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Washington State's Centennial Accord and the Role of Tribal Governments in Regional Comprehensive Planning Under the Growth Management Act and Associated Planning Laws

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**Washington State's Centennial Accord and the Role of Tribal Governments in Regional
Comprehensive Planning Under the Growth Management Act and Associated Planning
Laws**

By

Elliott Winter

Accepted in Partial Completion
of the Requirements for the Degree
Master of Arts

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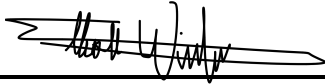
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MA

5/22/2019

**Washington State's Centennial Accord and the Role of Tribal Governments in Regional
Comprehensive Planning Under the Growth Management Act and Associated Planning
Laws**

A Project
Presented to
The Faculty of
Western Washington University

In Partial Fulfillment
Of the Requirements for the Degree
Master of Arts

by
Elliott Winter
May 2019

Abstract

Tribal governments in Washington State are important regional governments that exist in and border many counties. Tribal interests often extend beyond the boundaries of the reservation and into the county space where they may be affected by county and local government planning. Properly integrating tribal interest into regional comprehensive planning is necessary to reduce conflict and provide Indian tribes a seat at the government table.

The purpose of this project is to determine the extent to which planning laws, regulations, and policies within Washington State advance coordination with Indian tribes based on the government-to-government principles of the Centennial Accord, particularly those relating to the implementation of the state's Growth Management Act (GMA). This project assesses the state's legislative framework directing local governments in comprehensive planning with tribal governments and the adequacy of the state's encouragement regarding tribal participation in the Growth Management Act comprehensive planning. This project is primarily concerned with determining if Washington State's public policies adequately incorporate the interests of Indian tribes and allow for appropriate inclusion of tribal governments into regional planning, as outlined in the Growth Management Act's eleventh goal.

This project utilizes template analysis for the identification of thematic codes in determining relevant laws and regulations. Initial templates were defined on review of relevant literature and prior knowledge of tribal interests. Initial templates were revised to further assess the data for relevant themes using codes for mandatory language and modes of participation. Secondary codes were cross referenced with relevant literature and scholarly articles on cooperative planning with Indian tribes and planning principles.

The findings indicate a lack of GMA policies providing guidance to local governments regarding coordination with tribal governments. The small number of GMA policies also lack clear and precise language regarding the capacity with which local governments should cooperate with tribes. Ultimately, the GMA policies fail to adequately institute the guiding principles of the Centennial Accord. For the state to fulfill the GMA's interjurisdictional coordination goal and more fully incorporate tribal government interest into regional planning structures, the GMA must be amended with clear and precise language regarding tribal inclusion in comprehensive planning and in what capacity. This project identifies possible amendments based on communicative and cooperative mechanisms within the Centennial Accord.

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To my father, who reached out and picked me up when I was at my lowest. You and Denise welcomed me with open arms, and without you I may have never had this opportunity. Thank you. To my mother, who always encouraged me to follow my heart and hold my head high, even when I felt lost and disappointed. Thank you for your guidance and your wisdom. To my brother Nicholaas, who always offered a helping hand and never made me feel the lesser. Thank you, little brother. After this, I will get you that trip to Japan.

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I want to acknowledge the first peoples of this land we call Washington, and the hardships they have endured in the name of development. Without the efforts of so many Indian tribes in protecting our environment and natural resources, we may have lost what makes this place so special. Thank you.

Lastly, thank you so much to my advisor Dr. Nicholas Zaferatos and committee Jean Melious, and Dr. David Rossiter. I had no experience in policy, law, or tribal governments but here we are. I know it has been a long trip with a steep learning curve but thank you for your support, guidance, and your patience. I wish you great fortune with the graduate students to come.

Table of Contents

Abstract	iv
Introduction.....	1
Project Problem	1
Context/Discussion	2
History of the Growth Management Act	2
Centennial Accord	4
GMA Issues	10
Research Question	14
Literature Review	14
Introduction	14
Jurisdictional Coordination	19
Consistency, Coordination and Cooperative Planning	21
Working with Tribal Governments and Acknowledging Tribal Interests	23
Methodology	30
Introduction	30
Comprehensive planning elements and tribal interests	32
Coding and Indexing	32
<i>Laws and Regulations</i>	32
<i>Policies</i>	34
<i>Accord Principles</i>	35
Interpretation and Evaluation	36
Results.....	36
Guiding Principles	37
RCW	38
Identification and Classification	38
Language Inference	41
WAC	44
Identification and Classification	44
Policies	50
Discussion Section.....	55

Policies	55
Laws and Regulations	59
RCW	59
WAC	63
MOUs and Intergovernmental Agreements	68
Assessment of the Implementation of Accord Principles	70
Solutions	74
Conclusion	77
References	80
Endnotes	85

TABLES AND FIGURES

TABLE 1: RCW LAWS ORGANIZED BY PLANNING CATEGORY.....40
TABLE 2: RCW LAWS ORGANIZED BY LANGUAGE.....43
TABLE 3: WAC REGULATIONS ORGANIZED BY PLANNING CATEGORY.....47
TABLE 4: WAC REGULATIONS ORGANIZED BY LANGUAGE.....48
TABLE 5: MEMORANDUMS OF UNDERSTANDING AND INTERGOVERNMENTAL AGREEMENTS.70

Introduction

Project Problem

The establishment of the Centennial Accord and Millennial Agreement in 1989 and 1999 called for the implementation of a government-to-government relationship between the executive branch of Washington State and the twenty-six federally recognized Washington Indian tribes who signed the agreements. The Centennial and Millennial Accords aimed to foster greater inclusion of tribal interests in the implementation of state policies by providing executive agencies with a framework for the implementation of procedures to assure the fulfillment of the guiding principles and agreements within the accords. By the late 1980s, population growth and a lack of consistency in regional planning were causing issues with land use and natural resources in Washington State. To better accommodate growth and manage development through coordinated regional planning, the state legislature enacted the first series of statutes known as the Growth Management Act (GMA) in 1990. While the executive branch saw benefits to improving coordination with and incorporating the interests of Indian tribes, the legislation comprising the GMA remains largely silent regarding the inclusion of tribes into coordinated planning between regional jurisdictions. Although recognized as best practices for improving communication and coordination with Indian tribes, the executive policies of the Accords are not adequately incorporated into the GMA's legislation guiding local governments in regional comprehensive planning. This research examines the extent to which the Accords' executive policies are reflected in the legislation guiding regional comprehensive planning pursuant to Washington State's Growth Management Act. This project will refer to the Centennial Accord and Millennium Agreement as "the Accords" and will refer to the Growth Management Act by the abbreviation "GMA".

Context/Discussion

History of the Growth Management Act

The state of Washington in the latter half of the twentieth century was facing uncertainties with the rate of population growth the state was experiencing. Urban sprawl, traffic congestion, and environmental stresses were some factors being exacerbated by the large increases in population and the levels of urbanization happening to accommodate the growing population. In response to the growing pressures, the Legislature enacted Washington State's Growth Management Act (GMA)¹ on April 1, 1990. How the GMA attempts to address the issues associated with rapid population growth is characterized by thirteen goals counties and cities are encouraged to achieve while planning. The thirteen goals include²:

1. Encourage development in urban areas
2. Reduce urban sprawl
3. Encourage efficient multimodal transportation
4. Maintain adequate housing
5. Encourage economic development
6. Protect the property rights of landowners
7. Process permits in a timely manner
8. Promote natural resource industries and conservation
9. Retain open space and encourage the development of recreational opportunities
10. Protect the environment
11. Encourage citizen participation and coordination. Encouraging the involvement of citizens in the planning process and ensuring coordination between communities and jurisdictions to reconcile conflicts.
12. Ensure adequate infrastructure to meet the needs of Urban Growth Areas
13. Preserve historic land.

Settle and Gavigan (2016) summarize the goals of the GMA into four key objectives: (1) avoiding sprawl by concentrating new development in urban growth areas; (2) ensuring adequate public facilities that are planned and built current with new development; (3) protecting critical areas and conserving agricultural, forest, and mineral lands; (4) and regionally coordinate local

¹ SHB 2929 (Washington Laws, 1990 181 Ex. Sess., Ch 17) later codified under RCW 36.70A.

² RCW 36.70A.020 (2-14) Planning Goals

plans and regulations for efficient allocation of essential facilities³. For this project, the GMA's eleventh goal will be a point of focus with an emphasis on coordination between local jurisdictions⁴. Coordination is a reoccurring theme throughout the GMA and this project places particular emphasis on interjurisdictional coordination.

The GMA requires counties with high growth rates and populations over twenty-thousand to opt into the GMA planning regiment (Parker, 2015). An important part of the planning regiment required counties and cities to develop comprehensive plans addressing nine elements⁵. The comprehensive plan is the centerpiece of planning for local governments and states policies, standards, and goals which are meant to guide local governments in everyday decision making (CSUN California State University Northridge, 2001). The nine elements are:

- Land use
- Housing
- Capital facilities
- Utilities
- Rural development
- Transportation
- Economic development
- Parks and recreation
- Ports (where applicable)

Coordination referenced in the comprehensive planning section of the GMA focuses on local governments and the surrounding jurisdictions. Comprehensive plans of local governments are required to be coordinated and consistent with those of other local governments sharing borders⁶.

³ Settle & Gavigan, *supra* note 5, at 904-05

⁴ RCW 36.70A.020 (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

⁵ Rural counties with populations less than 20,000 are allowed to opt out of full GMA planning but are still subject to critical areas and natural resource lands planning requirements. This option is addressed in RCW 36.70A.40.

⁶ RCW 36.70A.100 Comprehensive Plans-Must be coordinated: The comprehensive plan of each county or city that is adopted pursuant to RCW [36.70A.040](#) shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW [36.70A.040](#) of other counties or cities with which the county or city has, in part, common borders or related regional issues

The requirement to coordinate with adjacent jurisdictions directly relates to the goal of the GMA acknowledging coordination as a means of reducing and resolving conflicts. The value of interjurisdictional coordinated planning is demonstrated by its inclusion in both the principle goals and mandatory comprehensive plan sections of the GMA.

The first installation of the GMA (SHB 2929) lacked enforcement mechanisms to ensure that planning goals and requirements were met by counties and cities, as well as a lack of protection for critical environmental areas (Parker, 2015). Frustrated with the lack of enforcement and protection for critical environmental areas, citizens and environmental groups were able to pressure the Washington State's government into holding a popular vote for Initiative 547. The Initiative would have required all counties to participate in growth management planning and for the state to approve county and city plans ("Washington Land Use Planning, Initiative 547 (1990),"). Although Initiative 547 was defeated, Washington State and the development community promised to enact legislation in 1991 to implement environmental protection requirements and an enforcement mechanism for the GMA (Parker, 2015). As promised, SHB 1025 (also known as "GMA II") was enacted in 1991 and established oversight and mechanisms for enforcement of the GMA (Parker, 2015).

Centennial Accord

The accord institutionalized the government-to-government relationship between the executive branch and the twenty-six federally recognized Indian tribes. The Centennial Accord was ratified on August 4th, 1989 between the executive branch of Washington State and twenty-six federally recognized Indian tribes within Washington. The ultimate purpose of the Accord is

to improve the services delivered to people by the parties involved⁷. The accord does outline several other important purposes and objectives of the agreements⁸:

- Supporting the sovereign status of the parties involved
- Enhancing and improving communication between the parties involved
- Facilitating the resolution of issues through enhanced communication

The parties involved with the Centennial Accord recognized mutual interests between them and that the historical conflicts that plagued these parties were detrimental to achieving each respective government's long-term planning goals. The respective governments recognized long-term planning goals as a broad responsibility to effectively deliver services to Washington citizens and manage resources. To avoid or minimize conflicts between the executive and tribal governments, each party was encouraged to establish goals for improved services and identify obstacles standing in the way of achieving those goals⁹. Annual meetings and the formation of joint strategies for achieving mutual goals instituted formal coordination procedures between executive agencies and tribal governments. The executive branch and the twenty-six signatory Indian Tribes saw coordinating protocols and policies for government-to-government relationships as a way of avoiding or minimizing conflict.

Boldt Decision was a significant driver of Washington State considering tribal interests and the Indian tribes themselves becoming important players in natural resource planning.

⁷ Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, 1989 (IV Implementation Process and Responsibilities)

⁸ Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, 1989 (III. Purposes and Objectives)

⁹ Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, 1989 (IV. Implementation Process and Responsibility)

Following a series of federal court cases¹⁰ in which Washington Indian tribes challenged the salmon management practices of the state, a final decision on the subject fell to Senior Judge of the U.S. District Court for Western Washington George H. Boldt (G. Clark, 1985). The Indian tribes had signed treaties to ensure their fishing and hunting rights in exchange for the land that would later become Washington State. Judge Boldt determined Washington Indian tribes' treaty rights were violated due to management practices of the state and they were legally entitled to half the harvestable number of every run in their usual and accustomed fishing grounds (1985).

The suppression of tribal treaty rights by the state had caused physical and legal conflicts between the State's Indian tribes, non-tribal fishers, and regulatory authorities. Following the Boldt Decision, Indian tribes, the state, and industry representatives needed to cooperatively manage salmon stocks with yearly quotas. Following the initial Boldt decision in 1974, Indian tribes continued litigation with Washington State when disputes arose between them regarding salmon habitat protection. These disputes culminated in *phase II* of the Boldt Decision. Unlike the initial decision, *phase II* did not establish a conclusive ruling. The ruling found that hatchery fish were included in the harvestable fish for tribes but reversed a previous decision supporting tribal entitlement to protection of salmon habitats (Mulier, 2006). The reversal on habitat protection did not end the issue but stated that habitat rights of Indian tribes required fact-based development. T However, important court decisions in the 2000s would stress the habitat issue. The Culvert Case is one example of the case-by-case determination of tribal habitat rights. The Supreme Court ruled that culverts were proven to negatively impact salmon and salmon-bearing streams, requiring Washington State to remove all culverts for the protection of tribal rights to

¹⁰ *Maison v. Confederated Tribes of the Umatilla Indian Reservation* (1963), *Puyallup Tribe v. Dept. of Game of Washington* (1963), *Puyallup Tribe v. Washington Department of Game (Puyallup II)* (1973)

salmon. The habitat issue would resurface in important court decisions in the 2000s, leading sweeping changes regarding how the state would need to consider tribal interests regarding salmon.

Following the Boldt Decision phase I and II, tribal interests became a central issue in the management of natural resources and planning. The courts enforced treaty rights and Indian tribes had their interests affirmed off reservations and within the county space¹¹. The restoration of tribal treaty rights and the conflictive relationships between tribes and state governments contributed to the formation of cooperative planning policies in the GMA and Accords.

The Millennial Agreement was essentially a reaffirmation of the commitments to government-to-government relationships outlined in the Centennial Accord a decade prior, with some additional methods for improving the Centennial Accord structure. During the 1999 Washington Tribal and State Leader's Summit, cooperation and coordination between Indian tribes and state governments were identified as important areas for improving the Centennial Accord agreements. Improving cooperation through enduring communication channels, developing consultation protocols and action plans, enhancing coordination through the newly established Washington State Office of Indian Affairs, and striving to coordinate in the protection of natural resources were some of the key focus for improving relations between the respective governments involved¹². The executive summary of the Millennium Agreement sets up the government-to-government implementation guidelines in five sections: providing

¹¹ County space is defined as any area outside the boundaries of Indian reservations and not under tribal jurisdiction

¹² The New Millennium Agreement, Institutionalizing the Government-to-Government Relationship in Preparation for the New Millennium, 1999

background, defining the consultation process, defining the dispute resolution process, defining roles and responsibilities, and the implementation of the state Centennial Accord Plan.

