Uncovering the Mystery of Tribal Sovereignty
- Community Workshop

Governor’s Office of Indian Affairs
Association of Washington Business
Department of Revenue
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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

- 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

- 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.
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.
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

Source: Washington State Historical Society
Indian Land Over Time – 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

“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.
“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.
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)

- 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

- 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

- Department of Revenue
  - 1-800-647-7706
  - www.dor.wa.gov