CITY OF TACOMA

INTER-DEPARTMENTAL COMMUNICATION

To Erling O. Mork
City Manager

From City Attorney

Subject Puyallup Indian Reservation and Effect upon City of Tacoma Governmental Authority

Date April 8, 1977

In order to fully understand the status of the Puyallup Indian Reservation, it is necessary to consider the status of the various Indian tribes in the continental United States and the effect of European claims. A clear exposition of the legal principles involved is found in the early United States Supreme Court case of Johnson v. McIntosh, 21 U.S. 543 (1823). In that case, two different parties had purchased the same tract of land in Illinois. One of the claimants received grants from the original Indian tribes who occupied the area where the land was located. Chief Justice Marshall considered the conflicting claims, and ruled that the Indian title was invalid. The Court found that under the well-settled international law doctrines of discovery and conquest, the title of the Indians had been abolished. The doctrine of discovery was simply that the European nation that discovered a certain area had all rights to that area, and no other nation could interfere. The doctrine of conquest, of course, is well known. Title is wrested from the original title-holder by force. Therefore, when the United States was occupied by "civilized" men, the Indian title was extinguished, and the Indians became mere occupants of the property. The Court noted that, while this was a harsh doctrine, it is universally recognized and the courts could not ignore it.

Chief Justice Marshall summarized the legal principles as follows:

> "However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned. So too, with respect to the concomitant principle, that the Indian inhabitants are to be considered merely as occupants, to be protected, indeed, while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by courts of justice."

In Colonial times, the British sovereign reserved to itself the power to negotiate with the various Indian tribes. After the American Revolution, the Federal Government determined that it would be the exclusive authority in dealing with the various Indian tribes. The scheme is set forth in Article I, Section 8 of the United States Constitution, which provides that:

> "The congress shall have power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.. . ."

The Courts have construed this to mean that Congress has plenary power over Indian tribes and treaties. "Plenary" in this sense means absolute, complete, and total; thus Congress has the right to change or abolish Indian treaties as it sees fit. The individual states do not have authority to negotiate or impose their laws over the tribes, as that power is constitutionally vested in the Federal Government.

The case law and text dealing with Indian tribes and their authority in "Indian land" noted that Congress has removed any power of external sovereignty which the Indian tribes possessed, but it is generally recognized that where the inherent sovereignty or governmental power was not taken from the tribes, they have internal sovereignty or the power of self-government over the following:

1. The exercise of limited civil jurisdiction.
2. Lesser crimes.
3. Determination of tribal membership.
4. Regulation of Indian inheritance.
5. Power to tax tribal members.
6. Regulation of property within tribal jurisdiction.
7. Control over Indian domestic relations.
8. Power to determine the form of tribal government.

In the very early days of the United States, the Indian tribes had a position of some importance, because it was necessary for the United States to conclude peace treaties with the tribes to ensure that they would not ally themselves with more powerful European enemies who still had interest in this continent, and to ensure that the tribes would not make war on the United States. After the War of 1812 and the threat of European interference in the affairs of the United States diminished, the importance of the tribes decreased. The thrust of negotiations between the tribes and the Federal Government thereafter was mainly designed to remove the Indians from the path of the westward expansion of the United States, and to ensure the peaceful settlement of the continent.

In this regard, it should be noted that the Indian tribes in what is now the

State of Washington were not conquered people. The treaties which were made with the Indian tribes in the Puget Sound area were negotiated treaties. Each of the parties had a mutual interest in maintaining the peace, and maintaining the peace was the chief bargain which each gained from the negotiations. The Indians were induced to surrender most of the country for settlement by the whites. The Indians agreed to remove themselves to the reservation areas. It is important to note that the Indians were not granted the reservations by the United States, but they reserved from the lands they had given up these reservation areas. The legal theory is that any right of sovereignty that was not expressly surrendered in the peace treaty, or not subsequently modified by congressional act, was retained by the tribes.

We have seen from the recent fishing litigation that the Indians retained the right to fish, both on the reservation and in their usual and accustomed grounds. The treaty of December 26, 1854, with the Puyallups describes their reservation area and contains the following language:

> ". . . which tracts shall be set apart, and, so far as necessary, surveyed and marked out for their [Puyallups'] exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the Superintendent or Agent."