The Millennium Agreement defined the key principles of government-to-government policy and expanded upon the structures set as the foundation of the Centennial Accord. These government-to-government principles include¹³:

- Encourage cooperation between tribes, the state, and local governments to resolve problems of mutual concern
- Working directly with each other (executive branch and Indian tribal governments) in a government-to-government fashion, rather than as subdivisions of each other's governments
- Take steps to remove legal and procedural roadblocks to working directly and effectively between governments
- Strive to assure that each government's interests are considered when one government's actions may affect the other
- Working with federal agencies that have related responsibilities
- Incorporation of the above principles into planning and management activities, including development and implementation, legislative initiatives and into the policy and regulation development process.

Principles of primary concern for this study are the first and last of these guiding principles of government-to-government policy. In particular, the first guiding principle is relevant to this study because it directly identifies cooperation between local governments and Indian tribes, a

¹³ The New Millennium Agreement, Executive Summary-Government-to-Government Implementation Guidelines (2. Key Principles of Government-to-Government Policy), 1999

primary interest of this study and one of the principal criteria for assessing its findings. The final guiding principle is relevant because it seeks the incorporation of the other principles into state regulations and policies, another principle criterion for assessing the findings of this study. The other government-to-government principles in the list identify useful principles for government-to-government relations but are not significant to this study, primarily referencing the relationship between the executive branch and Indian tribes.

The Millennium Agreement acknowledges the relevance of incorporating tribal interests into the planning process, along with interjurisdictional and intergovernmental coordination. However, the Millennium Agreement does not clarify which planning process tribal interests should be incorporated into. Executive agencies are tasked to coordinate with Indian tribes by the Governor's Office, but these agencies are also tasked with adopting regulations for directing county and city planning under the GMA. Since the GMA's statutes are the primary authority for comprehensive planning, the incorporation of the guiding principles encouraging coordination between Indian tribes and local governments should be included in the GMA legislation giving authority for the adoption of regulations and policies by the executive agencies also participating in the accords. Incorporating the guiding principles of the Centennial and Millennium Accords into legislative initiatives could also include GMA statutes or amendments since tribal interests highlighted by the aforementioned court cases involve required GMA planning elements.

Centennial Accord explicitly states that coordination between tribal and state governments is a method for reducing and mitigating conflicts. The Millennium Agreement emphasizes coordination by recognizing the importance for local governments, the state and tribal governments to cooperate. Providing the structures to facilitate cooperation is a key principle of the Centennial and Millennium Accords' government-to-government policy. The

incorporation of this principle of cooperation among jurisdictions into planning activities, including public policy development, acknowledges the value in providing structural guidance to local governments and the state regarding cooperating with Indian tribes.

GMA Issues

The GMA also acknowledges the importance of interjurisdictional coordination throughout its various sections referencing coordination among counties and local governments sharing borders. The GMA falls short of providing guidance for local governments in how or if they should coordinate with Indian tribes, and in directing local governments to coordinate their comprehensive planning with Indian reservations sharing mutual interests and planning areas. The GMA provides the opportunity for participation by Indian tribes in the countywide planning policy process¹⁴ but does not require counties to seek consultation with tribes, nor does it expand on Indian tribes' inclusion in the planning process. Without well-defined structures to include tribal interest in countywide GMA planning, important regional governments within the county space become overlooked. Disregarding tribal governments leaves the GMA's goal for interjurisdictional coordination unfulfilled and a fragmentary application of interjurisdictional and coordinated planning in Washington State.

Within the limits of this project, coordination is understood as a means of achieving consistency, with consistency in policies, regulations, and laws to ultimately reduce conflict being the end goal. Coordination between jurisdictions is necessary to avoid or reduce conflicts between public policies and regional plans. Coordination between regions is necessary to assure efficiency in providing services to citizens across jurisdictions and reducing conflicts or issues

¹⁴ RCW 36.70A.210 (4) Countywide Planning Policies: Federal agencies and Indian tribes may participate in and cooperate with the countywide planning policy adoption process. Adopted countywide planning policies shall be adhered to by state agencies.

that may arise from jurisdictional disputes. Regarding Washington State Indian tribes, the occurrence of inconsistencies in policies, values, and priorities among tribes and other governments led to repeated conflicts and litigation.

The Culvert Case is a prevailing example of how inconsistencies and a lack of coordination with Indian tribes can become far-reaching issues with large financial implications for Washington State. Initially filed in 2001, twenty-one Washington tribes sued the state to replace culverts blocking salmon spawning routes (MRSC - The Culverts Case, 2018). This case attempted to follow the undecided habitat issue from Phase II of the Boldt Decision and tribes sought a decision that would establish Washington State's duty to protect salmon habitats. In 2013, the district court issued an injunction ordering Washington to remove culverts blocking fish passage and the Supreme Court affirmed the ruling in June of 2018 after (2018). A main point of contention from the state was the financial burden the ruling would impose, potentially costing hundreds of millions of dollars.

The Hirst Decision is a pertinent example of the negative impacts on the state that, in some capacity, results from a lack of coordination with Indian tribes. The 2016 court decision ruled that Whatcom County's comprehensive plan did not satisfy the requirement of the GMA to ensure an adequate water supply before granting building permits because it relied on the Department of Ecology's water level measurements (*Whatcom County v. W. Wash. Growth Management. Hearings Board*, 2016). A large number of permit-exempt wells granted by the county, which allow the extraction of up to five-thousand gallons a day without the request for a permit, were negatively affecting salmon habitats by lowering the water level in rivers. The ruling was opposed by developers and landowners who could no longer rely on permit-exempt wells for water withdrawals. The Squaxin Island Tribe viewed a lack of regulations regarding

permit-exempt wells as the perpetuation of a regulatory free-for-all for developers and landowners (*Amicus Curiae Brief of the Squaxin Island Tribe*, 2015). In both cases, the inability or reluctance by the state and county governments to more fully incorporate the interests of Indian tribes during the establishment of the GMA and subsequent years resulted in unfavorable court decisions that imposed large financial burdens.

In the case of *Swinomish Indian Tribal Community v. The Department of Ecology* (2013), Washington’s DOE amended a rule for instream flow requirements that applied the statutory exception to reserve water from the Skagit River basin for extraction in uninterrupted and year-round use. The Swinomish Indian Tribe challenged the amended rule in Washington’s Supreme Court, contending that the rule was invalid because it exceeded the statutory authority granted to the DOE¹⁵ (2013). The Supreme Court agreed with the Swinomish Tribe that the DOE erroneously interpreted the statutory exception and did not have the authority to reallocate water for new uses, citing a lack of valid evidence for impairing the minimum flow water right (2013).

Litigation such as the Hirst Decision and Culvert Case are costly to Washington State, and cases like *Swinomish Indian Tribal Community v. DOE* can strain relationships between counties and Indian tribes. *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*¹⁶ has challenged the statutory interpretation of county responsibilities regarding the GMA and salmon habitats. In a previous case brought by the Swinomish Indian Tribe, Skagit County’s critical areas ordinance was initially found to lack

¹⁵ The Swinomish Indian Tribe cited an incorrect interpretation of RCW 90.54.020(3)(a): Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values...

¹⁶ *Swinomish Indian Community v. Western Washington Growth Management Hearings Board* (No. 76339-9) primarily involved disputes over the critical areas protection of the Skagit River and water quality standards decisions by the Growth Management Hearings Board. The Supreme Court of Washington State upheld the Hearings Board’s decisions and stated that Skagit County had no obligation to enhance the water quality from current standards, citing the meaning of the word “protection” does not include enhancement.

necessary elements to protect anadromous fish through the establishment of instream flows and water pollution standards (*Swinomish Indian Tribal Community v. W. Wash. Growth Management Hearings Board*, 2007). Following the decision, Skagit County adopted the “no harm” ordinance, stating that the County would not need to improve water quality but protect anadromous fish habitats by maintaining then current water quality (2007). The Swinomish Indian Tribe challenged the language of the no harm ordinance in *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*, stating the word “protection” in the GMA was synonymous with “enhance” and required improvement of water quality (2007). However, the court ruled Skagit County’s no harm ordinance appropriate and the language of the GMA dictated Skagit County had no obligation to improve water quality but is required to maintain levels from initial quality standards measurements (2007).

The decision casts doubt on the obligations of counties regarding the management of resources associated with tribal treaty rights but existing in the county space. The lack of a definitive ruling in phase II of the Boldt Decision and the variable decisions from more recent court cases cause confusion regarding tribal property rights and the obligations of local and state governments managing that property on non-tribal land. However, the gravity of *Swinomish Indian Tribe v. DOE* and the Culvert Case, in combination with the application of treaty rights after the Boldt Decision, remove nearly all doubt regarding the necessity to consider tribal of off-reservation interests affected by GMA comprehensive planning. Furthermore, the question is not whether tribal interests should be included in comprehensive planning, but what are the established structures to facilitate and guide the inclusion of those interests in comprehensive planning?

Research Question

To what extent do the laws, regulations, and policies of Washington guiding statewide GMA planning advance the goal of interjurisdictional coordination in regional planning with respect to Indian tribal governments, consistent with the commitments made in the Centennial Accord?

Literature Review

Introduction

The purpose of this project is to determine the extent to which planning laws, regulations, and policies within Washington State advance coordination with Indian tribes based on the government-to-government principles of the Centennial Accord, particularly those relating to the implementation of the GMA. This project assesses the state's overarching framework guiding comprehensive planning with respect to tribal governments and the adequacy of Washington State for encouraging tribal participation in GMA comprehensive planning at the local level.

This research is primarily concerned with principles in comprehensive planning that promote the necessity of regional coordination among multiple units of government. The literature review also considers important principles in planning concerning the attainment of more equitable and inclusionary processes through increased democratization demonstrated in social and environmental justice practices. Specifically, the literature review considers social and environmental justice practices concerning the inclusion of underrepresented and marginalized communities with respect to the exclusion of tribal community interests in comprehensive planning. This review will end with an exploration of tribal interests and working with tribal communities and governments.

Comprehensive Planning Principles

According to the American Planning Association (APA), the goal of planning is to maximize the well-being for all residents regarding health, safety, and the economic development of communities (“What is Planning?” 2019). Planning focuses on many different dimensions of a working community, taking a broad viewpoint for how to coordinate the layout of roads, buildings, parks while protecting natural resources (“What is Planning?” 2019). Planning should consider how communities will grow and how the current planning may affect aspects of the communities in the future (“What is Planning?” 2019). Planners may apply the values through planning practices. By incorporating the natural environment into a project and planning so impacts on natural resources are as limited as possible, a planner can apply their environmental and social values within the community.

Planning values are not an official list requiring all planners to adhere to, but a collection of ideals represented in the literature and contributing to planning thought. The APAs American Institute of Certified Planners (AICP) developed a code of ethics, listing responsibilities for member planners to consider. The responsibilities include being conscious of the rights of others, dealing fairly with all participants in the planning process, give opportunity for people to have a meaningful impact on plans and programs that may affect them, and seeking social justice through expanding choice and opportunity for all persons (“AICP Code of Ethics and Professional Conduct,” 2019).

Authors, including Campbell (1996) and Anne Wessells (2014) describe concepts including the responsibilities of planners, contradictions in sustainable planning and the four ethical pillars of planning. The contradictions in sustainable planning described by Campbell refer to the difficult task planners face when balancing of goals and priorities associated with

supporting green cities, promoting economic growth, and advocate social justice (1996).

Wessells establishes the four pillars of planning as economic, environmental, social, and cultural (2014). Wessells places the four pillars as elements within urban development and part of economic growth, emphasizing the importance of addressing sociopolitical, cultural and environmental aspects of economic growth to reduce the negative impacts of unchecked market economies (2014).

Authors such as Umemoto (2001) touch on the limitations of traditional planning and public participation in the face of planning ethics regarding inclusion. M. Webster (2016), Innes and Booher (Innes & Booher, 2010), and Forester (Forester, 1993) provide important values for comprehensive planning through critical planning theory (CPT) and communicative planning theory. Communicative planning focuses on the act of communication and dialogue (Innes, 1995) and CPT applies critical social theory, emphasizing justice and preserving rights by moving away from planning practices that do not fulfill certain planning values.

M. Webster addresses the limitations of traditional planning structures, power dynamics, and disinterest in participation. Innes and Booher (2010) elaborate on collaborative methods of planning, as reflected in the GMA's interjurisdictional coordination goal and the Centennial Accord. This goal institutes one of comprehensive planning's values of inclusion by seeking to consider the interests of other communities through interjurisdictional planning. The interjurisdictional planning approach of the GMA extends to tribal governments, but counties are given a great deal of discretion regarding coordinating with Indian tribes. Counties are not obligated to reach out to tribes except in a small number of circumstances. When counties are given the option to reach out to tribes, tribal voices can often be excluded in planning and considered as an afterthought by being relegated to public participation methods considered

inappropriate for a sovereign government (Webster, 2016). Examples of counties exercising their discretion regarding coordination with Indian tribes can be seen in the litigation over planning issues between counties and tribes. A prominent example is *Swinomish Indian Tribe v. W. Wash. Growth Management Hearings Board* (2007), where the Swinomish Tribe challenged Western Washington Hearings Board's approval of the no harm ordinance for Skagit County's water quality standards. It was ruled that Skagit County was in compliance with the GMA, but it had disregarded the interests of the Swinomish Tribe in attempting to protect their property rights to salmon. For the planning value of interjurisdictional coordination to be adequately applied, interjurisdictional coordination in planning must have some mechanisms to ensure tribal governments are included in the proper capacity when decisions may affect their interests.

The barriers to participation by marginalized and historically disenfranchised groups are explored within a tribal context by M. Webster, where historical issues which have bred mistrust between Indian tribes and state and local governments (2016). Due to this mistrust and a historically conflictive relationship between the powers of the government, tribal governments in Washington State have not always utilized participation measures. M. Webster highlights the underlying factors regarding tribal participation in planning, stating that governments may find ways to increase indigenous participation but indigenous governments often perceive the attempts as insincere (2016). These efforts may also be marked by a lack of interest from tribal governments, with Indian tribes perceiving that state actors may discount tribal government authority and expertise in the decision-making process (2016). The limited participation from Indian tribes may also be viewed as being entangled with epistemological differences and distrust toward governments that have been historically oppressive (Umemoto 2001; Lane 2001). Within a state-based planning process, those communities which have had conflicts with or been

oppressed by governments may view efforts of engagement with skepticism, leading to disinterest or a lack of initiative to participate.

Providing appropriate modes of communication and participation, such as those outlined by the Accords, would serve as substantial steps towards achieving the GMA's interjurisdictional coordination goal and reduce the issues that may deter tribal governments from participating. Limited participation through public comment and public participation methods diminish the sovereignty of tribal governments and the terms of communication are set by governments who may not adequately consider tribal interests (Umemoto, 2001).

M. Webster bases her study in the principles of cooperative planning theory, combined with elements of communicative planning theory (2016). The principles of cooperative planning theory and communicative planning theory emphasize a need to acknowledge power wielding from state governments in planning to achieve a fair and just process. This theory calls for planning practitioners and scholars to critically examine the social and historical roots of planning as a means of improving the planning process (2016). The communicative aspect of cooperative and communicative planning theory is particularly important for considering power structures and the inclusion of communities and stakeholders into the planning process. Cooperative and communicative planning theory call for stakeholders to be well informed and engaged with other stakeholders in a face-to-face dialogue, allowing the free expression of views regardless of the power they may wield in the community (Innes & Booher, 2010). Cooperative planning theory also applies critical social theory in the planning process, which focuses on the power wielded by decisions makers. For planning to adequately incorporate tribal interests and recognize the sovereign status of tribal governments, decision-makers must realize the power they wield in the planning process, often to the detriment of Indian tribes (Forester 1993).

