



# *Uncovering the Mystery of Tribal Sovereignty*

- Community Workshop

***Governor's Office of Indian Affairs  
Association of Washington Business  
Department of Revenue  
March 27, 2008  
Vancouver, WA***

# Introductions – Who we are

- Craig Bill, Governor's Office of Indian Affairs, Executive Director
- Marty Loesch, Swinomish Tribe - Tribal Attorney
- Kelly Croman, Marine View Ventures, Inc., Puyallup Tribe – General Counsel
- Amber Carter, Association of Washington Business, Gov'tl Affairs Director
- Leslie Cushman, Dept of Revenue, Deputy Director

# [ Our Goal Today ]

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- Gain a common understanding about Tribal Governments.
- Gain perspective on federal law, Tribal law, and state and local roles and relationships.

# [ What We Will Cover ]

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- Define Tribal sovereignty and self governance;
- Outline why Tribal sovereignty is an important issue for all of us; and
- Share information about Tribal activity in the state and region and answer your questions.

# [ Around the Room ]

- At your table take a few minutes to fill out the “True and False” quiz.
- If you have a question or issue you want addressed today, write it out on the index card provided in your packet.

# [ Reporting Out ]

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And the answer is...

# Indian Tribes

- An Indian Tribe is a distinct political community.
- Indian Tribes are not considered instrumentalities of the federal government.
- Indian Tribes are not states nor are they local governments.



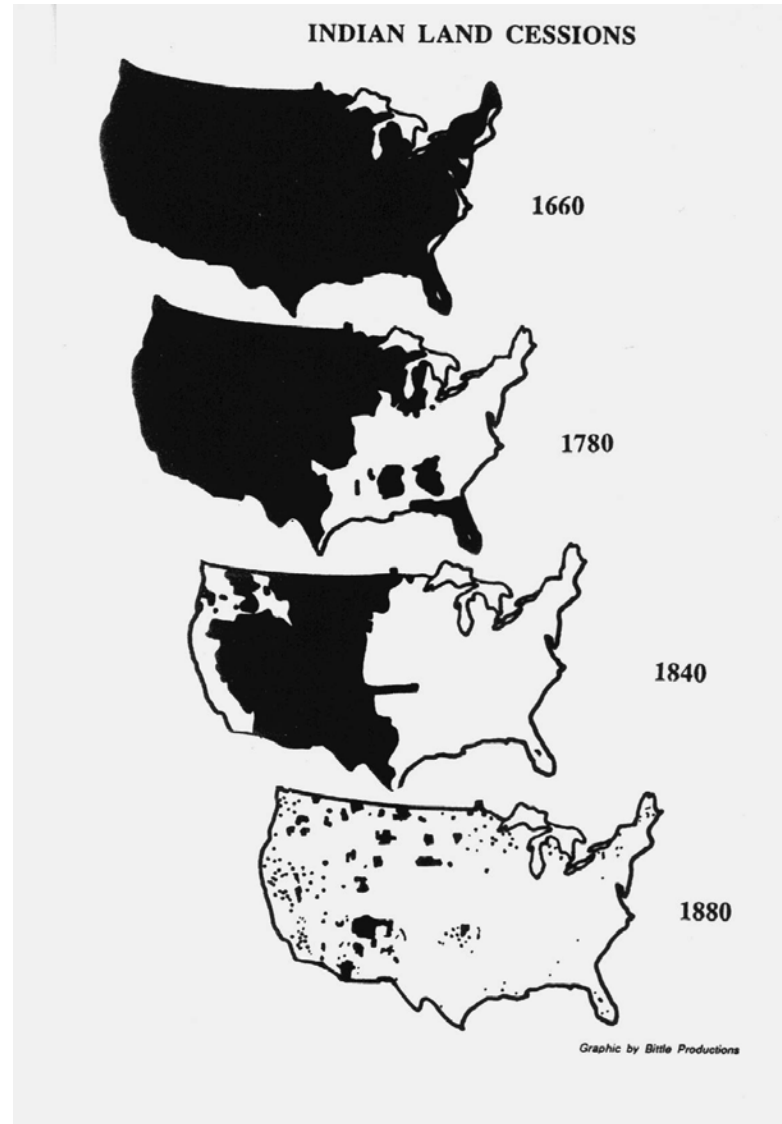
# Tribal Governments

- There are over 561 Tribal governments in the United States, located in 34 states.
- Each Tribe is unique, with distinct cultures, histories, and traditions.
- There are Indian people living in all 50 states.