Before we consider further the various legal principles involved in the construction of Indian treaties and the laws to be applied to Indians and the history of the Puyallup Tribe and its reservation, it is necessary to consider some of the legal principles governing the construction of Indian treaties. The Courts have noted the unequal bargaining position of the parties at the time the treaties were negotiated. The superior power of the United States, the fact that the treaties were negotiated in English, a language with which the Indians were unfamiliar, has resulted in the following cardinal principles:

> 1. Ambiguous expressions must be resolved in favor of the Indian parties concerned. McClanahan v. State Tax Comm'n., 411 U.S. 164; Carpenter v. Shaw, 280 U.S. 363.
>
> 2. Indian treaties must be interpreted as the Indians themselves would have understood them. Choctaw Nation v. Oklahoma, 397 U.S. 620; United States v. Shoshone Trige, 304 U.S. 111; Worcester v. Georgia, 31 U.S. 515.
>
> 3. Indian treaties must be liberally construed in favor of the Indians. Choctaw Nation v. United States, 318 U.S. 423; Tulee v. Washington, 315 U.S. 681.

From the foregoing, we can see that, as a result of the discovery and occupation of the continental United States by the white man, the Indian title to the land was extinguished. In the early case of Worcester v. Georgia, the legal principle was established that Indian nations are not foreign nations, but they are domestic dependent nations, and to that domestic dependent

nation and its people, the United States stands in the nature of a guardian and is legally bound to protect their rights. In the construction of Indian treaties, all ambiguities and doubts are resolved in the Indians' favor, and the treaty must be construed as the Indians would have understood it. In addition to the foregoing, the Indian tribes retain some vestige of their sovereignty or governmental power over the lands which constitute their reservation. This power is not subject to state or its derivative municipal law.

THE PUYALLUP RESERVATION

The original Puyallup Reservation, 1,280 acres near the mouth of the Puyallup River, was created by the treaty of 1854. In 1857, the area was enlarged by Presidential Executive Order to contain a total of about thirty-six sections, or 23,000 acres. In 1873, the boundaries were adjusted to correct a surveying error, and give the Indians access to Commencement Bay. See Kappler, Indian Laws and Treaties, pp. 922-23. The Northern Pacific Railway was given free access across the reservation at about the same time.

In 1887, the Indian Allotment Act was passed. Before that time, the reservation had been communally owned by the entire tribe. By the Allotment Act, the land was parceled out and assigned to individual Indians. The underlying policy was that the Indians would thereby be encouraged to take up agricultural pursuits and would soon meld into the general population.

In 1893, Congress passed a special act for the Puyallups, which directed that all Puyallup lands not required for the Indian allottees' homes, the school, and the burying ground, were to be sold, and those lands remaining in Indian ownership could be sold after a period of ten years.

A most common restriction in the Indian Allotment Acts of this period was a twenty-five year restriction on alienation, rather than the ten-year period. It was most commonly assumed in a number of cases that the allotment of the reservation to the individual Indians, the subsequent granting of fee patent title to the Indians, and the subsequent alienation or sale of the land to other parties destroyed or terminated the reservation. There are a number of earlier cases that so hold.

As of 1970, there were approximately thirty-five acres of Puyallup Reservation in "trust status" as defined by the Bureau of Indian Affairs, plus another two hundred acres which were owned by the Indian heirs of the original allottees.

A Federal act called the Indian Reorganization Act was passed in the late 1920's or early 1930's. This allowed the various tribes to reorganize themselves and to form a corporate structure. The text writers note that the Puyallups signed the Treaty of Medicine Creek and have been actively and continuously recognized as a tribe since the treaty signing by Congress and the various Federal agencies, notably the Department of the Interior. The Puyallup Tribe adopted and approved a constitution in 1936 which defines the territory of the tribe as the restricted land, that being land in Indian

ownership subject to holding in trust by the Federal Government, and not subject to state taxes within the original confines of the reservation. The 1936 tribal constitution defined the tribal membership by referring to the 1929 approved tribal roll, children born to any member who resides within a certain area on and around the reservation.