Counties wielding power in the planning process is not an issue in itself, but when tribes are not given an appropriate mechanism for cooperation, it poses significant barriers to the incorporation of tribal interests and tribal sovereignty. The Accords recognize the sovereignty of both tribal and state governments, providing communicative and cooperative structures that do not diminish the power wielding of state governments but provides Indian tribes an appropriate platform for interacting as a fellow government.

Jurisdictional Coordination

The GMA's interjurisdictional coordination goal also emphasizes the requirement for coordination in planning between communities and jurisdictions as methods to increase inclusion and reduce conflict in regional policies. The value of interjurisdictional coordination is demonstrated in many levels of Washington's government as a primary principle in collaborative comprehensive planning. Local governments have utilized MOUs and agreements with Indian tribes, the executive branch adopted specific consultation and communication with the Accords, and legislation such as RCW 43.376.050¹⁷ are examples of jurisdictions seeking to improve relationships with Indian tribes and incorporate their interests into planning. Coordination in GMA planning occurs between counties and other local jurisdiction, providing a representation of different governments to address regional interests on a government-to-government basis. However, the GMA does not specify tribal government inclusion in regional planning. Innes and Boher (2010) suggest that collaborative processes, such as interjurisdictional planning, not only have the potential to build foundations for a more adaptive governance system but also generate changes in planning practices and the promotion of new norms. By not including or limiting pathways for participation between local and tribal governments on a government-to-government

¹⁷ Yearly meetings between Washington State's federally recognized Indian tribes and the legislature.

basis, the benefits of a truly inclusive and interjurisdictional planning system are not fully realized.

Four pillars for planning (economic justice, environmental justice, social justice, and tribal justice) are described by Wessell as supporting a Seattle based planning project in the most sustainable manner (2014). For this project, the four pillars of Wessell can be adopted to represent: economic justice as determining who benefits economically with a planning project, environmental justice as meaningful involvement of all peoples in the environmental public policy, social justice determines whose benefits from a project, and tribal justice determines if indigenous governments are appropriately engaged within the planning process (Wessell, 2014; US EPA, 2014). Planning in a sustainable and inclusive manner means analyzing policies from a variety of perspectives through the inclusion of diverse communities to gain understanding about who will be impacted in planning.

The tribal justice pillar of from Wessell's planning principles refers to the inclusion of tribal voices in a planning project to assure they have been adequately heard and their cultural heritage honored in the project (2014). This concept can be incorporated into the context of this project's goals by applying the same principle to tribal governments regarding planning policies. Providing policies that specify appropriate communication modes and cooperative pathways for the inclusion of tribal governments in comprehensive planning ensures the voices of tribal governments are adequately heard. Incorporating tribal interests through interjurisdictional cooperation with local governments would better allow tribal governments to protect their cultural and natural heritage, fulfilling the GMA's coordination goal, and ensuring sustainable planning.

Consistency, Coordination and Cooperative Planning

Consistency and coordination among jurisdictions can be seen as a core value in the GMA's comprehensive planning goals and the principles of the Accords. The GMA seeks to establish coordination between jurisdictions as an attempt to make different plans more consistent and avoid conflicts. As established by the Centennial Accord, coordination may be understood as a useful tool for mitigating conflicts. For Washington State, a lack of "consistency" in policies and priorities has led to conflict and litigation with Indian governments. Kaiser et al (1995) raise the idea that plans should be reflective of a balanced consideration of values from competing, sometimes complementary, interests. Achieving some balance may require coordination, which in turn will likely require negotiation and compromise (Kaiser, Godschalk, & Jr, 2015).

Efraim Ben-Zadok establishes consistency as the "structural framework" for the implementation of the GMA and a policy that mandates coordination, compliance, and continuity among plans from state, local and regional governments (2005). The references of coordination within the GMA focus on the jurisdictions which share a common border, establishing a base for consideration of other communities and the trans-jurisdictional management required in regional planning (Ben-Zadok, 2005). Consistency within the GMA tends to focus on the consistency between parts of comprehensive plans. Within this project, consistency is used more broadly and refers to the coordination of plans in a regional context. This pertains to all jurisdictions within a region, including tribal governments. Coordination is established in this project as a means of achieving consistency in the policies among all jurisdictions within the planning region and ideally reducing or mitigating conflict.

For governments sharing common borders, interests and intertwined economies, coordination and consistency between adjacent or regional governments can provide many benefits. The National Congress of American Indians and the National Conference of State Legislatures discussed the interconnectedness of tribal, state and local governments, stating that neighboring governments share many aspects of their social and economic systems and are connected through political and legal relationships (Johnson, Kaufmann, Dossett, Hicks, & Davis, 2009). For this reason, many local governments, cities, and towns have signed Memorandums of Understanding (MOU's) with Indian tribes. MOU's facilitating coordination and consistency between tribal and local governments remove much of the uncertainty associated with the ill-defined and often conflicting relationships between the two. The development of consistency and cooperation is more difficult between tribes and local governments. As stated by M. Webster, "finding ways to sustainably plan for future development within the shared space can be a difficult task, especially in instances where tribes and local governments have different visions for how to shape the space they share." (2016).

Through the assessment of intergovernmental agreements, land use litigation, interviews, and comprehensive plans, M. Webster reveals key factors for cooperative and uncooperative relationships with regards to coordinated planning. Key factors for a successful cooperative relationship between local, state and tribal governments included strengthening positive interpersonal relationships, having a regional approach to planning, and working on community projects (M. Webster, 2016). Successful comprehensive planning was particularly reliant on positive interpersonal relationships between Indian tribes and local governments, as well as having a regional approach with joint planning. Key factors leading to uncooperative relationships included retaining negative interpersonal relationships, employing a parochial

approach to planning, and exerting control over another government (M. Webster, 2016).

Uncooperative relationships can also be a product of conflicting visions or policies between two jurisdictions. Because Indian tribes are sovereign governments and determine their own planning laws, conflicts with adjacent cities and counties can occur. Parochialism in this study referred to concentrating on the impact of an issue on a community or group with little to no concern for its impact on surrounding communities (M. Webster, 2016). The GMA, the Accords, and comprehensive planning principles incorporate the key factors for cooperative planning relationships highlighted by M. Webster. However, these key factors are applied unevenly across Washington's governments.

Working with Tribal Governments and Acknowledging Tribal Interests

Indian tribes derive their authority from three different sources, treaty rights, the inherent right of self-government, and the delegation of federal authority. The treaty rights of Washington State Indian tribes are unique because tribes signed the series of treaties giving up their traditional territories in exchange for smaller reservations but ensuring tribal hunting and fishing rights would continue, unincroached into the future. Washington's tribal treaty rights are federally recognized property rights which include rights to salmon, protection of their habitats, hunting, and water rights. The property rights of Washington State's Indian tribes are complex and extend beyond reservations, to areas where they can be impacted by GMA policies and the actions of the state, counties, and other local governments. Tribal authority does not extend into the county space, despite their interests being affected. Previously mentioned court cases (*Swinomish v. DOE*, *Culvert*, and *Boldt I and II*) have affirmed tribal interests off the reservations for the purposes of protecting their property rights to salmon.

Each Indian tribe is unique and may have a preferred system of government or operation. The inherent right of self-government ensures that Indian tribes are free to enact governing powers within the boundaries of the reservation. The delegation of federal authority allows Indian tribes to implement their own environmental laws from federal standards, regarding Indian tribes in the same capacity as states. Tribes may implement more stringent environmental standards, such as water quality under the Clean Water Act (1972) or requiring higher emission standards under the Clean Air Act (1970). The authority allowing Indian tribes to establish their own environmental laws does not extend beyond the boundaries of the reservation. The EPA's Indian policy, published in 1984, recognizes tribal governments as the primary authority for implementing EPA environmental programs on tribal lands (Zaferatos, 2015). The policy has faced opposition from Washington's government when the state applied its environmental jurisdiction onto tribal lands, eventually being overturned in the Ninth Circuit of Appeals (2015).

Intergovernmental planning between state, local and tribal governments is often a difficult task. The literature provided in this review highlights the issues that governments face when planning and implementing policies, laws, and regulations. Authors like Zaferatos (2015), M. Webster (2016), Morton, Gunton & Day (2012), and Barry (Barry, 2002) highlight the conflicts between local and tribal governments and attributes them, in some part, to local governments lacking knowledge, wielding power in planning, and historical and social factors. Regarding Washington state and Indian tribes, the planning power wielded by local governments is their authority as the primary jurisdictions for planning under the GMA. Tribal treaty rights are one of three sources of tribal powers and authority, the other two being inherent sovereignty and federally delegated powers. Local governments lacking knowledge of these two sources of tribal

jurisdiction may also pose as obstacles to cooperation in comprehensive planning, reducing consistency and not fulfilling the goals of the GMA.

Local governments have traditionally served as adversaries in opposing tribal jurisdiction and other tribal interests in federal courts. Though tribal sovereignty has never terminated in Washington State, the political authority of tribal governments has a history of being challenged or infringed upon by local governments (Zaferatos, 2015). Historical conflicts can cause tribal governments to view local governments as an adversarial force infringing on tribal jurisdiction by preempting tribal authority (Pommersheim, 1991a). As stated earlier, distrust from historically conflictive relationships between Indian tribes and local governments can prevent either party from engaging with the other, especially on the part of tribes who have experienced a great deal of hardship from this conflictive relationship. Infringements on tribal authority by local governments can be viewed as a form of colonialism. Washington State's land use and environmental litigation involving Indian tribes and the assertion of one government's authority over another entail attempts to displace tribal authority and replace it with a local government's authority (M. Webster, 2016). This relationship is exceptionally described by Barry in her 2012 study:

““bargaining” is intentional; for although the (tribal) Council often engaged in creative problem-solving and made considerable efforts to learn about competing perspectives and interests, their participation was always set against the backdrop of historically rooted colonial power relations and the resultant need to find creative ways to strengthen and maintain their overall negotiating position in the final G2G negotiations.”

The backdrop of colonial power structures and traditional planning structures which facilitate attempts to strengthen negotiating power are contributing factors which often plague negotiations between Indian tribes and local governments (Barry, 2012). Finding ways to cooperatively plan

within the shared space of counties and with the backdrop of colonial power relations can be difficult, especially when local governments plan without hearing the voices of tribal governments and perpetuate colonialism (M. Webster, 2016). By identifying and understanding where, if any, guidance is provided and where guidance is lacking from the state to local governments regarding coordination with tribal governments in the planning process, targeted policy development can be used to fill in the gaps.

Tribal interests vary a great deal among the twenty-nine federally recognized and independent nations that constitute Indian tribes located in Washington State. Tribal interests can often be at odds with local and state government, private industry, and private landowner interests. These conflicts can cost the state millions of dollars and impact communities all over the state by forcing the state to perform expensive restoration projects, stalling development projects and significantly devaluing property due to inability to attain water rights.

Another example of conflict resulting from inconsistencies in local and tribal policy would be the “Culvert Case”¹⁸, which could potentially cost Washington State nearly 2 billion dollars. The decision in the Culvert Case essentially established that Washington State was required to remove and replace all road culverts which would negatively affect salmon spawning or migration by the year 2030 (*United States v. Washington*, 2017). Established as an infringement on treaty rights to salmon and salmon protection, an injunction was granted by the federal judge that required the state to replace culverts with more fish-friendly waterways, which was also upheld by the Ninth Circuit Court. In the supreme court the case resulted in a rare 4-4 split ruling, leaving the Ninth Circuit Courts ruling and the injunction standing.

¹⁸ *United States v. State of Washington*, F. 2d (2007), No. CV 9213RSM, 2007 WL 2437166, (W.D.Wash., August 22, 2007)

The decisions in the Culvert Case and Hirst Decision by the Washington State Supreme Court cost private landowners, rural communities and the state and local governments a great deal in uncertainty regarding the granting of rights for rural development projects and state costs for the restoration of salmon streams impacted by culverts. In response to the Hirst Decision, counties severely restricted approvals for subdivisions and building permits for houses that relied on permit-exempt wells (“Washington State Department of Ecology - Hirst decision,” 2017). The exempt wells allowed under the DOE’s rules were viewed as possibly impacting both senior tribal water rights protected under the Winters Doctrine,¹⁹ and the salmon habitat protection rights established under Boldt II, of which the Indian tribes have the most senior rights. The Squaxin Island Tribe was a major proponent of the Hirst Decision and Culvert Case²⁰, seeking the protection of tribal property rights to fisheries resources. If more planning coordination occurred with tribes, given their broad interests in both water allocation and treaty fishing rights, it is more likely that avoidance of litigation may have resulted through negotiated approaches to conflict resolution. These cases provide pertinent examples of the growing understanding among Washington State’s government regarding a need for greater incorporation of tribal interests into the planning process.

There are many overlaps with tribal and local government interests and goals which have been the focus of models for cooperation between states and tribes (Johnson, Kaufmann, Dossett, & Hicks, 2009) and cooperative planning (CP) (Morton, Gunton, & Day, 2012). Tribes and state governments mutually desire to achieve effective resource use, comprehensive services, environmental safety, the protection of natural environments, and healthy economies (Johnson, et

¹⁹ U.S. Supreme Court case regarding the water rights of Indian reservations. The case clarified how the United States government acknowledged Indian water rights for the continuing survival and self-sufficiency of Indian reservations (*Winters v. United States*, 1908).

²⁰ The Squaxin Island Tribe was the main proponent of the litigation, with support from the Swinomish Indian Tribe.

al, 2009). Effective relationships and cooperatively planning regarding areas of common interest can help reduce conflict between local governments and tribes, as well as reducing the consequences of tribal actions on surrounding areas and governments (Johnson, et al, 2009). Cooperative planning has been shown to improve stakeholder relationships, facilitate new communication skills and create a shared knowledge base (Morton, et al, 2012). Continuous and face-to-face communication is an important aspect of cooperative planning as demonstrated by successful cases of interlocal cooperation in the literature. The established annual meeting between the governor of Washington State and Indian tribes during the first Centennial Accord negotiations were acknowledged as insufficient communication to adequately address the issues (Johnson, et al, 2009). The yearly meetings were replaced with structured and regular communication provisions between Indian tribes and the executive branch, drastically improving relations and approval by Indian tribes.

Morton, et al acknowledges the importance of not only providing participation through a “first-tier” public participation format but providing a “second-tier” of face-to-face consultation with Indian tribes (2012). The second-tier consultation was a distinct and separate consultation process comprising of affected Indian tribes who could also participate in the first-tier public participation. The Accords and intergovernmental agreements have expanded on the second-tier participation structure outlined by Morton, et al, expanding beyond face-to-face consultation to create a formal government-to-government process for consultation with tribes. Providing a second, separate consultation for tribal governments is a principle practice of the Centennial Accord and many counties and cities who have signed intergovernmental agreements with Indian tribes.

Conclusion

The treaty rights of Washington's Indian tribes extend the interest of tribes beyond the boundaries of reservations and into county spaces where they may be impacted by GMA comprehensive planning. Limiting tribal governments to public participation methods and ignoring tribal governments within a regional planning context has led to litigation and conflict when tribes seek to protect treaty rights. Through decades of litigation and conflict, Washington State's government has developed successful methods for incorporating tribal interest and establishing appropriate communication practices with Indian tribes demonstrated in the Accords. Broader implementation of the successful Accord policies into legislation to guide local governments in cooperating with Indian tribes would address many of the issues associated with traditional planning practices that weaken tribal sovereignty and reduced participation by tribal governments. Providing appropriate platforms for the sovereign tribal governments to participate in local planning would reduce conflict and improve the historically adversarial relationships which have resulted from local governments asserting their authority over Indian tribes. Adoption legislation based on the principles and practices of the Accords would better achieve the interjurisdictional element of the GMA's interjurisdictional coordination goal which does not regard tribal governments as valid jurisdictions. Applying planning values means that planning should reflect a balanced consideration of values from competing and complementary interests, likely requiring coordination, negotiation, and compromise (Keiser et al, 1995).