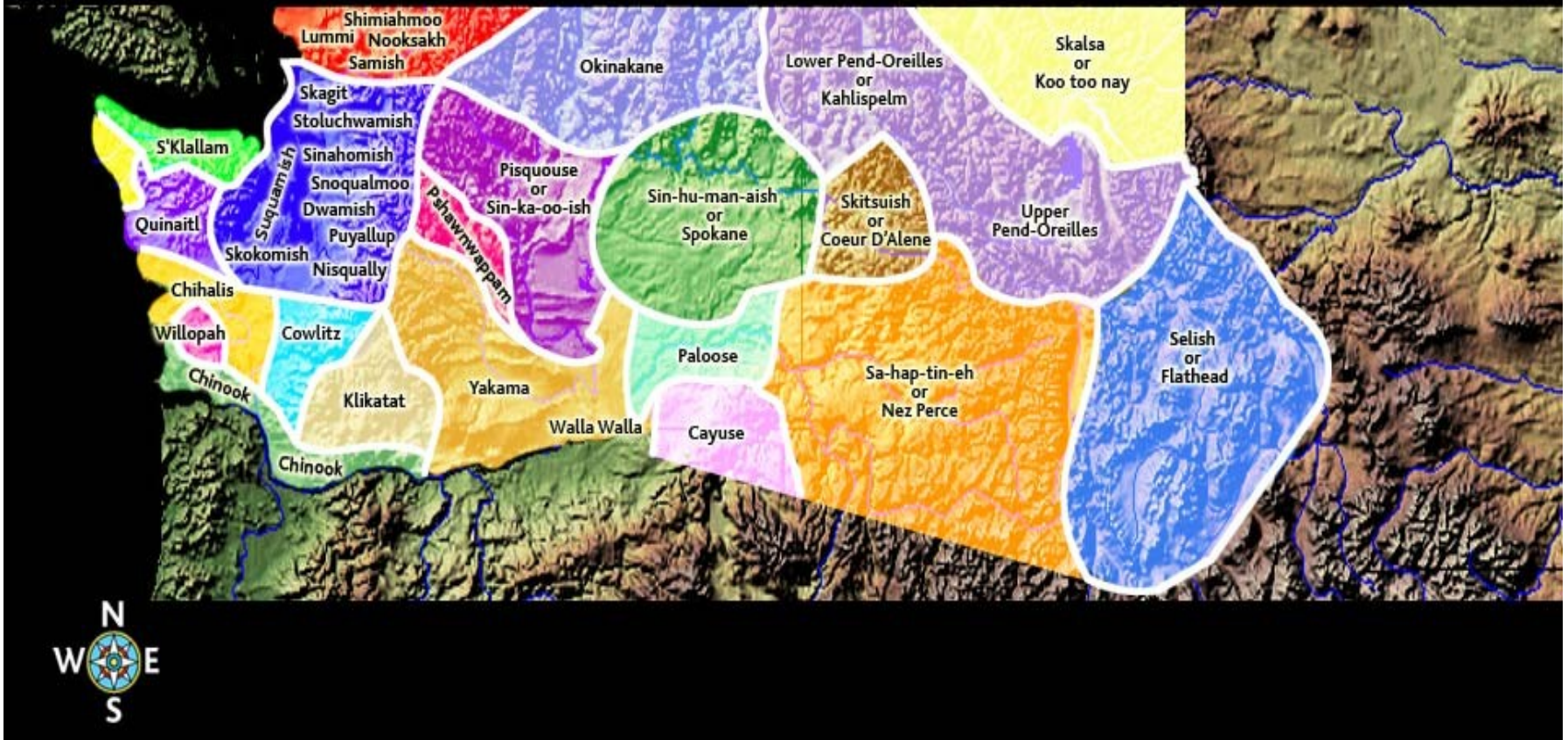


# Indian Land Cessions



# Indian Land Over Time – 1854

WASHINGTON TERRITORY INDIAN NATIONS AND TRIBES adapted from 1854 Lambert Census Map

