



## THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

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#### **Swinomish Cooperative Land Use Program Office of Planning and Community Development Swinomish Indian Tribal Community**

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*The Cooperative Land Use Program, which is based on memoranda of agreement and understanding between the Swinomish Indian Tribal Community and Skagit County, provides a framework for conducting permitting activities within the boundaries of the “checkerboarded” reservation and establishes a forum for resolving any conflicts that might arise. Since 1996, both governments have followed a common Comprehensive Land Use Plan and used similar procedures to administer it, exemplifying a mutually beneficial government-to-government relationship.*

The Swinomish Indian Tribal Community’s 7,000-acre reservation, home to approximately 4,000 Indian and non-Indian residents, is located approximately 80 miles north of Seattle and lies entirely within Skagit County. As a consequence of the General Allotment Act of 1887, which transferred lands within the reservation from collective tribal ownership to individual ownership, the Swinomish Reservation today is highly “checkerboarded” (i.e., Indian-held portions within the reservation’s boundaries are scattered and non-contiguous). The Tribal Community owns a mere 4 percent of reservation land, individual tribal members own approximately 50 percent, and non-Indians hold fee simple title to an additional 46 percent. Given this pattern of ownership, there is great potential for conflict between the Swinomish Indian Tribal Community (SITC) and Skagit County over land use.

Indeed, in the early 1980s, the SITC and the County found themselves in the midst of such conflict. Both governments were administering zoning, permitting and regulation enforcement programs that affected non-Indian-owned lands within the reservation’s boundaries. The resulting confusion over jurisdiction and allowable land use engendered anti-Indian and anti-non-Indian sentiments, a litigious atmosphere and serious difficulty in attracting investment.

At the same time, the Tribal Community was learning an important lesson in a very different arena. As a participant in the fierce regional battles over fishing rights, the SITC saw that cooperation with other sovereigns actually could be a means of increasing tribal self-determination. Thus, it began focusing on reservation land use regulation as the vehicle for both exerting sovereignty and improving relationships with the neighboring non-Indian community. In 1986, with the Northwest Renewable Resources Center (a regional non-profit) serving as a facilitator, representatives from SITC and Skagit County began discussing mutual problems and concerns related to land use.

Talks proceeded slowly, but proved useful. Early on, the parties acknowledged that neither government could act unilaterally without the other objecting, and that objections would likely

lead to litigation. The SITC and the County recognized that they would have to work together, operating under mutually agreeable principles and regulations. Ultimately, the governments were able to craft a series of agreements. They include:

- The 1987 Memorandum of Understanding (MOU) between the SITC and Skagit County, which articulates the parties' agreement to coordinated land use policy on the reservation and in its surrounding areas and records their commitment to working together on a comprehensive land use plan. The MOU resulted in the creation of a nine-member Planning Advisory Board, comprised of four tribal appointees, four County appointees and a neutral facilitator.

- The Draft Comprehensive Land Use Plan, created in 1990, which was the first comprehensive planning effort attempted by a tribe and a county. The Plan articulates land use goals, establishes policies to guide the stewardship of the land and resources of the reservation, and outlines an implementation strategy.

- The 1996 Memorandum of Agreement (MOA) between SITC and Skagit County, which delineates a set of procedures for administering the Comprehensive Land Use Plan. In particular, it requires joint review of proposals, provides dispute resolution mechanisms and affirms that cooperative problem-solving is the preferred means of decision making.

The Swinomish Cooperative Land Use Program is defined by these documents, and it has substantially changed both the practice of land use planning and the process of land use policymaking.

At the level of practice, the Program expedites land development by specifying a clear permitting process and common set of land use standards. Individuals or entities seeking a development permit on fee simple land may submit their application to either the SITC or the County. The receiving government shares the application with the other government, which is then responsible for reviewing and commenting on the application in a timely manner. While all development activities occurring on the reservation are required to possess a SITC permit, this information-sharing process makes it possible for County-approved plans to automatically meet SITC standards and for SITC-approved plans to be immediately acceptable to the County. By allowing applicants to work with a single bureaucracy instead of two, the process is "consumer friendly" and minimizes overlap in government review. Additionally, it promotes regulatory transparency – between citizens and government and between the two governments – which is itself one of the most important hallmarks of good governance.

At the policy level, the Swinomish Cooperative Land Use Program embodies the SITC's and County's commitment to coordinated land use. Critically, tribal sovereignty is not sacrificed. Under both the 1987 and 1996 MOU/MOAs, the SITC has consistently maintained its position of exclusive jurisdiction over all lands on the reservation, regardless of whether the land parcel is in fee or trust status. Rather than delegating any of the SITC's civil regulatory authority to Skagit County, the agreements provide the County with an opportunity to discuss its position and air its concerns. The Program creates a well-defined, consensus-oriented process for addressing the complex and ongoing jurisdictional problems surrounding land use, and in the establishment of the Planning Advisory Board, provides a forum for doing so.