Successful methods of incorporating tribal interest and providing appropriate participation for tribal governments is well understood by Washington State's governments, demonstrated by the Accords, and has been adopted by many counties and cities through intergovernmental agreements. The literature supports the principles and practices established in

the Accords as solutions to less participatory planning methods and more suitable methods for cooperating with Indian tribes.

Methodology

Introduction

The methods for this project were derived from the qualitative textual data analysis techniques known as template analysis, a form of content analysis. Template analysis is not a single, clearly defined methodology but is instead a set of techniques for thematically organizing and analyzing textual data (King, 2004). One key element of template analysis that distinguishes it from other forms of content analysis, such as grounded theory or discourse analysis, is the flexibility of the technique which allows researchers to tailor template analysis to the requirements of this specific project (King, 2004). Another key element of template analysis is the formation of an initial template of codes or themes before analyzing the textual data. The initial template can be derived from an initial understanding of the research subject, interview topics, or the initial research question. The initial template codes are used to analyze the textual data and the initial template is revised using relevant text or reoccurring themes which are coded and added to the initial template by either inserting or replacing inadequate codes (King, 2004). King (2004) states that codes can be used to create a hierarchical organization where groups of similar codes are grouped together to form higher-order codes. However, specific codes can be organized in a hierarchical structure by placing more value on specific codes. Codes may also be organized in parallel coding segments of text, where a segment may be classified into two or more different codes at the same level or different hierarchical levels (King, 2004).

Other methods of textual and thematic analysis were considered for this project, including framework analysis, discourse analysis, and grounded theory. These methods were not utilized because of several main differences which designated template analysis as the most appropriate technique. Two main differences between template analysis and grounded theory are that grounded theory consists of data gathering and analysis procedures which must be followed, and the users of grounded theory claim to be uncovering the sub-textual or ‘real’ meaning of the textual language (Strauss and Corbin, 1990; King 2004). Template analysis does not analyze the textual data as intricately or with the same intentions as grounded theory, but template analysis allows greater freedom regarding the use of methods for data collection and analysis. Template analysis primarily differs from framework analysis regarding the formation of codes. Instead of starting with an initial template of codes for the analysis of textual data, framework analysis requires the researcher to first familiarize themselves with the data and then identify themes to be coded (Srivastava & Thomson, 2009). Framework analysis requires the data to determine where the research will be directed and how it will be analyzed, but template analysis’ formulation of an initial template of codes with which to analyze data was more appropriate for this project because of the criteria for the initial identification and analysis of public policies were well established. Initial inquiries into methods for this project placed discourse analysis as the primary candidate. However, discourse analysis requires much more finely grained textual analysis and primarily explores the diversity of meaning and ambiguities of words regarding how language is used to construct reality (King, 2004). This project does not attempt to uncover the meaning of keywords used within the public policy but use the language of public policies as selection criteria and as a comparative evaluation against the Accords.

Comprehensive planning elements and tribal interests

The initial procedures for this project identified the required comprehensive planning elements of the GMA through preliminary research into the legislation and scholarly articles reviewing the required elements of Washington State's GMA. The required elements of the GMA were then cross-referenced with subjects known to be of interest to Indian tribal governments. The interests of tribal governments were based on reviews of court cases, assessing the subjects of the litigation, and reviews of literature detailing tribal treaty rights and interests in Washington State. Tribal interest used as cross-references for this project were required to involve resources and services off the reservations and within the county space. Off-reservation areas where county jurisdiction is in effect, tribal authority is based on the protection of treaty rights facilitated through private property rights, but tribes generally have no jurisdictional authority. However, tribes do have significant interests in county planning and policies that may affect their treaty-based property rights. Treaty resource interests include water rights, habitat protection, cultural interest, fishing, and hunting. Corollary interests affecting tribal development are also a primary interest, such as barriers to economic development, transportation, healthcare, and utilities. Required comprehensive planning elements that may particularly affect tribal interests include the land use element²¹ or critical areas requirement²² within the GMA.

Coding and Indexing

Laws and Regulations

The initial template of codes for this project's textual analysis methods was created using the well-established criteria for which public policies were relevant to this project; laws,

²¹ RCW 36.70A.070 (1)

²² RCW 36.70A.030 (5)

regulations, and policies mentioning Indian tribes and pertaining to the required comprehensive planning elements of the GMA. Codes were established using keywords, such as “Indian”, “tribes”, “tribal” and “reservation”. Themes of the public policies derived from for the comprehensive planning elements involved land use, natural resources, housing, capital facilities, utilities, rural development, transportation, economic development, parks and recreation, and ports. Archival research was performed with the search function on the Washington State Legislature website and using the initial codes as search criteria. Search results were assessed and selected based on their subject matter, assessing regulations on WAC sections under-relevant agencies, assessing legislation using RCW section numbers under GMA planning elements, and reading and keyword search function.

Once laws and regulations were selected using the initial code template, sections identifying Indian tribes were read and the laws and regulations were organized according to which of the GMA planning themes they contained. Laws and regulations were thematically organized using the parallel coding strategy of template analysis, where specific laws and regulations could be organized under more than one theme or code.

After the identification and indexing of the laws and regulations, the initial template of codes and themes was reassessed to create the final template. Salient themes and codes emerged from the textual analysis of the laws and regulations and relevant themes were added to the template while the initial codes were replaced to adjust the scope of the laws and regulations to a more appropriately represent the content of the laws and regulations. The additional themes included modes of participation between local governments and tribal governments regarding the comprehensive planning, including public participation and comment, consultation with tribal governments, invitations to participate in planning, giving notice to tribal governments,

collaboration and cooperative participation, and a category for other modes not defined by the previous five themes. The codes which replaced the initial template codes were mandatory and non-mandatory language. Mandatory language codes included the use of key terms such as “must”, “shall”, “require(d)”, and “will”. Non-mandatory codes included key terms such as “may”, “encourage(d)”, “should”, “purpose”, “authorized”, and “consider”.

The revised codes and themes were organized into a hierarchical structure. Mandatory codes were assigned a higher participatory value than non-mandatory codes. Themes associated with the modes of participation were organized into a hierarchical structure based on their level of participation with tribal governments and the appropriateness of the mode of interaction regarding the sovereign status of tribal governments. The hierarchical organization of the modes of participation was based on the literature regarding successful and appropriate cooperation methods with tribal governments, and the principles of the Accords which were developed in collaboration between the executive branch of Washington state and Washington State’s tribal governments. Because of the complex and broad language of some laws and regulations, parallel coding was utilized, where laws and regulations could be organized under mandatory and non-mandatory codes, as well as multiple themes for the mode of participation. Due to issues which may arise by using quantitative analysis and parallel coding, this project did not assign additional value to laws or regulations which were organized into multiple codes and themes.

Policies

The initial template for the identification of policies consisted of codes which identified policies intended to guide local governments in cooperating with tribal governments in the GMA planning process. The codes also distinguished policies meant to guide local governments from policies for the agencies themselves in working with Indian tribes, such as the policies in the

Accords. The codes for policies included the mention of Indian tribes and tribal governments, as well as counties and other local governments in a comprehensive planning capacity regarding the established GMA planning elements.

The appropriate agencies with jurisdiction to establish policies under the various GMA planning elements were identified and contacted through phone calls to agency planning departments. Agency planning representatives were asked to identify any policies they knew of associated with the established codes and to elaborate on the content of those specific policies or provide sources for the policies. Agency websites served as tools to locate specific policies containing the codes upon the recommendation of agency planning representatives. Sources from the Governor's Office of Indian Affairs (GOIA) were contacted similarly through phone conversations and review of policies located on the GOIA's website.

The organization of policies did not include the hierarchical or parallel coding methods but were analyzed regarding which comprehensive planning elements and the planning topics the policies addressed. Regarding policies, the goal of this project was to see if any policies were present to guide local governments in planning and what planning topics were mentioned.

Accord Principles

The initial template for the identification of the Accords' principles utilized codes established using this project's principal research question and the goals. Codes for the identification of relevant guiding principles of the Accords included principles mentioning best practices for communication and cooperation with tribal governments and promoting the Accords' principles with counties or other local governments.

Review of the Accords using the initial template codes required modification of the codes to include additional codes for the identification of relevant Accord principles. Additional codes included conflict mitigation, specific planning topics identified, reoccurring terms or themes, and principles from the Millennium Agreement which expanded upon Centennial Accord principles.

Interpretation and Evaluation

The identified public policies were evaluated against the guiding principles of the Accords and the GMA's coordination goal. The GMA's goal is recognized as a salient component for the evaluation of public policies associated with the comprehensive planning elements and assessing the adequacy of laws and regulations in accomplishing this primary goal of the GMA. The Accords' principles and the GMA's coordination goal served as the standard for which to evaluate the public policies in accomplishing successful methods for cooperation with and incorporating the interests of tribal governments.

From the evaluation of identified public policies against the Accords' principles and the GMA's coordination goal, recommendations were made for accomplishing the interjurisdictional goals of the GMA and improving cooperation with and better incorporating the interests of Indian tribes into comprehensive planning.

Results

After conducting extensive regulatory and policy searches on Washington State Legislature's archival website, contacting the tribal liaisons of state agencies, and information requests to the Governor's Office of Indian Affairs, the project has defined forty WAC regulations and thirty-four RCW laws being listed and assessed. Policies were identified through phone conversations and email correspondence with state agency planning staff and tribal

liaisons. What resulted from these conversations and correspondences was the identification of several voluntary programs for tribal and county interaction and a consistent theme that agencies have no authority to direct counties on their relationship with tribes. After reading the Centennial and Millennium Accord, eight guiding principles were identified as references to assess the adequacy of state laws, regulations and policies providing guidance to counties for the incorporation of tribal interests into comprehensive planning.

In the following paragraphs of this results section I will first identify the 9 guiding principles selected from the Centennial Accords and Millennium Agreement, present the selected forty regulations and thirty-four laws that were selected for this project and significant information ascertained from the analysis of the seventy-three laws and regulations, and this section will end with the results of the correspondence with state agencies to acquire relevant policies provided to counties as guidance on interacting with tribes.

Guiding Principles

The eight guiding principles which were identified for this project from the Millennium Agreement and Centennial Accord highlight the main purpose, goals, and objectives of the two documents. These guiding principles were selected based on their representation of the established goals of the agreements, principles which occurred in both Accords or repeated throughout one and guiding principles which were updated or modified for the Millennium Agreement. The selected guiding principles for this project are as follows (*Centennial Accord*, 1989; *The Millennium Agreement*, 1999):

1. Encourage cooperation between tribes, the state, and local government to resolve problems of mutual concern.

2. Continuing cooperation in the future by developing enduring channels of communication and institutionalizing government-to-government processes that will promote timely and effective resolution of issues of mutual concern;
3. Striving to coordinate and cooperate as we seek to enhance economic and infrastructure opportunities, protect natural resources and provide the educational opportunities and social and community services that meet the needs of all our citizens.
4. Take appropriate steps to remove legal and procedural impediments to working directly and effectively with each other's governments and programs
5. Parties should ensure that consultation occurs through the interaction of officials with comparable governmental stature and authority
6. Tribal interests should be considered in the administration of (these) programs by the state
7. To formalize the requirement for the State of Washington to implement a government-to-government policy and to seek consultation and participation by representatives of tribal governments in policy development and program activities
8. Incorporate these Principles into planning and management activities, including budget, program development and implementation, legislative initiatives, and ongoing policy and regulation development processes

Principles 1,2, 6, 7, and 8 were identified in the Millennium Agreement, while principles 3,4, and 5 were identified in the Centennial Accord. The first three principles emphasize coordination and cooperation between tribes, the state and local governments as an essential method of conflict reductions concerning areas of mutual interest. The third principle highlights important elements for coordination and cooperation, including natural resources, infrastructure, social services, and education. The principles establish and reinforce a communication and consultation process that opens a dialogue with tribes and incorporates tribal interests into the state planning process. These principles contain recurring language, such as coordination, consultation, and cooperation, but they were identified as the touchstone for this project because they each expand upon previous principles and emphasize the intent of the Agreement's goals.

RCW

Identification and Classification

After extensive archival research and investigation of the Revised Code of Washington State laws, thirty-four laws were identified and selected. The selected laws relate to a diverse range of topics, from GMA planning, coastal management, and natural resources to state board

health members and community economic revitalization. The criteria for the selection of laws of relevance to this project were the specific mention of county coordination or cooperation with tribal governments within the county space and off Indian reservations. The criteria for selection also included any mention of coordinated planning involving resources which tribal governments would have direct involvement in. An example of such a law which did not directly mention tribes but still involved them would be the mention of coordinated planning of salmon recovery within a county or between counties, which tribes must be included in as stated in RCW 77.85. The following paragraphs will delve into the results of the extensive research into the Revised Code of Washington State and qualitatively examine the pertinent information of these laws.

After selecting the thirty-four relevant laws from Washington State's legislative website, these laws were then organized into groups defined by the GMA planning elements as detailed in the methods section of this project. All but three of the thirty-four laws were assigned to an individual category based on the particular language and focus. One of the exceptions to this was RCW 43.376.050ⁱ, which mandates a yearly meeting between statewide elected officials and tribal government leaders for the purpose of addressing issues of mutual concern. The featured topics of the yearly meeting between statewide elected officials and tribal representatives are not mentioned within the law. As it is understood, these meetings may include any and all planning related topics which tribal governments and state officials find significant.

For this reason, RCW 43.376.050 was labeled as including all GMA planning elements. Other laws, which involved multiple topical categories, were RCW 79A.25.330ⁱⁱ, RCW 36.70A.210ⁱⁱⁱ, RCW 36.70A.36.70.035^{iv}, and 79A.25.310^v, which regulate the removal and management of invasive species in parks and on public lands. These laws involve natural

resources and parks and recreation. Table one displays the thirty-four selected laws and their distribution by corresponding GMA planning element.

Table 1: Relevant RCW laws organized by the main planning subjects addressed within the language. Highlighted laws are GMA laws.

LAWS	Land use	Natural Resources	Housing	Capital Facilities	Utilities	Rural Development	Transportation	Economic Development	Parks and Rec	Ports
RCW 17.10.201		X								
RCW 27.44.050	X									
RCW 27.53.60	X									
RCW 36.70A.210	X		X	X	X	X	X	X		
RCW 36.70A.035	X	X	X	X	X	X	X	X	X	X
RCW 36.70A.745	X									
RCW 36.70A.715		X								
RCW 36.125.050		X								
RCW 36.125.020		X								
RCW 39.33.010	X									
RCW 43.06.338		X								
RCW 43.20.030					X					
RCW 43.160.030								X		
RCW 43.376.050	X	X	X	X	X	X	X	X	X	X
RCW 52.30.080						X				
RCW 64.04.130	X									
RCW 76.04.760		X								
RCW 77.85.050		X								
RCW 77.95.160		X								
RCW 77.100.110		X								
RCW 77.85.200		X								
RCW 79A.25.330		X							X	
RCW 79A.25.310		X							X	
RCW 79.155.110		X								
RCW 89.08.500		X								
RCW 89.08.510		X								
RCW 90.46.005		X								
RCW 90.54.010		X								
RCW 90.71.250		X								
RCW 90.94.030		X								
RCW 90.94.020		X								
RCW 90.92.040		X								
RCW 90.92.050		X								
RCW 90.80.070		X								
Total: 34	8	25	3	3	4	4	3	4	4	2

After organizing the thirty-four laws into the appropriate topical categories, it is apparent that *Natural Resources* contain a majority of laws with a total of twenty-five. *Land use* was the second most populous category with eight total laws. *Parks and Recreation*, *Economic Development*, *Rural Development*, and *Utilities* consisted of four laws respectively. *Housing*, *Capital Facilities*, and *Transportation* all contained three laws. *Ports* contained two laws. The laws within the category of *Natural Resources* chiefly concerned water and salmon management, with fourteen of the twenty-five total laws mentioning or exclusively consisting of water or salmon management. Coastal or ocean management made up three of the natural resource laws.