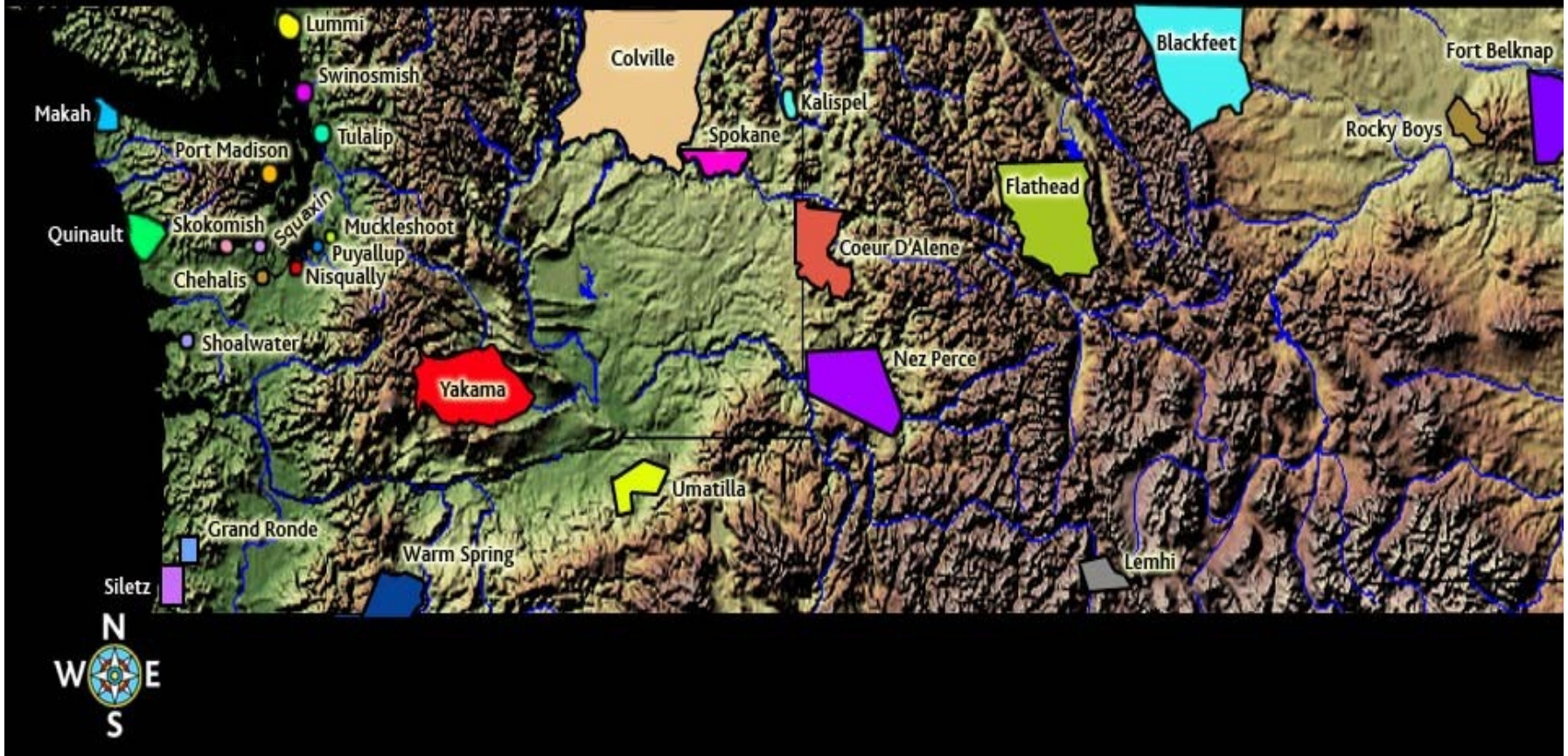


Source: Washington State Historical Society



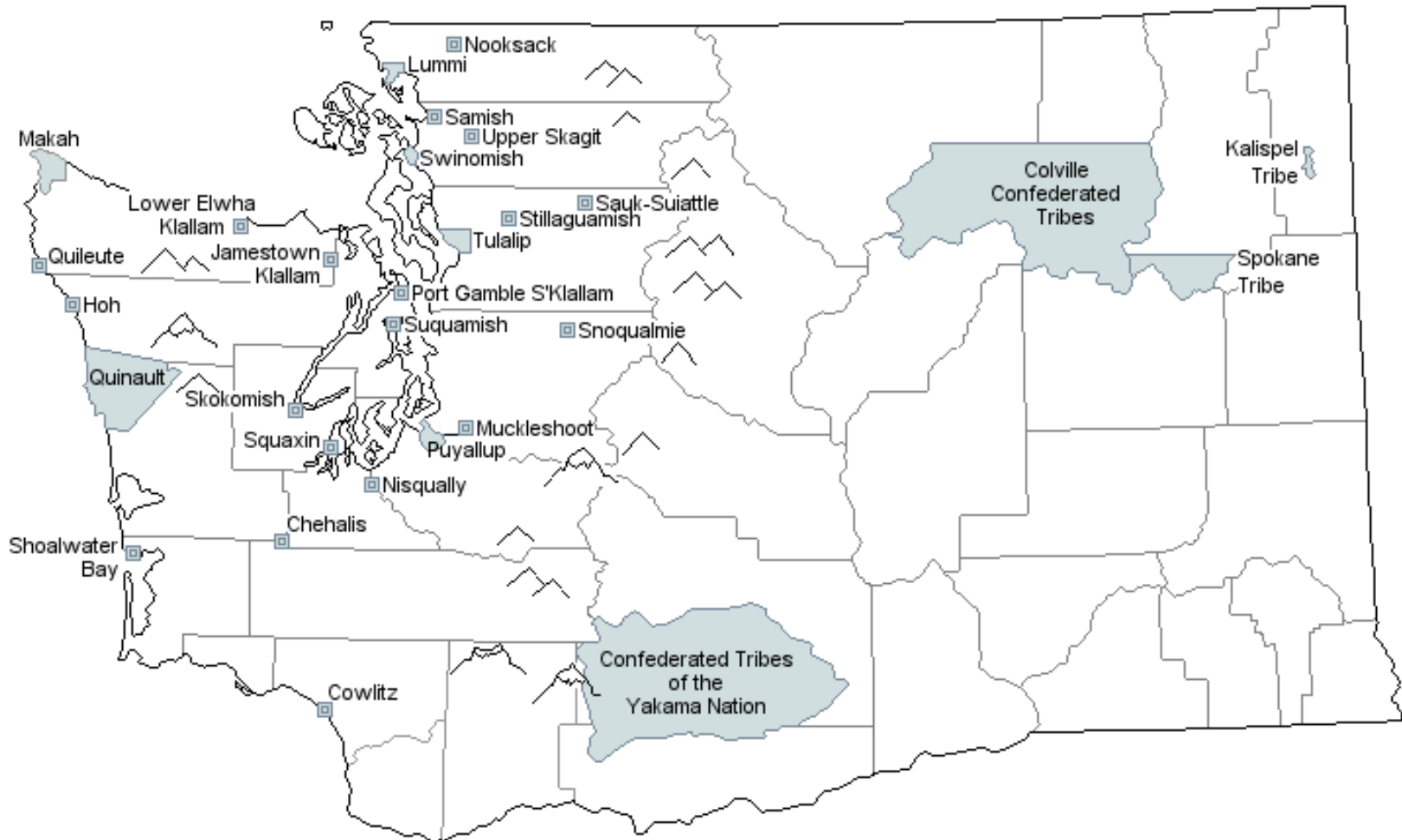
# Indian Land Over Time – 1890

**NORTHWEST INDIAN RESERVATIONS** adapted from U. S. Census Office Map, 1890



Source: Washington State Historical Society

# 29 Indian Tribes are Located Within the State of Washington



# Living and Working with Tribes

Businesses, individuals, and governments make hundreds of decisions every day. When the issue involves an Indian Tribe or Tribal member, we need to have a working understanding of:

- Tribal Sovereignty,
- Indian Law, and
- Land Issues.



