and the County affirm that cooperative problem-solving and consensus decision-making will be their preferred means of reaching joint decisions.

A PROMISING FUTURE

Such an agreement is the first of its kind in the state of Washington and represents a promising alternative approach by promoting positive land use jurisdictional coordination between two forms of government which have experienced a long tradition of conflict.



SWINOMISH PLANNING ADVISORY BOARD

John Garner, Skagit County member-at-large
Robert Joe Sr., Tribal Chairman, Swinomish member-at-large
Richard Miller, Skagit County Planning Commission member
Jim Sanford, Skagit County member-at-large
Shirley Solomon, Northwest Renewable Resources Center
John Stephens, Swinomish member-at-large
Jim Wilbur, Swinomish Planning Commission
Steve Wood, Skagit County Planning Director
Nicholas Zafaratos, Swinomish Planning Director

TECHNICAL WORK GROUP

Gary Christensen, Planner, Skagit County
Amy Morrison, Planning Intern, Swinomish Tribe
Paul Schissler, Planner, Swinomish Tribe

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