The remaining Natural Resource laws consisted of invasive species management (three), forest lands (two) and RCW 43.376.050. In addition to RCW 43.376.050, the remaining laws included state board of health members selection under the *Utilities* category, fire district services for tribal reservation lands under the Rural Development category, selection of community economic revitalization board members under the Economic Development category, and two invasive species removal laws under Parks and Recreation category.

There were a total of four GMA laws identified for this project, highlighted in *table 1*. The Land Use category consisted of three Growth Management Act planning laws, one for statewide advisory committee membership²³, one regarding the possibility of tribes to participate in countywide planning, and one regarding public participation notice provisions that included Indian tribes. One GMA law was under the *Natural Resources* category, concerning the county watershed groups and consultation with Indian tribes. Due to the broad language contained in RCW 36.70A.035, public participation was assumed to involve all comprehensive planning elements. The language of RCW 36.70A.210 specified which countywide planning policies shall be addressed, including housing, capital facilities, rural development, utilities, transportation, and economic development.

Language Inference

The language of the thirty-four RCW laws was assessed through reading the contents of the laws and highlighting relevant words or phrases which portrayed the compulsory or non-compulsory nature of the law. Compulsory or mandatory language included words such as: “must”, “shall”, “require(d)” and “will”. Non-mandatory language included words such as:

²³ The statewide advisory committee, in conjunction with the governor’s office, invites two representatives from tribal governments to participate.

“may”, “encourage(d)”, “should”, “purpose”, “authorized” and “consider”. Some laws contain both mandatory and non-mandatory language:

“Through a comprehensive planning process that includes the state, Indian tribes, local governments, and interested parties, it is possible to make better use of available water supplies and achieve better management of water resources...Comprehensive water resource planning *must* provide interested parties adequate opportunity to participate. Water resource issues are best addressed through cooperation and coordination among state, Indian tribes, local governments and interested parties”²⁴

Phrases such as these create difficulty when assigning laws to specific topical categories of Mandatory or Non-Mandatory language. Laws that contained unclear or both mandatory and non-mandatory language were assessed based on the context of the language within the law and any additional or corresponding legislation that may have provided clarification. In addition to designating the compulsory nature of each law, the mode of interaction or communication was assessed based on the language within each law. These modes of interaction included: *Public Participation, Consultation, Invitation, Given Notice, Collaboration/Cooperative Participation* and *Other*. Some laws are extensive and mention several methods of communication or interactions between tribes and counties. Laws mentioning two or more modes of interaction were assigned to the appropriate topical categories regarding the modes of interactions mentioned²⁵.

²⁴ RCW 90.54.010

²⁵ RCW 36.70A.035: Public participation-Notice provisions

Table 2: Relevant RCW laws organized by language type and mode of communication/interaction contained within said laws. The first two columns indicate if language within the laws is mandatory or non-mandatory. Highlighted laws are under the GMA (36.70A).

Laws	mandatory language?		Mode of communication/interaction					Other
	yes	no	Public participation	Invitation	given notice	Consultation	Collaboration/cooperative participation	
RCW 17.10.201		X					X	
RCW 27.44.050	X							X
RCW 27.53.60	X							X
RCW 36.70A.210		X					X	
RCW 36.70A.035	X		X		X			
RCW 36.70A.745	X						X	
RCW 36.70A.715	X						X	
RCW 36.125.050	X					X		
RCW 36.125.020	X			X				
RCW 39.33.010		X						X
RCW 43.06.338	X						X	
RCW 43.20.030	X						X	
RCW 43.160.030	X						X	
RCW 43.376.050	X					X		
RCW 52.30.080		X					X	
RCW 64.04.130		X						X
RCW 76.04.760	X							X
RCW 77.85.050	X						X	
RCW 77.95.160	X						X	
RCW 77.100.110	X						X	
RCW 77.85.200	X						X	
RCW 79A.25.330		X					X	
RCW 79A.25.310		X					X	
RCW 79.155.110	X						X	
RCW 89.08.500		X					X	
RCW 89.08.510		X					X	
RCW 90.46.005	X						X	
RCW 90.54.010	X						X	
RCW 90.71.250	X						X	
RCW 90.94.030	X			X				
RCW 90.94.020	X			X				
RCW 90.92.040	X			X				
RCW 90.92.050	X						X	
RCW 90.80.070	X				X			
Total: 34	25	9	1	4	2	2	21	5

Of the thirty-four laws selected for this project, twenty-five of the laws contained mandatory language and nine contained non-mandatory language. The modes of participation and communication within the thirty-four selected laws demonstrate a diverse selection, with all modes containing one or more laws. However, the laws demonstrate a majority concerning communication and participation through collaborative/cooperative participation methods. *Collaborative/Cooperative Participation* was the most populous category of the thirty-four laws, containing twenty-one laws. Of the twenty-one laws within Collaboration/Cooperative Participation, nine laws contained non-mandatory language and twelve contained mandatory language.

All other topical categories contained fourteen laws. The distribution of laws within the remaining topical categories included one law for Public Participation, two laws for *Consultation*, four laws for *Invitation*, two laws for *Given Notice* and five laws for *Other*. All laws within the *Public Participation*, *Consultation*, *Invitation* and *Given Notice* categories contained mandatory language. Three of the five laws within the category of *Other* contained mandatory language while two laws contained non-mandatory.

The modes of communication constituting the category of *Other* included Indians or Indian tribes pursuing recovery of damages to archeological objects/graves through county courts, contacting Indian tribes upon the discovery of graves or archeological objects, the acquisition of lands for conservation purposes by Indian tribes within a county, and permitting municipalities to sell or lease land to Indian tribes.

The GMA laws contained mandatory language for three laws and non-mandatory language for one law. Three of the GMA laws also contained cooperative participation modes, with the language of one law involving public participation and giving notice to Indian tribes.

WAC

Identification and Classification

The identification of the Washington Administrative Code (WAC) regulations was performed in a similar manner as the identification of RCWs, consisting of a series of online archival searches done through the Washington State Legislature website. As well, relevant regulations were located through recommendations made by the Governor's Office of Indian Affairs and agency tribal liaisons. Selection criteria for WAC regulations were also the same as those for the selection of RCW's, the specific mention of county coordination or cooperation with tribal governments within the county space and off Indian reservations. The criteria for

selection also included any mention of coordinated planning involving resources in which tribal governments have direct interest but may not be mentioned directly within the regulation. An example of such a regulation would be WAC 173-150-090²⁶ which mentions junior and senior water right holders reaching voluntary agreements. Possessing a senior water right, Indian tribes have a clear and direct interest in water allocation policy, particularly with an inchoate threat from a rapidly growing population and the dwindling availability of water in Western Washington.

Forty-one relevant WAC regulations were identified after extensive archival searches and state agency communication. Five state agencies were responsible for the forty WAC regulations selected for this project. State agencies with relevant regulations included the Department of Ecology (DOE), Department of Commerce (DOC), Department of Health (DOH), Department of Transportation (DOT) and the Health Care Authority (HCA). The agency responsible for most of the relevant regulations selected for this project was the DOE. Of the forty-one total regulations, twenty-seven were from the DOE, six were from the DOT, five were from DOC and the Forest Practices Board, DOH, and HCA had one regulation each.

As with the RCW's, the relevant WAC regulations selected for this project were read and assigned to one or more of the ten available categories. The most populous category was *Natural Resources*, which contained twenty-seven of the forty regulations. The regulations addressing natural resources came from two agencies, the DOE and DOC. The second most populous category was Transportation, with seven of the forty relevant WAC's. All but one of the

²⁶ (1) Notwithstanding the provisions of WAC [173-150-080](#), should the senior and junior water right holders reach a voluntary agreement which satisfies the concerns stated in the notification of impairment, the department, if it determines that the public interest is fully protected thereby, shall not regulate the withdrawals by the junior water right holder under this regulation.

regulations within the Transportation category are associated with DOT²⁷. The third most populous category was Land Use, with five regulations from DOE and DOC. The *Utilities* category contained one regulation from DOH. *Housing, Capital Facilities, Rural Development, Economic Development, Parks and Recreation,* and *Ports* contained no regulations.

The regulations contained within the *Natural Resources* category pertain to a wide variety of subjects, from water resource inventory to toxics control and dangerous waste management. Eight regulations within *Natural Resources* involved water²⁸, consisting of instream flows, shoreline management, and groundwater. Four regulations within *Natural Resources* involved wetland banks²⁹ and six regulations involved model toxics control and dangerous waste management³⁰. A total of eight regulations from *Natural Resources* involved special protection designations for environmental areas, environmentally sensitive areas and critical areas designations³¹. One regulation within *Natural Resources* pertained to the master program provision³².

²⁷ WAC 182-546-5200 Department of Health-Nonemergency transportation broker and provider requirements

²⁸ WAC 173-100-050, WAC 173-100-090, WAC 173-157-200, WAC 173-204-415, WAC 173-501-030, WAC 173-532-055, WAC 173-500-080, WAC 173-150-090

²⁹ WAC 173-700-100, WAC 173-700-102, WAC 173-700-220, WAC 173-700-222

³⁰ WAC 173-303-902, WAC 173-340-600, WAC 173-340-360, WAC 173-340-720, WAC 173-183-230, WAC 173-360A-0130

³¹ WAC 173-26-251, WAC 173-200-090, WAC 173-270-040, WAC 173-360-530, WAC 365-190-040, WAC 365-190-060, WAC 365-190-080, WAC 365-190-130

³² WAC 173-26-221

Table 3: Relevant WAC regulations organized by main planning subjects addressed within the language. Highlighted WAC's include GMA regulations (WAC365-196), critical areas (365-190), and Shoreline Master Programs (173-26).

REGULATIONS	Land use	Natural Resources	Housing	Capital Facilities	Utilities	Rural Development	Transportation	Economic Development	Parks and Rec	Ports
WAC 197-11-408	X									
WAC 173-26-201	X									
WAC 173-26-110	X									
WAC 173-270-030	X									
WAC 173-26-221		X								
WAC 173-26-251		X								
WAC 173-100-050		X								
WAC 173-100-090		X								
WAC 173-150-090		X								
WAC 173-157-200		X								
WAC 173-183-230		X								
WAC 173-200-090		X								
WAC 173-204-415		X								
WAC 173-270-040		X								
WAC 173-303-902		X								
WAC 173-340-600		X								
WAC 173-340-360		X								
WAC 173-340-720		X								
WAC 173-360A-0130		X								
WAC 173-360-530		X								
WAC 173-500-080		X								
WAC 173-501-030		X								
WAC 173-532-055		X								
WAC 173-700-100		X								
WAC 173-700-102		X								
WAC 173-700-220		X								
WAC 173-700-222		X								
WAC 182-546-5200							X			
WAC 222-20-120		X								
WAC 246-290-100					X					
WAC 365-190-040		X								
WAC 365-190-060		X								
WAC 365-196-450	X									
WAC 365-190-080		X								
WAC 365-190-130		X								
WAC 468-12-510							X			
WAC 468-63-050							X			
WAC 468-63-040							X			
WAC 468-63-060							X			
WAC 468-86-050							X			
WAC 468-86-090							X			
	5	28	0	0	1	0	7	0	0	0
TOTAL: 41										

The subjects of regulations within the *Land Use* category consist of SEPA public and tribal comment rules³³, master program regulations³⁴, best management practices for WSDOT stormwater runoff³⁵ and one regulation regarding historic preservation³⁶. For regulations under the *Transportation* category, subjects included regional transportation plans and Regional Transportation Planning Organizations (RTPO's)³⁷, community trip reduction programs³⁸, one regulation regarding public notice procedures and determinations of non-significance within

³³ WAC 197-11-408

³⁴ WAC 173-26-201, WAC 173-26-110

³⁵ WAC 173-270-030

³⁶ WAC 365-196-450

³⁷ WAC 468-86-050, WAC 468-86-090

³⁸ WAC 468-63-060, WAC 468-63-050, WAC 468-63-040

environmental impact assessments³⁹, and one regulation regarding non-emergency transportation⁴⁰. Under the *Utilities* category, one regulation pertained to water system plans⁴¹.

The highlighted regulations are GMA and GMA related regulations. WAC's 173-26, sections 110, 201, 221, and 251 involved shoreline master plan programs and master plan development. The language within the WAC's indicates that shoreline mater plan programs are considered a section of the GMA's comprehensive planning, and it is appropriate to identify them as GMA regulations. WAC 365-196-450 is under the Department of Commerce and involved the identification of cultural properties of Indian tribes within counties. WAC 365-190-080 is also under the Department of Commerce and administers rules for critical areas. In total, there are six regulations attributed to the GMA.

An examination of the language of the forty regulations identified for this project delivered similar results as those with the RCW's, with most regulations containing mandatory language. Of the forty regulations, twenty-nine contained mandatory language while twelve regulations contained non-mandatory language. One regulation, WAC 173-26-201, was extensive and comprehensive in addressing the preparation of Shoreline Master Programs. WAC 173-26-201 contained both mandatory and non-mandatory language, as well as references to *Public Participation, Consultation, Giving Notice and Collaborative Participation* regarding Indian tribal governments. As well, WAC 173-26-221 mentions multiple modes of interaction between counties, local governments, and Indian tribal governments. The modes of interaction within WAC 173-26-221 are consultation and giving notice.

Table 4: Relevant WAC regulations organized by language type and mode of communication contained within said regulation. The first two columns indicate if language within a Regulation referencing tribal participation is mandatory or non-mandatory. Highlighted

³⁹ WAC 468-12-510

⁴⁰ WAC 246-290-100

⁴¹ WAC 182-546-5200

regulations directly are attributed to the GMA.

Regulations	mandatory language?		Mode of communication/interaction					Other
	yes	no	Public participation	Invitation	given notice	Consultation	Collaboration/cooperative participation	
WAC 197-11-408	X						X	
WAC 173-26-201	X	X	X		X	X	X	
WAC 173-26-110	X		X					
WAC 173-270-030		X					X	
WAC 173-26-221	X				X	X	X	
WAC 173-26-251	X					X		
WAC 173-100-050	X		X					
WAC 173-100-090	X						X	
WAC 173-150-090		X					X	
WAC 173-157-200	X					X		
WAC 173-183-230		X					X	
WAC 173-200-090	X		X				X	
WAC 173-204-415	X					X		
WAC 173-270-040	X						X	
WAC 173-303-902	X						X	
WAC 173-340-600		X	X					
WAC 173-340-360	X		X					
WAC 173-340-720	X				X			
WAC 173-360A-0130	X		X					
WAC 173-360-530	X		X					
WAC 173-500-080		X					X	
WAC 173-501-030	X					X		
WAC 173-532-055	X		X					
WAC 173-700-100		X					X	
WAC 173-700-102	X							X
WAC 173-700-220	X			X				
WAC 173-700-222	X					X		
WAC 182-546-5200	X							X
WAC 222-20-120	X				X		X	
WAC 246-290-100	X				X			
WAC 365-190-040	X		X					
WAC 365-190-060		X					X	
WAC 365-196-450		X					X	
WAC 365-190-080		X					X	
WAC 365-190-130		X						X
WAC 468-12-510	X				X			
WAC 468-63-050	X			X				
WAC 468-63-040	X			X				
WAC 468-63-060	X			X				
WAC 468-86-050		X					X	
WAC 468-86-090		X					X	
Total: 41	29	12	10	4	6	7	18	3

Because two regulations inhabit multiple interaction categories, the total count for the distribution of regulations by interaction categories is more than the established forty total regulations. *Public participation* contained ten regulations with eight representing mandatory provisions, one non-mandatory and one regulation containing both mandatory and non-mandatory language. *Consultation* contained seven regulations total with six containing mandatory language and one containing both mandatory and non-mandatory language. *Invitation* contained four regulations with all containing mandatory language. The category of *Given Notice* contained six total regulations with five containing mandatory language and one containing both mandatory and non-mandatory language. *Collaboration/Cooperative Participation* was the most populous single category with eighteen regulations, eleven of which contained mandatory

language and one containing both mandatory and non-mandatory language. The category, *Other*, contained three regulations with mandatory language.