# What is Tribal Sovereignty?

- Sovereignty - the right or power that comes from itself, and no other source, that a government draws upon to govern.
- Federally recognized Indian Tribes enjoy all inherent powers of a sovereign nation, except those powers Congress has specifically removed.



# Tribal Sovereignty...Its Real.

Tribal sovereignty is:

- Inherent (predates US government).
- Not granted by any government.
- Recognized in treaties, court decisions, and the US Constitution.
- Separate and independent from the federal and state governments.
- Subject to some limitations.



# [ Sovereign Powers of a Tribe Include: ]

- The power to determine the form of government,
- Define the conditions of membership,
- Regulate domestic relations among members,
- Prescribe rules of inheritance,
- Levy taxes on members and non-members,
- Control entry onto Tribal lands,
- Regulate the use and distribution of Tribal property,  
and
- Administer justice among members of the Tribe.



# What is Indian law?

- Indian law is the body of law that defines the legal and political relationship between the federal, state, and local governments; Indian Tribes; and individuals. It is multi-faceted and created by:
  - U.S. Constitution
  - Treaties with Tribes
  - Federal Statutes
  - Executive Orders
  - Case Law – Both Federal and State
  - Administrative Law – Tribal, Federal and State

# [ U.S. Constitution: *Commerce Clause* ]

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*“The Congress shall have power...to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.”*

This clause is the basis for Congressional Authority to pass laws dealing with Tribes and for the Government to Government relationship.

# U.S. Constitution: *Supremacy Clause - Treaties*

*“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land...”*

Treaties between Indian Tribes and the federal government enjoy legal superiority over any conflicting provisions of a state constitution or law. They are the “supreme law of the land.”

# U.S. Constitution: *Treaty Clause*

- *“No state shall enter into any treaty...”*
- *“He [The President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators concur...”*
- Statutory rule of construction: Treaties are construed to the benefit of Tribes.
- In 1871 Congress ended the practice of entering into treaties with the Indian Tribes. The federal government entered into more than 400 treaties with various Indian Tribes from 1778 to 1871.

