

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

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.

