

CITY OF TACOMA

INTER-DEPARTMENTAL COMMUNICATION

To Erling O. Mork, City Manager

From City Attorney

Subject Puyallup Indian Reservation -
Effect upon City of Tacoma
Authority

Date April 20, 1977

Pursuant to my memo of April 11, I submit the following summary and recommendations:

To the best of my knowledge, the Tribe has never given a clear indication of their intentions; however, the fact that the Tribe has established a police force, has enacted a zoning and building code, and has indicated that they do not wish to conform to the comprehensive zoning plan and codes of the City of Tacoma indicates the establishment of an independent government. The Tribe has approached this office and the Police Department to form an agreement to use the City Jail to jail any offenders against the "tribal law".

I have recently had discussions with attorneys who represent other tribes. These attorneys and their clients are concerned about the Puyallup Tribe because of the extreme position the Tribe takes. They fear that the Puyallup Tribe will precipitate litigation which will redound to the detriment of the other tribes. We should note that the other tribes have a large land base, owned largely by Indians, wherein the Indian Tribes provide most of the governmental services, such as police, fire, protection, land use regulation, and within these reservations the Indians are in the majority. Quite the reverse is the case on the Puyallup Reservation. The Puyallups are insignificant in number. The 1929 Tribal Roll was somewhere in the number of 400. Estimates range from 400 to 1,000 Puyallups, not all of whom reside on the reservation. The Puyallups have attempted to increase their numbers by purporting to represent every Indian in the area and by counting all native Americans.

Representatives of the State Attorney General's office have indicated a desire to litigate the existence of the Puyallup Reservation, but not in a hunting/fishing context. They have indicated interest in discussing this matter with the appropriate City officials in order to bring an action litigating the governmental authority of the Puyallups as it tends to erode and impair the governmental activities of the City of Tacoma. In this regard, it was suggested that the continued acquisition of lands in trust might one day impair the bonding capacity of the City of Tacoma.

I would therefore recommend:

1. A definite policy direction be obtained from the appropriate administrative or elected officials regarding continued assistance to the Tribe in placing land in trust for the benefit of the Tribe and individual tribal members.

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2. That the Tribe and the regulatory governmental agencies, Department of Interior, Bureau of Indian Affairs, be requested to state their policy regarding the continued creation of Indian country within the Puyallup Reservation in the City of Tacoma.
3. That the Tribe, the Bureau of Indian Affairs, and the Department of the Interior notify the City of Tacoma of all lands within the City of Tacoma placed in trust prior to the creation of such areas.
4. That some arrangements be made for the United States Government to pay in lieu of taxes and/or assessments to the City of Tacoma if the amount of trust lands within the City of Tacoma continues to increase.
5. That a survey be immediately undertaken to determine the present amount and location of Indian trust land within the historic Puyallup Reservation within the City boundaries.
6. That the appropriate administrative or elected officials contact the Attorney General's office and other State officials to determine whether the status of the Puyallup Reservation should be litigated.
7. That a decision be made as to whether request should be made of Congress in exercising its "plenary power" to either terminate or diminish the Puyallup Reservation to a reasonable land base necessary to sustain their fishing rights.

The foregoing summary and recommendations have necessarily been of a general nature. The decisions which now must be made will affect the continued growth of a significant portion of the City of Tacoma for an appreciable period of time. While there is still time for an informed decision regarding these questions, it should be noted that continual litigation in the hunting and fishing rights context may have prejudiced the determination of the question of the existence of the Tribe and the Reservation to the detriment of the City and its non-Indian citizens. As the political and economic power of the Tribe grows, so does the urgency of these questions.