# Do the Executive Order Tribes Have “Sovereignty”?

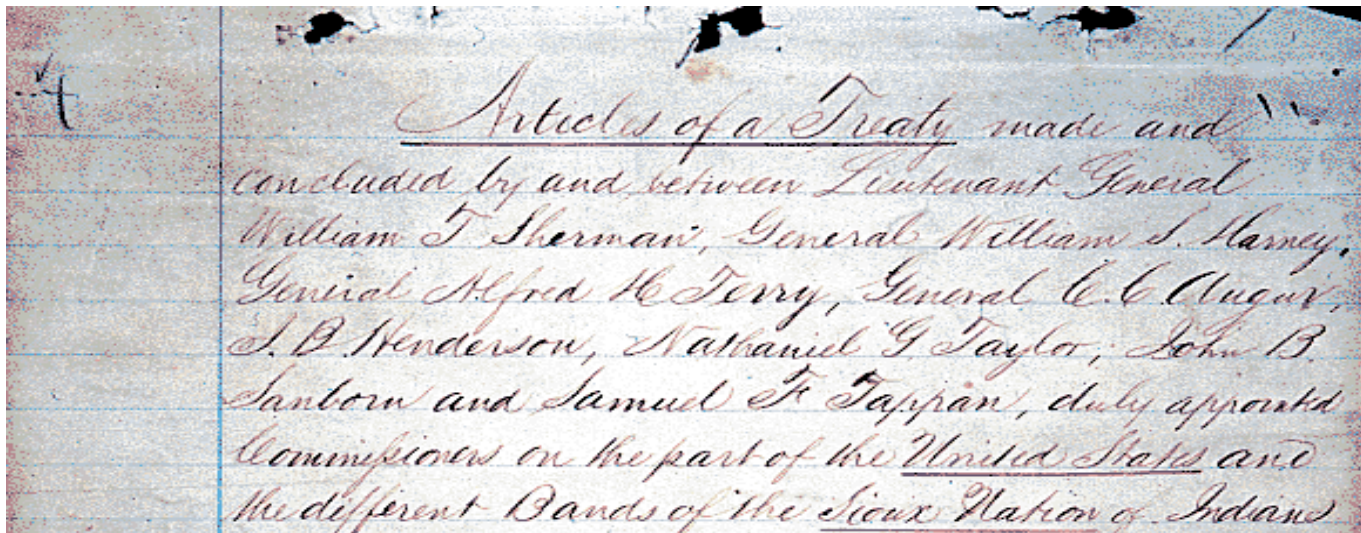
***Yes!***

- Federal recognition is federal acknowledgement of the sovereign status of a Tribe.
- Recognition is about the existence of a political organization.

# What is a Treaty?

The U.S. Supreme Court said:

*“A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.”*



# Treaty Facts

- A treaty is not a grant of rights to a Indian Tribe. It is a grant of rights from the Indian Tribe to the U.S. government, and a “reservation of rights” not granted.
- Rights not granted are called “reserved rights.”
- Treaty rights do not diminish with the passage of time, periods of nonuse, or changes in technology. Some treaty rights extend outside of reservation boundaries.

# Treaties – Yesterday, Today, and into the Future

- Salmon and Culverts
- Shellfish
- Whaling
- Hunting in National Parks
- Berry Picking Near Mt. Adams
- Gathering Basket Making Materials
- Right to Travel
- Health Care



# [ The Role of the Bureau of Indian Affairs (BIA) ]

The BIA is a branch of the federal government responsible for:

- Managing the 55.7 million acres of land held in trust by the United States for American Indians, Indian Tribes, and Alaska Natives.
- Developing forestlands, leasing assets on these lands, directing agricultural programs, protecting water and land rights, developing and maintaining infrastructure and economic development.
- Providing education services to approximately 48,000 Indian students.

# Understanding the Geography of Tribal Authority

- Indian Country
- Indian Reservation
- Trust Land
- Fee Land
- Open and Unclaimed Land
- Usual and Accustomed Area



# Tribal Authority to Regulate is Based on Sovereignty

## Tax Example:

- Tribal taxing authority is recognized as a fundamental and inherent attribute of Tribal sovereignty.
- The scope of Tribal authority to tax non-members is a function of federal law describing civil jurisdiction, it is not a function of state law.

# Tribal Authority to Tax Relates to Geography

On Trust land:

- Tribal authority to tax non-members on trust land is generally accepted.

On Fee land within the Reservation:

- Tribal authority to tax non-members on fee land within the Reservation is evaluated under the U.S. Supreme Court's Montana test.

# Tribal Authority to Tax Non-Indians on Fee Land within the Reservation

A Tribe can regulate non-members on fee land in Indian Country if:

- The non-member enters into consensual relationships with the Tribe or its members; or
- The non-member's conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of Tribe.

# State Authority to Tax is Very Broad but Has Limitations

- The state has extensive authority over non-Tribal members, border to border, including within Indian Country.
- Authority to tax non-Indians may be preempted under the balancing test.
- State and local governments have no authority to tax Tribes or their members in Indian Country, unless authorized by Congress.
  - This is true throughout Indian Country and outside Indian Country for treaty issues.

# Federal Preemption

Federal Preemption of state and local authority:

- Preemption is determined using a balancing test – Tribal and federal interests are combined and are weighed against state interests. This analysis is very fact specific.



# Why Tribal Sovereignty Matters

- Sovereignty is the Law.
- Conflict is costly.
- Legal authority isn't clear cut and risk exists for both parties.
- Establishing trust & working relationships makes sense for everyone.
- Cooperation has long-term benefits for our communities.





# Centennial Accord – A Framework for Cooperation at the State Level

- 1989 Historic Document –
  - Signed between federally recognized Tribes in WA and the Governor.
- Framework –
  - Government to Government relationship.
- Guidelines –
  - Establishment of mutual goals through improved relationships between sovereign governments.