The *Other* category contains three regulations, WAC 365-190-130, WAC 182-546-5200 and WAC 173-700-102. WAC 365-190-130^{vi} pertains to fish and wildlife habitat conservation areas, where counties must consider areas where tribes plant game fish and do not specify which modes of communication the term “consider” encompasses. WAC 182-546-5200^{vii} addresses non-emergency transportation contracts which must be negotiated in good faith with Indian tribal governments. WAC 173-700-102^{viii} address tribal wetland banks, stating that tribal banks partially or totally located outside Indian country are subject to state and county regulations.

Half of the GMA regulations contained mandatory language with one containing both mandatory and non-mandatory language. Non-mandatory language for five of the six GMA regulations was attributed to the collaborative/cooperative participation modes. WAC 173-26-201 contained both mandatory language and multiple modes of participation. Assessing the language of the regulation to attribute mandatory or non-mandatory language to the modes of participation showed that mandatory language was used for both public participation and giving notice to an Indian tribe, with the non-mandatory language being attributed to consultation and collaboration.

Policies

For the purposes of this project, policies were identified from the relevant executive and non-executive agencies by contacting the appropriate tribal liaisons or planning department. Tribal liaisons and planners were asked to provide any existing policies that may provide counties with guidance on GMA planning and tribal cooperation. Policies were identified

verbally over phone conversations and online from agency websites upon recommendations from tribal liaisons or planners. Conversations with state agency staff yielded common themes in the views held by agencies regarding counties and tribal interactions. Reoccurring themes were the independence of local governments in GMA planning, a lack of state agency authority to direct counties regarding the incorporation of tribal interests in planning, and that the sovereign status of Indian tribes limited the state's ability in guiding local government-tribal cooperation. Most conversation reverted to areas where agencies felt they had authority regarding coordination with Indian tribes, citing the Centennial Accord and the responsibilities of executive agencies in fostering intergovernmental cooperation with tribes. Agencies contacted for this project included the Department of Ecology, Department of Commerce, Department of Agriculture, Department of Health, Department of Social and Health Services, Department of Transportation, Department of Fish and Wildlife, Utilities and Transportation Commission, Department of Archeology and Historic Preservation, Puget Sound Partnership and the Recreation and Conservation Office.

The Department of Ecology (DOE)⁴² was the first agency contacted for this project due to the abundance of regulations present. The DOE provides no general guidance to counties through written policies. However, it was mentioned that an understanding exists, communicated verbally among DOE planners, to encourage local governments to coordinate with Indian tribes when developing shoreline plans. The encouragement is verbally promulgated through planners.

The Department of Natural Resources' (DNR)⁴³ guidance to counties regarding planning with tribal governments is primarily contained within the agency's SEPA regulations. SEPA applications to DNR will not be approved without comment and review from Indian tribes,

⁴² Contact: Tom Laurie, Senior Advisor for Tribal and Environmental Affairs

⁴³ Joenne McGerr, Director of Tribal Relations

particularly if a proposed project may affect tribal land or resources. Tribes may join Forest Practice Review Boards when there is an area of common interests but is not mandatory for counties to include, nor extend invitations to Indian tribes. However, tribes are notified by DNR when they have interests in areas being discussed by planners within DNR. Ultimately, DNR does not provide official policies for guidance to counties because they do not believe they have the authority to tell counties what to do.

The Department of Commerce⁴⁴ provides a booklet to counties and local governments to provide guidance and assist them with tribal interactions. The booklet on tribal interactions is available to counties and local governments, free of charge and available online at the Department of Commerce's website⁴⁵. The Department of Commerce also provides counties and local municipalities with short courses on local planning. The short courses are three-hour workshops providing insight on issues involving GMA planning, Indian tribes, and local governments. The local planning short course is open to the public, free of charge.

The Department of Agriculture (WSDA)⁴⁶ indicated that there are no specific policies established by WSDA to provide counties or local governments guidance on tribal interactions. Most information and guidance to local governments from WSDA is provided through SEPA regulations. Critical areas planning was used as an example by the two policy advisors, stating that no critical areas designations and planning are complete until tribes have commented. A voluntary stewardship program from WSDA exists which requires the twenty-seven participating counties to engage with Indian tribes when planning. The voluntary stewardship program

⁴⁴ Cheryl Smith, Senior Policy Advisor

⁴⁵ <https://www.commerce.wa.gov/serving-communities/growth-management/short-course/>

⁴⁶ Evan Sheffels, Senior Policy Analyst; Kelly McClain, Policy Advisor to the Director

involves environmental conservation management and agricultural practices. Another program mentioned during the conversation was the Dairy Nutrient Management Plan (RCW 90.64). According to WSDA, part of the law facilitates coordination between county ecology offices and tribal governments over nutrient pollution from dairy farms. It was also mentioned that the law facilitates coordination on pollution reports, where counties send water quality reports to tribal governments. However, attempts to verify these statements through review of RCW 90.64 yielded no mention of Indian tribes or language from within the law's subsections requiring or encouraging counties to coordinate with tribes in the management of water quality and dairy farm pollution. This report does not infer that WSDNR is incorrect in their statement regarding RCW 90.64 and tribal and county coordination but may indicate a lack of clear language indicating a coordinated effort between counties and tribes in the management of dairy pollution.

The Department of Health⁴⁷ does not currently contain any official policies regarding guidance to counties on tribal interactions. The Department of Health believes there is a lack of authority to give guidance to local health jurisdictions or counties. The Department of Social and Health Services representatives, Tim Collins (Senior Director of the Office of Indian Policy) and Leah Muasau (Tribal Contracts Coordinator), also indicated that there were no specific policies to provide counties or local governments with guidance on tribal interactions. The Puget Sound Partnership indicated that no policies or regulations exist regarding guidance to counties regarding tribal interactions. Other agencies which did not have policies included the Recreation and Conservation Office and the Puget Sound Partnership. Currently, there are no official Department of Fish and Wildlife (WDFW) policies to guide counties on interactions with Indian

⁴⁷ Tribal Relations Director Tamara Fulwyler was the point of contact

tribes but Senior Tribal Policy Advisor James Woods described WDFW as developing agency policies on communication with tribes.

The Department of Archaeology and Historic Preservation (DAHP)⁴⁸ cited the agency's provision of tribal consultation information through their website for counties or individuals to access⁴⁹. The website provides information on tribal consultation through a guidebook (though the page could not be found), information on section 106⁵⁰ of the National Historic Preservation Act, and the National Association of Tribal Historic Preservation Officers (NATHPO) best practices pdf. These documents provide information on forming agreements with tribes, with several tribes listing their own preferred consultation methods on the DAHP website.

The Department of Transportation (WSDOT)⁵¹ referred to WSDOT's website on tribal information⁵² and the information provided by the department to counties and local governments. The policies for WSDOT regarding county and tribal interactions related to Regional Transportation Planning Organizations (RTPO) and Metropolitan Planning Organizations (MPO). WSDOT encourages local governments and organizations, counties and Indian tribes to coordinate through local funding opportunities. As well, WSDOT recommends that tribes, RTPOs and MPOs, and county lead agencies to work cooperatively because funds for the State Transportation Improvement Project (STIP) are primarily distributed through RTPOs. The WSDOT website provides information on Tribal Transportation Planning Organizations

⁴⁸ Director, Allyson Brooks

⁴⁹ <https://dahp.wa.gov/archaeology/tribal-consultation-information>

⁵⁰ Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment. In addition, Federal agencies are required to consult on the Section 106 process with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), Indian Tribes (to include Alaska Natives) [Tribes], and Native Hawaiian Organizations (NHO). (National Park Service American Indian Liason Office, 2012)

⁵¹ Government Relations Tribal Liaison, Megan Cotton

⁵² <http://wsdot.wa.gov/tribal/default.htm>

(TTPO)⁵³, which encourage the formation of cooperative relationships with regional and local governments and non-governmental entities to better obtain funding for transportation projects.

Discussion Section

This project's identification of state laws, regulations and agency policies is a comprehensive list demonstrating the extent of statutory and regulatory language relating to tribal involvement in comprehensive planning within the county space. This list is an accumulation of relevant laws and regulations which directly reference Indian tribes in a participatory capacity regarding comprehensive planning. This list does not attempt to compile every law or regulations which may potentially affect Indian tribes. The interpretation of mandatory and non-mandatory language within the context of this project is grounded in publications on statutory interpretations in Washington State and *Webster's Third New International Dictionary of the English Language* outlined in this project's method section. This discussion section will assess the findings of this project by first discussing the relevant elements of the data, key findings, and discuss the context. This section will then assess the adequacy of Washington State's GMA planning guidance provided to local governments in relation to the eight guiding principles chosen for this project, and provide possible solutions identified through the literature.

Policies

The discussion of policies with agency representatives highlighted a lack of authority on the part of agencies to form policies that could help guide local governments when planning with Indian tribes. Agency representatives consistently communicated the lack of authority to tell

⁵³ <http://wsdot.wa.gov/planning/Tribal/default.htm>

counties when, where, and how to plan with Indian tribes. Conversations followed a similar pattern of stating a lack of authority and leading the discussion to existing NEPA and SEPA regulations and the need for tribal comment before the assessments can be approved. The number of regulations for any one agency was not related to the number of policies held by the agency. The WSDOE is associated with many more regulations than other agencies in this project but has no official policies to help guide local governments when planning with Indian tribes.

Both the Department of Commerce and Department of Transportation have official policies to help guide counties in planning with Indian tribes. The Department of Commerce's short course includes planning with Indian tribes but must be requested by local governments and Indian tribes. The Regional Transportation Planning Organizations (RTPOs), consisting of regional and local governments, and Tribal Transportation Planning Organizations (TTPOs) are encouraged to work together by the WSDOT when requesting funding and planning regional transportation projects. The WSDOT requires partnerships between tribal planning organizations and non-tribal planning organizations in some cases due to funding limitations and the ability to allocate those funds ("Tribal Liaison | WSDOT," 2019). WSDOT also encourages local funding sources for tribal projects through coordinating and working with counties, local municipalities, and local organizations (2019). Additionally, WSDOT makes recommendations for TTPOs, RTPO's and county lead agencies to work cooperatively since state transportation improvement project (STIP) lead agencies are RTPO's.

While the Department of Commerce's short course on planning deals directly with comprehensive planning under the GMA, the RTPO and TTPO policies from the WSDOT deal with transportation planning outside of the GMA. The policies provided by the Department of Commerce and WSDOT are not mandatory and simply encourage cooperation, provide services

to local governments willing to learn about cooperative planning with Indian tribes, and provide solutions to issues recognized by the agencies. Despite being non-mandatory, the RTPO policies from the WSDOT demonstrate innovative methods for including tribal governments in regional planning without any formal legislative mechanisms for accomplishing coordination with Indian tribes.

State agencies have the jurisdiction to form regulations given authority from laws passed by the legislature and signed by the Governor. All agency policy and guidelines that are of general applicability are subject to a review by the Joint Administrative Rules Review Committee (34 RCW § 05.630), but the agencies are able to adopt rules, procedure, and policies that fall within the given authorities of each agency. Following the procedures for the public participation and implementation of rules outlined in chapter 34.05 RCW, agencies have the authority to create rules and policies within their jurisdiction (34 RCW§ 05.020). The authority granted to agencies for the enforcement of laws and the creation of policies and procedures does not give agencies the authority to mandate county engagement with Indian tribes, but agencies can provide counties with guidance regarding planning best practices for cooperating with tribal governments.

These best practices are the principles making up the Accords and are discussed in the planning literature, such as open and free communication, well defined government-to-government communication structures, conflict resolution procedures, and recognizing the sovereignty of both tribal and non-tribal governments. The lack of guiding policies exhibited by the agencies included in this project may result from feelings that such policies would be stepping beyond agency authority and telling counties how to plan, resulting in conflicts or litigation.

The practices and principles within the Accords are known to be effective because they are the product of direct discussions with Washington's Indian tribes and the culmination of knowledge from decades of litigation and conflict. The principles of the Accords that agencies follow could be provided to counties and local governments in the presence of limited legislative structure regarding cooperative planning with Indian tribes. Much like the Department of Commerce and WSDOT's innovative programs that provide guidance to local governments willing to learn, other agencies could have policies in place to address the pertinent issues at the behest of local governments. An example could be the issue of water quality, pesticides from agricultural runoff, and protecting salmon. The WSDOE could provide training to agricultural producers and local governments regarding best practices for working with tribes to address issues of water quality, improve interjurisdictional cooperation, and reduce conflict. The best practices from the Accords and within the literature could serve as the template to developing policies to help local governments plan with Indian tribes at their discretion. Many of the principles and best practices have already been formalized besides the Accords and between the state government, tribal governments, and local governments. Every year tribal representatives and state fishing representatives cooperate in negotiating salmon harvests. As well, many local governments have agreements, MOUs and IGAs, with neighboring Indian tribes to formalize communication, cooperation, and improve relations.

The Accords have already been proven to work and are incorporate best practices agreed upon by tribes for improving relations and appropriately communicating. Agencies could also follow the example of WSDOT and make provisions for receiving funding, particularly on regional projects with an interjurisdictional focus. The lack of authority described by agencies presents difficulty in the formation of policies regarding local planning with Indian tribes.

However, agencies may avoid overstepping their authority and risking conflict with local governments by assessing the issues and providing solutions at the request of local governments and making the information available.

Laws and Regulations

RCW

There are thousands of laws within the RCW and a query for the word “tribe” or “Indian” on the Washington State Legislature website produces over 450 results, with various combinations of words relating to Indian tribes providing results of several hundred. There are hundreds of state laws relating to Indian tribes and the thirty-four laws identified for this project represent the extent of legislation addressing various comprehensive planning elements and cooperative planning with county and local jurisdictions. Of the thirty-four planning laws regarding Indian tribes and counties, four derive from GMA laws⁵⁴.

The distribution of the thirty-four laws identified from the Revised Code of Washington (RCW) is primarily within two categories, land use, and natural resources. Fourteen of the laws constituting the natural resource category addressed water resources and salmon. The fourteen laws address issues such as minimum instream flow levels, salmon habitat restoration, salmon recovery plans, ecosystem management boards, and watershed management plans. Watershed management and salmon restoration are two issues that characterize many of the conflicts between state, counties, local governments, and tribes. Since Washington State Indian tribes successfully asserted their treaty rights in federal courts in the nineteen seventies with the Boldt

⁵⁴ RCW 36.70A.210: County wide planning policies
RCW 36.70A.035: Public participation-Notice provisions
RCW 36.70A.745: Statewide advisory committee-Membership
RCW 36.70A.715: Funding by commission-County’s duties-Watershed group establishment

Decision⁵⁵, a great deal of litigation over salmon and salmon habitats occurred between Indian tribes, state, counties and local governments. After the second phase of the Bold Decision,⁵⁶ strategies were developed by organizations, such as the Northwest Water Resource Committee, to start negotiations aimed at resolving issues pertaining to natural resources and natural resource policy (Zaferatos, 2015). These events facilitated the formation of the Northwest Renewable Resource Center (NRRC) in 1987, aiming to address deadlocks over natural resource policies through cooperative mediation (2015). In recent years, court decisions such as the Hirst Decision⁵⁷, *Swinomish Indian Tribe v. DOE*, and the Culvert Case⁵⁸ regarded tribal treaty rights off the reservation as important considerations and put pressure on the state and counties to further protect salmon and their habitats.