WILLIAM J. BARKER
Assistant City Attorney

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CITY OF TACOMA

INTER-DEPARTMENTAL COMMUNICATION

Handwritten:
RECEIVED
MAY 5 1977
City Manager's Office
City of Tacoma

To Erling O. Mork, City Manager From City Attorney

Subject Puyallup Indian Reservation Discussions Date May 5, 1977

On Tuesday, May 3rd, Mr. Hamilton and I met with Don Herron, Pierce County Prosecutor, Jim Mason, attorney for the Port of Tacoma, Gordon Scraggin, Puyallup City Attorney, Edward Mackie, Assistant Attorney General, and Tom Tobin, a South Dakota lawyer who specializes in Indian law cases. The purpose of the meeting was to explore the possibility of a cooperative effort among the various local government entities whose jurisdictions lie within the historical boundaries of the Puyallup Indian Reservation, with an eye to recommending to the various governmental authorities some course of action by which they might attempt to solve the impending problem regarding whether or not the reservation still exists.

Mr. Tobin is a member of a private law firm which specializes in Indian law and reservation boundary cases. His is the only private law firm in the United States, that we are aware of, which specializes in Indian law, representing or associating with various governmental entities such as counties and states against the Indian interests. To date, they have participated in, among others, two recent United States Supreme Court cases in which the Supreme Court determined that large reservations had been extinguished. Their main office is located in Winner, South Dakota, with a staff member based in Washington, D. C. Mr. Tobin flew to Tacoma from Salt Lake City, Utah, where he has been participating in a reservation boundary case which is being litigated in Federal District Court, Salt Lake City. He was invited here at the behest of our office, Mr. Herron, and Mr. Mason, in the hope that he might be able to advise us on a course of action which might ultimately successfully result in litigating the Puyallup Indian Reservation boundary question in a local governmental context. We also hope to solicit his advice with regard to the problems created by the acceptance by the United States Government of properties in the City of Tacoma in trust for the Puyallup Tribe and individual Indians..

As a result of that meeting, we became aware of the magnitude of the problems which the local governments face with regard to the exercise of jurisdiction over Indians on trust lands within the historical boundaries of the reservation. It appears that, if the Supreme Court of the United States determines that the reservation exists within the historical boundaries, trust lands located therein achieve sovereign nation status over which local governmental authorities have no civil or criminal jurisdiction. In addition to this, a case decided this week in the 9th Circuit Court of Appeals determined that Washington's Public Law 280 statutes, under which the State has taken jurisdiction over Indians within the boundaries of a reservation and not on trust land, was unconstitutional. The effect of that decision, if affirmed by the United States Supreme Court, would be to make an Indian


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anywhere within the boundaries of an existing reservation immune to civil or criminal jurisdiction by the State or local governmental authorities. It is generally understood by all the lawyers who participated in this meeting that it will be difficult to raise the issue of the reservation boundaries in Federal Court in a favorable setting which might ultimately lead to a decision that the reservation has been extinguished, or possibly diminished to the twenty acres which have been in trust for the Indians since 1893. It was further agreed that the effort should be made, since the prospect of a sovereign Indian nation encompassing a large part of industrial and residential Tacoma, all of Fife, parts of Pierce County, and a part of Puyallup under the conditions described above might be difficult to live with.

It was further pretty well understood among the local lawyers involved that none of the jurisdictions has the manpower or legal resources to properly present this issue in the Federal Court system.

Mr. Herron, Mr. Mason and I have agreed that we should recommend to our various principals that they band together and make available money with which to associate Mr. Tobin's firm to advise, research, and help litigate the reservation and trust issues. He had suggested an initial retainer of \$10,000.00, to be utilized at the rate of \$45.00 per hour to research the history of the reservation with an eye to ultimately litigating the boundary question, and further to explore all legal avenues of recourse in the next three months to evaluate the situation and to attempt to formulate some policy and course of action.

We have made no agreement, of course, either with regard to hiring Mr. Tobin or with regard to any possible sharing of costs, but have discussed generally, with regard to costs, that we recommend to our principals that this be done on some mutually agreeable basis. It is, therefore, my recommendation that we meet with all of the interested local governmental entities and attempt to obtain an agreement among them for a cooperative effort on a cost-sharing basis. If you agree with this recommendation, we are prepared to coordinate the effort recommended.


ROBERT ATKINSON
Assistant City Attorney

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