# Government to Government Examples

- Tulalip Tribes/City of Everett “Governmental Alliance.”
- Municipal-Tribal Agreement (Suquamish, Swinomish, & Snoqualmie Tribes with Seattle).
- Suquamish Tribe’s MOU with Kitsap County on Fund Disbursements.
- Olympic Coast Intergovernmental Policy Council.
- Ecology-Tribal Environmental Council.
- Water Resources Program.

# Government to Government Examples (*continued*)

- State/Tribal Collaboration on Tourism (ATNI, AWT, and CTED).
- Education MOA - Enhance School Board-Tribal relationships in the areas of Tribal history and culture and closing the achievement gap.
- Tribal-Local Emergency Planning Committee.
- State-Tribal-Urban Indian Partnership.
- Potlatch State Park/Skokomish Tribe land Exchange.
- Tribal Traffic Safety Advisory Board.
- Law Enforcement – Local-level Agreements.



# Tribal Services

*To name just a few...*



- Jamestown S’Klallam Tribe – Jamestown Family Health Clinic in Sequim
- Kalispel Tribe – Read Right programs advance literacy in three public schools
- Squaxin Island Tribe – Northwest Indian Treatment Center addresses substance abuse, domestic violence, and other family and individual mental health problems
- Tulalip Tribes – Northwest Indian Court System
- Yakama Nation - Yakama Housing Authority

# *Stretch Break*



# [ A Closer Look – Swinomish Indian Tribal Community ]

- Located on Fidalgo Island – the “Gateway to the San Juans.”
- Reservation Lands – 10,000 acres, including 3000 acres of tidelands.
- 60% Trust, 40% Fee.
- 800 Tribal Members.
- Reservation has 3000 inhabitants, 1000 Native.

# [ Swinomish Governmental Services ]

- Social Services:
  - Education (HeadStart, Day Care, After School Tutoring, Cultural Program, Paraprofessionals in La Conner Public Schools, GED, Northwest Indian College, Vocational Training, Lifeskills, and Parenting Classes)
  - Substance Abuse & Mental Health Counseling
  - Elder Care
  - Low Income Energy Assistance
  - Job Placement Assistance
  - Family Services

# [ Swinomish Governmental Services – *(continued)* ]

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- Law Enforcement
- Low Income Housing
- Utility Authority
- Public Works
- Planning & Permitting
- Environmental Stewardship
- Health & Dental Clinics



# [ Swinomish Tribal Budget Revenue Summary ]

- 2006 Governmental Budget – Approx. \$27MM
- 55% Earned (Economic Ventures & Commercial Leasing)
- 41% Grants, Contracts, Self-Governance
- 2.5% Taxes & Fees
- 1.5% Other

# [ Swinomish Tribal Budget Expense Summary ]

- 38% - Capital & Debt Service
- 22% - Health, Education & Social Services
- 18% - General Government
- 9% - Resource Protection
- 9% - Law Enforcement
- 3% - Economic Development

# [ Swinomish Tribal Tax Snapshot ]

- \$2,600,000 – Payroll & Related
- \$1,500,000 – Regulatory & Gaming Related
- \$400,000 – Utility Taxes
- \$180,000 – Property Taxes
- \$140,000 – Misc. Federal Taxes
- \$15,000 – Sales Tax
  
- **\$4,900,000 – Total Taxes**

# [ Other Swinomish Reservation Taxes ]

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- Approximately \$2.9MM in property taxes from fee land and improvements on Swinomish Reservation.
- Minimal sale tax production – limited on-reservation retail sales.
- Minimal stumpage tax – limited timber production on reservation.

# Resources

- Government-to-Government Training
- Centennial Accord
- [Indian Tax Guide](#)
- WAC/Rule [458-20-192](#)
- Taylor Report
- Suquamish Report
- An Introduction to Indian Nations in the United States

# [ Let Us Hear From You ]

## Facilitated Question & Answers

- Check your index cards...were your questions answered?

# [ Contacts: ]

- Governors Office of Indian Affairs
  - (360) 902-8828
  - [www.goia.wa.gov](http://www.goia.wa.gov)
  
- Department of Revenue
  - 1-800-647-7706
  - [www.dor.wa.gov](http://www.dor.wa.gov)