With tribal treaty rights recognized as important considerations for planning off Indian reservations and within county spaces through important natural resource cases and state government actions to incorporate treaty rights, the abundance of land use and natural resource laws is given context. The success of a communicative approach to negotiating issues and the cross-cultural membership of the NRRC helped facilitate broader public policy responses for tribal participation (Zaferatos, 2015). Interjurisdictional cooperation successes at the local level, such as the Tribes and Counties: intergovernmental Cooperation Project⁵⁹, further demonstrates

⁵⁵ *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975); U.S. District Court for Washington and Ninth Circuit Court of Appeals Decision by Judge George Hugo Boldt upholding tribal treaty fishing rights and detailing a 50/50 split of harvestable salmon between Washington State Tribes and non-tribal fisherman.

⁵⁶ Phase II of the Bold Decision, Decided by District Judge William H. Orrick, Jr., agreed with tribes that treaty fishing rights would be meaningless if salmon habitats were degraded. In 1987 the courts ruled that salmon habitats must not be degraded to the point that to an extent which would deprive the tribes of moderate living needs.

⁵⁶ RCW 36.70A.210, RCW 36.70A.035, RCW 36.70A.745, RCW 36.70A.715

⁵⁷ *Whatcom County v. Hirst, Futerwise, et al.*, 186 Wn.2d 648 (2016)

⁵⁸ *Washington v. United States* 138 S. Ct. 1832 (2018)

⁵⁹ 1990-1996- assisted tribal, county, and regional governments in forming cooperative processes for the resolution of issues involving environmental issues and many others (Zaferatos, 2015)

the importance for legislative structures for cooperative participation between counties, local governments, and Indian tribes.

The disparity between the number of laws which address Indian tribes and the number of those laws addressing planning issues is an important point of this project. A small fraction of planning laws in Washington state address the interests of Indian tribes and incorporating those interests through cooperative planning methods, with only four laws being attributed to the GMA. The narrow focus and a limited number of planning laws determine where regulations will be focused and restrict where agencies can guide counties on incorporating tribal interests. This is represented, in part, by the lack of agency policies regarding cooperative planning between local and tribal governments. At present, only three agencies have such policies and in a limited capacity.

Analysis of RCWs Language

Twenty-one laws were attributed to *collaboration/cooperative participation*, more than all other communication modes combined, but nearly half of all laws exhibited non-mandatory language. Of the eleven total laws with non-mandatory language, nine were associated with the *collaboration/cooperative participation* modes. As discussed in the literature review section of this project, consultation and cooperative planning are the more appropriate forms of inclusion within the planning process, most equitably providing representation of citizen or participant interests. The attempts to incorporate effective and inclusionary participation into growth management planning elements, represented by a high proportion of laws pertaining to collaborative and cooperative participation, is depreciated by a lack of mandatory language which leaves decisions at the discretion of counties and local governments.

Some of the laws exhibiting mandatory language exhibited broad terminology or vague statements regarding tribal participation in off-reservation planning efforts. One example of such a law is RCW 90.54.010⁶⁰, stating that adequate opportunity for participation from Indian tribes must be made for comprehensive water resource planning. The use of the word “adequate” and the ambiguousness of its use within the context of the law could be a source of confusion or dispute among local governments and tribes. The wording of the law provides opportunities for broad interpretation by counties and local governments in determining what actions are considered adequate for providing opportunities for Indian tribes to participate in comprehensive water planning.

The vague wording in the law raises several questions; what equates to “adequate opportunity” to satisfy RCW 90.54.010? How has the state defined “adequate opportunity”? Have they defined adequate opportunity? It appears that the adequacy of opportunity for participation by Indian tribes is determined by the counties and local governments planning water resources. Without direct consultation with each sovereign tribe for proper means of communication, counties and local governments would likely have differing interpretations of RCW 90.54.010.

The GMA laws showed a similar proportion of mandatory and non-mandatory language as the associated planning laws, with most laws containing mandatory language. The GMA laws also primarily addressed collaborative modes of participation with Indian tribes. GMA law RCW

⁶⁰ RCW 90.54.010-(d) Comprehensive water resource planning must provide interested parties adequate opportunity to participate. Water resource issues are best addressed through cooperation and coordination among the state, Indian tribes, local governments, and interested parties

36. 70A.035⁶¹ exhibited mandatory language for both public participation and giving notice to Indian tribes. This law exhibited language outlining the process for giving notice to various organizations, people, and groups for public participation in the context of GMA planning (RCW chapter 36.70A). No other laws constituted multiple columns for the mode of communication. The law places Indian tribes alongside private landowners and individual citizens regarding methods for participation and being notified. For sovereign nations, this does not provide appropriate methods of communication and consultation which are outlined in the Accords. The GMA laws demonstrate a commitment to more collaborative modes of participation between tribal governments but are only four laws.

The lack of GMA representation in this project's identified laws demonstrates an extreme lack of directive legislation under the GMA for counties and other local governments when working with tribal governments. Counties and other local governments are only required to work with tribes in a collaborative manner under two circumstances, those instances being the participation on the statewide advisory committee with only two tribal representatives and conferring with tribes on the formation of a watershed group.

WAC

As with the RCW, search results on the Washington State Legislature website for the term "tribe" and limited to the WAC produce four-hundred and thirty results. A search using the term "Indian" produces more than nine-hundred and fifty results. Of the more than nine hundred and fifty regulations pertaining to Indian tribes, the total number of regulations addressing

⁶¹ RCW 36. 70A.035: **Public Participation-Notice Provisions** (1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes...

This law highlights the public participation and notice provisions for growth management planning under chapter 36. 70A: Growth Management-Planning by Selected Counties.

interjurisdictional planning is represented by the forty regulations included in this project. Nearly all the regulations were contained in three categories associated with growth management planning elements, including land use, Natural Resources, and Transportation.

Of the small fraction of planning regulations concerning tribal and local governments working together, only six were attributed to the GMA. It is important to note that no regulations under the Department of Commerce's GMA section for interjurisdictional coordination⁶² mentioned tribal governments. As mentioned earlier in this project's introduction, the GMA's interjurisdictional coordination goal is one of thirteen primary goals to be achieved through comprehensive planning. Although there is no language excluding tribal governments from participating in the regional coordination of comprehensive plans, there is no clear and precise language to provide adequate communication methods or dictate the capacity with which counties should involve tribal governments. Leaving the participation of Indian tribes to the digression of counties can prevent participation from Indian tribes because of the conflictive history, tribes viewing county attempts at cooperation as disingenuous (Pommersheim, 1991), and the lack of a structured and effective communication process as outlined by the Accords.

As with the Natural Resource category in the RCW evaluation, fourteen regulations from the WAC pertain to water-related resources and anadromous fish habitats. One of these regulations is particularly relevant to the aforementioned Hirst Decision and *Swinomish Indian Tribe v. DOE* confrontations, WAC 173-501-030⁶³ (establishment of instream flows). The establishment of instream flows, particularly in Western Washington, is a source of considerable

⁶² WAC 365-196 sections 500 through 580 are under the GMA section entitled "Consistency and Coordination".

⁶³ The regulation addresses the establishment of instream flows for streams. The regulation requires consultation with affected state and federal agencies and Indian tribes when studies must determine stream reach and project-specific flow requirements. (Wash. Admin. Code § 173-501-030(5))

confrontation between state governments and Indian tribes. With the supportive legislation, senior tribal water rights and Washington's history of water-related planning, it is understandable that water-related regulations would be a prominent feature in comprehensive planning regulations.

The greatest number of WACs were attributed to the Department of Ecology, with twenty-seven regulations under WAC sections 197⁶⁴ and 173⁶⁵. The five regulations attributed to the Department of Commerce all pertain to natural resource and land use. The limited number of Commerce regulations was a surprise considering the department is one of the main administrators of comprehensive planning under the GMA and was anticipated to provide a significant number of the regulations identified for this project. The agencies exhibiting regulations and the subject of those regulations can be directly tied to the distribution of laws in the RCW, which provide the authority for the regulations. However, the regulations in the WAC address a wider scope of issues than the laws under the RCW by addressing services involved in tribal and local government coordination, such as Regional Transportation Planning Organizations (RTPO's), community trip reduction programs, and water system plans.

The limited number of regulations and comprehensive planning elements addressed in the regulations does not represent the full interests of tribes. One such interest is the maintenance, operation, and expansion of utilities on and off the reservation. Indian reservations are often a patchwork of non-Indian fee simple land where counties have established their jurisdiction by extending utilities on the reservation to the non-Indian residents. Reservation utilities, such as water, may be connected to county or municipal lines or mains that require coordination and

⁶⁴ Department of Ecology (Council on Environmental Policy)- SEPA rules

⁶⁵ Department of Ecology

cooperation. However, no such regulations are present. This may be due to a reliance on MOU's and intergovernmental agreements existing between local and tribal governments regarding utilities⁶⁶.

Assessing Language of WACs

The language of the WAC regulations exhibits a similar distribution to the RCW laws regarding mandatory and non-mandatory language. Twenty-nine of the regulations exhibit mandatory language and twelve regulations exhibit non-mandatory language. Eleven of the regulations exhibiting non-mandatory language were attributed to the *collaboration/cooperative participation* mode, over eighty-four percent. A total of eighteen regulations were attributed to the *collaboration/cooperative participation* mode, more than any other category. As mentioned in the previous section regarding RCWs, the high number of regulations facilitating more cooperative an appropriate modes of interaction are diminished by significant numbers of regulations with non-mandatory language. *Public Participation, Consultation, Invitation*, and the *Given Notice* columns almost entirely exhibit mandatory language, with the exception of WAC 173-340-600⁶⁷ and WAC 173-26-201⁶⁸. The disparity in mandatory language among the various modes of interaction demonstrate a willingness to promote and guide local governments in less inclusionary modes but do not demonstrate a willingness to commit to successful modes of inclusion highlighted in the Accords.

⁶⁶ Cowlitz Tribe and Clark County (24 May 2016: PUD service for Casino)
Confederated Tribes of Chehaliz and Thurston County (3 March 2016: utility service on the Reservation)
Tulalip Tribe, Stillaguamish Tribe, and Sauk Suiattle Tribe (tribal element in Skagit County comprehensive plan)

⁶⁷ Chapter 173-340- Model Toxics Control Act, Section 600- public notice participation.

⁶⁸ Chapter 173-26-State Master Program Approval/Amendment Procedures, Section 201- process to prepare or amend shoreline master programs.

Some of the regulations contain broad language and facilitate several forms of participation. One such regulation, WAC 173-26-201⁶⁹, contained both mandatory and non-mandatory language, as well as *public participation*, *consultation*, *given notice* and *collaborative participation* modes. The regulation is broad and robust in the content covered and the language used regarding local governments and tribes in the establishment of shoreline master programs. The regulation encourages participation and information sharing between local governments and Indian tribes in some instances but mandating the notification of Indian tribes in other instances. WAC 173-26-221 is another regulation which contains multiple forms of participation from Indian tribes, including *consultation*, *given notice*, and *collaborative participation* regarding archeology and saltwater habitat protection.

Other regulations contain vague language regarding the participation of tribal governments, making interpretation more difficult. GMA regulation WAC 365-190-060⁷⁰ never mentions Indian tribes but states that: “Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions”. This language indicates that any adjacent jurisdictions with cities can be coordinated with and are encouraged to do so, implying that tribal governments are included in such designations since the regulation did not use the term “local jurisdictions”, as other regulations have⁷¹, as a means of excluding tribal governments. Another such regulation is WAC 468-12-510, which does not mention Indian tribes directly but states that counties and cities may consider existing water rights when

⁶⁹ WAC 173-26-201-Process to prepare and amend shoreline master programs

⁷⁰ WAC 365-190-Minimum Guidelines to Classify Agricultural, Forest, Mineral Lands and Critical Areas, Section 060-Forest resource lands

⁷¹ The use of the word “local” throughout the WAC regulations is used to specify which governments are referred to and which are excluded. One example is from WAC 365-130-020-Definitions, (1) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation created by such an entity.

designating areas as fish and wildlife habitat conservation areas. Although the regulation does not mention Indian tribes specifically, the mention of existing water rights undoubtedly will involve Indian tribes in Washington State in some capacity.

The GMA regulations also show a lack of commitment to more collaborative modes of participation with Indian tribes. A pertinent example of this lack of commitment is WAC 173-26-201, where public participation and giving notice are attributed to mandatory language but collaboration and consultation elements of the regulation are associated with non-mandatory language. Within the language of the regulations, any attempts to facilitate more collaborative participation between local governments and Indian tribes is hindered by a severe lack of commitment to mandatory language that would abate the discretion of local governments when reaching out to tribes and provide more incentive for tribes to participate. Agencies lack the legislative authority to establish regulations directing local governments with more appropriate and cooperative modes of planning with tribal governments. The practices and principles understood to be most successful for interacting with tribal governments, such as those exhibited by the Accords, are not supported by the regulations.

MOUs and Intergovernmental Agreements

The use of vague and non-mandatory language in many of the more participatory laws and a commitment to less appropriate measures for Indian tribes to have their voices heard makes the legislation hollow and ineffective. With court case decisions (*Swinomish Tribe v. DOE*, *Boldt*, *Culvert Case*, etc.), previous successes through cooperative mediation, and the potential for tens of millions of dollars in state funds to be diverted to salmon restoration, it seems that the legislature would be more inclined to address the inadequate planning structures in place for incorporating tribal interests and guiding local governments in cooperatively

planning with tribes. Due to laws utilizing vague language, less participatory methods, and providing limited guidance, counties and local municipalities have taken additional steps to adopt cooperative planning methods like those in the Accords.

Successful collaborations on comprehensive planning and interjurisdictional planning have occurred within Western Washington. The presence of MOUs and IGAs between counties, cities, and tribes demonstrate a process utilized by these groups in the absence of laws or regulations providing guidance. With uncertainty in litigation and gaps in the policies and regulations, intergovernmental agreements and MOU's have become a necessity for cooperation between the neighboring governments of tribes, counties, and cities (Johnson, et al, 2009; Getches, 1993). MOUs and IGAs utilize many of the best practices and principles of the Accords and Cooperative Planning Theory, such as the second-tier consultation process and government-to-government relationships. Through intergovernmental agreements, tribes and local governments have managed to work around the limited system of laws and regulations to improve cooperation.

Table 5: Examples of MOUs and IGAs between Washington State Indian Tribes, counties, and cities.

MOUs and IGAs: Natural Resources	Date and subject
Lummi Nation, Whatcom Co., Bellingham & Bellingham PUD	29 October 1998: Watershed Management ESHB 2514
Lummi Nation, Nooksack Tribe, Bellingham, Whatcom Co	14 January 2000: Watershed planning
Port Gamble S'Klallam Tribe & Kitsap Public Health District	21 February 2017: Environmental Health Services
Snoqualmie Tribe, Tulalip Tribes, Cities of Carnation, Duvall North Bend, Snoqualmie & Town of Skykomish	1 July 2015: WRIA 7 Planning
Lummi Nation & Whatcom County	1 May 2017: Wetland Mitigation High Creek
Nooksack Tribe & Whatcom County	23 February 2016: Habitat Restoration and Monitoring
Stillaguamish Tribe & City of Stanwood	1 May 2013: Coordinated Watershed Management
Skokomish Tribe & Mason County PUD No. 1	31 August 2006: Hood Canal Water Quality Protection
Lummi Nation, Nooksack Indian Tribe, Whatcom County City of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack & Sumas & Whatcom County PUD No. 1	14 December 2016: Function of WRIA 1 Management
Nooksack Tribe & Whatcom County	12 August 2015: LIO Ecosystem Recovery Plan

MOUs can serve as useful tools for local governments to form relationships with Indian tribes and adopt similar principles and practices to those in the Accords. However, creating MOUs is difficult with the contentious relationships many local governments and tribes have, and there are no legislative structures guiding local governments in forming MOUs. What the presence of MOUs demonstrate is a desire to improve planning relations between local governments and Indian tribes but lacking the necessary legislative structures to formalize the process and provide agencies the authority to guide local governments in adopting successful principles like those in the Accords.