The most significant evidence of the SITC Cooperative Land Use Program's success is the foundation it provides for self-government and the protection it affords against future threats to tribal sovereignty. As demonstrated by U.S. Supreme Court's 1989 decision in *Brendale v.*

Yakima Indian Nation, which held that reservation jurisdiction is based in part upon who owns the land, questions about tribal jurisdiction over checkerboarded lands are complicated and controversial, and can pose serious challenges to tribes' rights. Left unresolved, these questions deter investment by both internal and external stakeholders, hamper sound resource management, stymie law enforcement and constrain tribes' ability to advance their planning and development goals. Not surprisingly, many tribal governments are forced to defer to local non-Indian authorities or expend resources litigating for the right to jointly manage land use with off-reservation governments. In contrast, the Swinomish Cooperative Land Use Program frees the SITC from such jurisdictional difficulties. It solidifies the SITC's control over the reservation land base and ensures that the Swinomish and the County share a political environment in which cooperation is the norm, not the exception. With these guarantees in place, Community leaders are able to focus on other sovereignty-enhancing pursuits (such as tribally directed economic development, fisheries issues and cultural investments), which can lead to jobs and improved livelihoods for tribal citizens.

The Program has also been successful in giving the SITC a "seat at the table" in other important policy discussions. Through the precedents set in land use planning, the Swinomish Tribal Community has transformed its relationship with surrounding local governments and become more involved in regional governance. For example, the SITC is now working cooperatively with Skagit County, the City of Anacortes and the town of LaConner to develop a comprehensive integrated water delivery system for Fidalgo Island. Likewise, the SITC has instituted more than a dozen separate agreements with federal, state, county and municipal authorities in the areas of land use, public safety, environmental protection, and utility and public health regulation. In a region of the U.S. that has become known for its strained intergovernmental relations over Indian affairs, the Swinomish Cooperative Land Use Program is an educational model.

By bringing government officials together to solve problems, the Program has enhanced cross-cultural understanding. In fact, education is a key ingredient in the improved relations between the SITC and Skagit County. When the Planning Advisory Board first came together in the late-1980s, they attended a series of educational sessions on federal Indian law, tribal governance, the history of tribal and non-tribal culture, and consensus-based negotiation. These sessions gave the SITC an opportunity to educate its non-Indian neighbors about the cultural importance of land and how it serves as the basis for community development. More recently, the SITC's and County's commitment to cooperation and mutual learning have had spillover effects: In the Fall of 2000, the Town of LaConner held its first-ever Native American Day celebration, an event that gained national attention.

One of the fundamental reasons for the success of the Swinomish Cooperative Land Use Program is that it has been "institutionalized." That is, formal institutional vehicles (such as MOUs, MOAs, advisory boards and jointly administered comprehensive plans) serve as the foundation for productive government-to-government relations. The content of these agreements specifically emphasizes the importance of regional cooperation and the mutual benefits and obligations that the signatory governments share. Looking ahead, institutionalization is also a primary reason why the Program can be expected to have sustained effectiveness.

The professionalism and competence of the individuals charged with Program implementation are other reasons for its success. At the SITC, the Program is managed by the 12 professional and support staff of the Swinomish Office of Planning and Community Development, which oversees all aspects of reservation land use planning and regulation, including environmental assessment, air/water quality protection programs, economic

development, and the development of community facilities, utilities and transportation infrastructure. Individuals who have worked with both the SITC and Skagit County attest to the Swinomish staff's impressive qualifications, to their commitment to finding the best outcome for all parties and to the helpfulness of having a wide range of planning services available under one roof.

Two decades ago, the SITC's leaders decided that community planning and development was important enough to command some of the Community's quite limited resources. Without their foresight, the Program would not exist. The leadership's wisdom in pursuing an "outwardly focused" strategy has also been critical. They believed, rightly, that concerning themselves with policy that had an impact beyond the reservation's boundaries would increase the Community's authority over the land within its boundaries. The strategy increases the development opportunities as well. Particularly on checkerboarded reservations, good land use programs advance standards that, at a minimum, are not in direct conflict with off-reservation requirements. The Swinomish Program achieves excellence because the SITC leaders' strategy allows progress beyond conflict avoidance to truly coordinated land use planning. As a result, the Swinomish Reservation is today connected to surrounding non-reservation land in a way that maximizes the Community's future development options. The SITC is poised to take advantage of the phenomenal economic and population growth occurring in its region, while simultaneously protecting its land and resources.

The Swinomish Indian Tribal Community's Cooperative Land Use Program stands out because it addresses an issue that is both contentious and complex – land use – and embraces a process that fosters "win-win" solutions rather than litigation. Many tribes, especially those with checkerboarded reservations, can learn from SITC's response to its jurisdictional and, thus, self-governance challenges.

#### Lessons:

- The inherent regulatory and jurisdictional challenges of land use on checkerboarded reservations make intergovernmental cooperation vital, and tribes can engage in such cooperation without delegating any of their civil regulatory authority to non-Indian governments.
- Before jurisdictional disputes can be mediated, meaningful relationships should be formed. Early investments in relationship building can prevent misunderstandings that would otherwise hamper intergovernmental progress.
- Intergovernmental cooperation is most likely to succeed when it is institutionalized, and MOAs and MOUs are useful tools for formalizing processes and commitments. At the same time, however, such formal agreements must be grounded in a genuine spirit of cooperation.