Assessment of the Implementation of Accord Principles

The eight guiding principles established as the basis for assessing the adequacy of Washington State's public policy under this project were chosen from the Centennial Accord and

Millennium Agreement. The guiding principles address the recurring themes in both documents, as well as established priorities and goals found pertinent by those who participated in the two agreements. Each of the eight principles highlights the most salient elements of the Centennial Accord and Millennium Agreement, as written by the participating tribal governments and executive offices. Some of the eight guiding principles provide additional coverage on a subject mentioned in one or both documents or were overlapping slightly with other guiding principles but were found to be relevant by providing additional context for the purposes of this project. Other guiding principles from the Centennial Accord and Millennium Agreement were excluded from this project's list because they did not provide additional information, establish additional context, or did not pertain to relevant subjects regarding the parameters of this project.

The guiding principles, communication methods, conflict resolution processes, and consultation practices established in the Accords were developed by Washington's Indian tribes and the executive branch because they are recognized as methods for successful intergovernmental communication and cooperation that will ensure a durable, effective working relationship to the benefit of all citizens of Washington State ("Millennium Agreement" 1999). If these principles are such effective and durable facilitators of prosperity and intergovernmental cooperation, it is relevant to compare the methods established in the Accords against those modes facilitated by the laws, regulations, and policies. The relevance of this comparison is reinforced by the preamble of the Centennial Accord which states that "the parties share a desire for a complete Accord between the State of Washington and federally recognized tribes...and will work with all elements of the state and tribal governments to achieve such an accord." ("Centennial Accord" 1989). The following section will assess the adequacy of the institutionalization of the Accords' guiding principles highlighted by the preamble.

Effective modes of communication and cooperation with tribal governments have been established through the Accords and within the academic literature regarding planning with Indian tribes. Regarding successful agreements and cooperation with Indian tribes, Getches highlights free and open communication between parties as the determining factor (1993). Morton touches on tribal sovereignty and the importance of having a separate, face-to-face participation format with tribal governments (Morton, 2012). Structures supporting face-to-face meetings are an important principle in the Accords for supporting the sovereignty of both participating governments. MOUs between tribal and local governments have adopted the face-to-face interactions and open communication pathways as effective methods for cooperation. Many of the regulations and laws rely on public participation that puts Indian tribes on equal ground with citizens, diminishing the sovereignty of tribal governments. The modes of communication and interaction within the Accords were established, in part, to avoid diminishing tribal sovereignty and provide appropriate pathways.

Within the Centennial Accord, successfully forming relationships between governments and addressing issues of mutual concern are dependent on clear and direct communication between appropriate representatives responsible for addressing the issue (1989). The Millennial Agreement acknowledges that communication and cooperation are not guaranteed but forming enduring relationships requires each government to work directly with each other in a government-to-government fashion (1999). The basis of the government-to-government cooperation is a well-defined communication process which includes consultation between the governments, two-way communication and face-to-face meetings, communication between officials of comparable stature and authority, and formalized pathways for conflict resolution (1999).

The regulations, laws, and policies identified for this project address selective areas of mutual concern between Indian tribes and local governments. The laws with the RCW narrowly address issues of natural resources and land use by primarily dealing with water and salmon, areas where tribes have significant power and influence off the reservation. Several of the laws attempt to address additional areas of common interest, such as rural development and utilities, but the limited number of laws present cannot adequately address those other areas of common interest. Exhibiting similar limitations to the RCW's, natural resources represented the majority of WACs with land use and transportation representing a fraction of the regulations.

Taking account of the guiding principle's language to encourage cooperation between tribal and local governments, the language of both the laws and regulations do encourage adequate forms of cooperation through collaborative participation. Many of these regulations and laws are not mandatory but do encourage collaborative participation at significantly higher proportions than less appropriate modes of communication and interaction. However, the implementation of successful communication methods within the regulations and laws is significantly less committed and standardized than the executive agencies implementing the principles of the Accords. If adopting effective methods of interacting with Indian tribes are open to the discretion of local governments, the effectiveness of the interactive methods are diminished. The Accords mandated agencies to utilize the appropriate methods for interacting with Indian tribes because they were established as the most appropriate and effective for reducing conflict.

No standard consultation process is in place for counties, save for a handful of regulations and laws regulating water and salmon. Public participation, invitation and giving notice to Indian tribes are near sited and largely ineffective methods for the representation of

tribal interests within the county space. Less inclusive methods of cooperation that are more concretely established by the language of the laws and regulations often limit dialogue between local governments and Indian tribes to momentary windows near the end of the development of a plan or project process and from the same platform utilized by citizens. Examples of narrow windows of less participatory modes of cooperation can be seen within the public comment sections of SEPA and NEPA. Public participation allows members of the public to have a platform for expressing their views regarding a proposed project or plan but is not an appropriate method of communication for sovereign nations such as the federally recognized Indian tribes in the State of Washington. However, most agencies have policies in place that do not allow the assessments.

Solutions

An important first step for the inclusion of tribal interests into regional planning is to have clear and precise language defining the role of tribal governments and their relationships to other regional governments regarding the GMA's interjurisdictional coordination goal. Tribal governments are able to participate in county-wide planning and there is no language excluding tribal governments from participating in interjurisdictional coordination of comprehensive plans, however, there is no mention of tribal governments or their role within the regulations directing local governments in regional planning⁷². Without clear and precise language that includes tribal governments in the regional comprehensive planning legislation, and utilizes the best practices and principles of the Accords, tribes have few incentives to participate with counties which have a great deal of discretion in how, or if they want to work with tribal governments.

⁷² WAC 365-196 sections 500 through 580 deal with consistency and coordination in GMA planning. Sections 500-580 directly enforce the GMA's eleventh goal. These sections are enforced by the Department of Commerce.

A possible solution to the issue of agency authority would be to institute legislation for broad implementation of the effective collaboration and communication methods established in the Centennial Accord and which are being selectively applied through intergovernmental agreements, Washington's RCW, and the WAC. Legislation providing structured means of government-to-government consultation with Indian tribes regarding planning issues that may affect tribal interests would direct counties through best practices for communicating with Indian tribes. A structured government-to-government consultation mechanism would also provide tribal governments with greater agency in discussions with local governments, as opposed to inadequate public participation methods for sovereign governments. As sovereign governments, tribes have no obligation to take part in discussions with counties or cities. However, legislation administering a minimum set of requirements and expectations for local governments to fulfill the government-to-government consultation with Indian tribes and based on the terms in the Accords may significantly improve relations and beneficial cooperation. A minimum set of requirements and expectations would standardize the consultation process with Indian tribes and reduce inconsistencies present among counties. The Accords ask that agencies and tribal governments make every effort to respond to and participate in the consultation process, allowing both governments to request consultation and ensure that request is adequately responded to (*The Millennium Agreement*, 1999). Consultation under the Accords may be initiated by either government and requires consultation for any issues that may impact or involve tribal governments (1999).

Enacting legislation that would give agencies the authority to form regulations and policies to guide local governments in conflict resolution with tribes may also serve as a beneficial solution derived from the Accords. Conflict resolution guidelines for agencies and

Indian tribes is an important aspect of the Accords and may benefit local governments and Indian tribes when applied to their relationships. Adequately conducting both consultation and conflict resolution in the Accords clearly identifies channels for accomplishing them. Identifying participant in the processes, providing clear descriptions of the nature of the issues, recognizing cultural differences among tribal governments, and utilizing task forces and/or groups to develop recommendations are mechanisms which have proven to be successful (*The Millennium Agreement*, 1999).

The legislature and the executive branch of Washington understand the methods for effective cooperation with Indian tribes but there is a significant disconnect regarding the application of those methods. The future of tribal relations lies with the state, who have selectively instituted effective measures, and with local governments. To establish guidelines for effective interaction modes at the local level, Pommersheim emphasizes the need for specific and precise legislation at the state level to ensure cross-communication (1991). Yearly reports on the status of relationships with tribal governments are already instituted at the executive level and could be incorporated into the laws as an effective method for measuring improvements if open to legislative, executive, and public review (Pommersheim, 1991).

Another legislative solution could provide targeted guidance on the execution and negotiation of IGAs and MOUs. The principles and effective methods exemplified by the centennial accord and within the literature have been adopted by many local governments in Washington State through the formation of intergovernmental agreements, but there is no standardized process for the development of such agreements with tribal governments. Providing guidance through legislation and regulations would help local governments to improve relations

with Indian tribes and could provide a temporary bridge between the future implementation of more comprehensive legislative solutions.

Through decades of litigation and negotiations, the state has already formulated an effective approach to working and planning with tribal governments exemplified by the Centennial Accord and Millennium Agreement. Structured communication, encouraging open and face-to-face communication, providing structures for government-to-government cooperation, established conflict resolution procedures, and less reliance on public participation is understood by the state to be the most effective measures for cooperatively working with tribal governments. However, these measures have not been widely utilized to guide local governments in comprehensive planning.

Conclusion

As entities deserving of more appropriate modes of cooperation and in recognition of their unique status as sovereign governments with established interests and rights to resources which may be impacted by comprehensive planning by local governments, tribal governments should be included in GMA planning using the well-established methods known to the state which have been demonstrated to reduce conflict and improve tribal relations. Appropriate and successful methods for cooperating with tribes and incorporating their interests have been implemented by the state in the executive branch's development of the Accords and by local governments in MOUs and intergovernmental agreements. Because the state has developed successful methods for tribal inclusion through decades of litigation and negotiations, they should provide local governments with the necessary guidance to plan with tribal governments and improve relationships that are still conflictive and lead to costly litigation.

Appropriate and successful modes for interacting with tribal governments, such as collaboration and consultation, are present in both GMA and non-GMA planning laws and regulations. However, the language of the laws and regulations with more successful modes contain a high level of non-mandatory language giving local governments significant discretion. Of the hundreds of GMA planning laws and regulations, this project identified ten pertaining to coordination with tribal governments. The laws and regulations identified by this project do not support effective conflict resolution, nor do the laws and regulations regard Indian tribes as integral governments to be included in regional planning. Many of the opportunities for more inclusive participation may not be sufficient directives to require local governments to accomplish a regional planning process inclusive of direct tribal participation.

New legislation and amendments to the GMA are required to address the inconsistencies present regarding the implementation of tribal interests and successful coordination practices with Indian tribes, such as those implemented by the executive branch through the Centennial Accord and Millennium Agreement. Interjurisdictional coordination and consistent regional planning are primary goals of the GMA, but it remains largely silent regarding tribal interests and coordinating with tribal governments in GMA planning. Agencies do not have the authority to implement regulations or policies to tell counties and other local governments how to plan with tribes, despite agencies having worked with tribes to develop and successfully implement the Accords. New legislation and amendments to the GMA would provide executive agencies with the authority to form regulations which would help guide local governments regarding planning with Indian tribes. To address the inadequacies regarding agency policies, agencies could establish planning best practices which counties and other local governments could utilize when choosing to coordinate with tribal governments in planning.

Even with amendments to the GMA and mandatory language, Indian tribes are sovereign governments with no obligation to participate in GMA and regional coordinated planning. Though beyond the scope of this research, two relevant questions regarding tribal participation in GMA planning are: why should tribes participate in GMA planning when they have no obligation to, and what is in it for tribes to participate in regional planning? Policies like the Centennial Accord and the presence of intergovernmental agreements with local governments demonstrate an interest to participate in planning with local governments on the part of tribal governments, a desire to improve relationships, and better incorporate tribal interests on the part of the state and local governments.

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Endnotes

ⁱ RCW 43.376.050-Meetings with statewide elected officials and tribal leaders—List of contact information.

- (1) At least once a year, the governor and other statewide elected officials must meet with leaders of Indian tribes to address issues of mutual concern.
- (2) The governor must maintain for public reference an updated list of the names and contact information for the individuals designated as tribal liaisons and the names and contact information for tribal leadership as submitted by an Indian tribe.

ⁱⁱ RCW 79A.25.330-Washington invasive species council—Goals.

- (1) Minimize the effects of harmful invasive species on Washington's citizens and ensure the economic and environmental well-being of the state;
- (2) Serve as a forum for identifying and understanding invasive species issues from all perspectives;
- (3) Serve as a forum to facilitate the communication, cooperation, and coordination of local, tribal, state, federal, private, and nongovernmental entities for the prevention, control, and management of nonnative invasive species;
- (4) Serve as an avenue for public outreach and for raising public awareness of invasive species issues;
- (5) Develop and implement a statewide invasive species strategic plan as described in this chapter;
- (6) Review the current funding mechanisms and levels for state agencies to manage noxious weeds on the lands under their authority;
- (7) Make recommendations for legislation necessary to carry out the purposes of this chapter;
- (8) Establish criteria for the prioritization of invasive species response actions and projects; and
- (9) Utilizing the process described in subsection (8) of this section, select at least one project per year from the strategic plan for coordinated action by the Washington invasive species councilmember entities.

ⁱⁱⁱ RCW [36.70A.210](#)-Countywide planning policies

- (4) Federal agencies and Indian tribes may participate in and cooperate with the countywide planning policy adoption process. Adopted countywide planning policies shall be adhered to by state agencies.

^{iv} RCW 36.70A.035-Public Participation-Notice provisions

- (1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, group A public water systems required to develop water system plans consistent with state board of health rules adopted under RCW [43.20.050](#), and organizations of proposed amendments to comprehensive plans and development regulation.

^v RCW 79A.25.310-Washington invasive species council—Created.

- (1) There is created the Washington invasive species council to exist until June 30, 2022. Staff support to the council shall be provided by the recreation and conservation office and from

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- the agencies represented on the council. For administrative purposes, the council shall be located within the office.
- (2) The purpose of the council is to provide policy level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.
 - (3) The council is a joint effort between local, tribal, state, and federal governments, as well as the private sector and nongovernmental interests. The purpose of the council is to foster cooperation, communication, and coordinated approaches that support local, state, and regional initiatives for the prevention and control of invasive species.
 - (4) For the purposes of this chapter, "invasive species" include nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include domestic livestock, intentionally planted agronomic crops, or non-harmful exotic organisms.

^{vi} WAC 365-190-130 Fish and wildlife habitat conservation areas.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

- (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

^{vii} WAC 182-546-5200 Nonemergency transportation broker and provider requirements.

(2) Brokers:

- (f) Must negotiate in good faith a contract with a federally recognized tribe that has all or part of its contract health service delivery area, as established by 42 C.F.R. Sec. 136.22, within the broker's service region, to provide transportation services when requested by that tribe. The contract must comply with federal and state requirements for contracts with tribes. When the agency approves the request of a tribe or a tribal agency to administer or provide transportation services under WAC [182-546-5100](#) through [182-546-6200](#), tribal members may obtain their transportation services from the tribe or tribal agency with coordination from and payment through the transportation broker.

^{viii} WAC 173-700-102 Applicability to tribal banks.

(2) Proposed tribal banks which are located outside of Indian Country and partially or wholly on lands under state jurisdiction are not covered under this section and are subject to the requirements of this chapter.