GENERAL LAW ON TERMINATION OF INDIAN RESERVATIONS

During the 1950's and 1960's, the policy of the Federal Government was to terminate the guardianship or trust status of the Indians and to terminate the existence of the reservations. This "termination policy" was an anathema to the Indians. The underlying theory again was that the termination of the reservations and the special relationship between the Federal Government and the Indians would hasten their assimilation into the general population. The courts have had occasion to consider the question of whether various Indian reservations exist or not. The general rule is, with both international and Indian treaties, in the absence of Congressional expression to the contrary, the later in time between the treaty and Federal statute governs a conflict between a treaty and statute.

In order to determine, of course, whether there was a conflict, the courts looked to see whether Congress intended an abrogation or termination of the treaty. Lone Wolf v. Hitchcok, 187 U.S. 553, Thomas v. Gay, 169 U.S. 264. The following general principles relating to abrogation of a treaty have been developed:

> 1. Abrogation will only be found upon a "clear showing" of legislative intent. United States v. Santa Fe Pacific Railroad Company, 314 U.S. 339.

In the Santa Fe case, the United States had established a new reservation for a tribe of Indians. The railroad sought to build across the old reservation. The Court held there was no clear showing that by establishing the new reservation the United States intended to extinguish the old. See also United States v. 5,677.94 Acres of Land, 152 F.Supp. 861. In that case, they found extinguishment of a reservation because of clear Congressional intent to condemn Indian lands for flood control.

Under the "clear showing" test, an apparent conflict between a treaty and a subsequent statute is insufficient to establish an abrogation. The Santa Fe case says not only a clear showing, but a clear and unambiguous showing of legislative intent to abrogate.

> 2. Abrogation is not lightly implied. See Menominee Tribe v. United States, 391 U.S. 404; Kimball v. Callahan, 493 F.2d 564.

Under this "not lightly implied" test, the court may not liberally construe legislation in favor of abrogation. Under the prior "clear and ambiguous" test, showing of an intent to abrogate is not sufficient unless the legislative history of the Congressional enactment shows a clear and unambiguous intent to abrogate.

3. Abrogation will only be found after liberal construction of the Congressional act in favor of Indian treaty rights. See Choate v. Trapp, 224 U.S. 665.

In that case, an Indian reservation was allotted to certain Indian tribes with the proviso that the allotted land was to be non-taxable for a specified time. Before that time expired, Congress passed another act removing the restrictions from the sale or encumbrance of the allotments, and making those lands taxable. The Choate court found that tax exemption was a valuable property right for which compensation must be paid, and not a mere gratuity, construing the act in favor of the Indians.

4. Abrogation will be found only upon express legislative reference to Indian treaty rights. See Leavenworth, Lawrence, & Galveston Railroad Co. v. United States, 92 U.S. 733; see also 18 USC 1151 defining "Indian country" and Williams v. Lee, 358 U.S. 217, and Iron Crow v. Oglala Sioux Tribe, 231 F.Supp. 89, which holds that Indian tribes are distinct independent political entities and have all the powers of a sovereign nation except those which Congress has expressly taken from them.

5. There are several miscellaneous tests. Some courts have said that treaty rights can be extinguished only with the consent of the tribe. This test is doubtful, however, because it contravenes the principle of Congressional plenary power; but see First National Bank v. United States, 59 F.2d 367.

It is recognized that general Congressional acts do not serve to abrogate Indian treaty rights. McCandless v. United States, 25 F.2d 71.

A leading case in the termination field is Menominee Tribe v. United States, 391 U.S. 404, decided in 1968. In that case, the Federal Government passed an act "to provide for the orderly termination of Federal supervision over the property and members of the Menominee Tribe", 25 USC, Section 891. This Federal act made no specific reference to Indian hunting and fishing rights of the Menominee tribal members. The court applied the various tests alluded to above, and found that the Congress did not intend to extinguish the hunting and fishing rights of the tribe because extinguishment of these rights was not clearly and unambiguously stated in the legislation, and termination is not lightly implied, so notwithstanding the termination of the supervision over the property and members of the tribe, the tribe still retained their treaty hunting and fishing rights.

A summary of the reliable indicators on the question of termination is found in 63 Cal.Law Rev. 601 at page 634. The leading case indicating that allotment and subsequent sale of reservation lands does not result in termination is Mattz v. Arnett, 412 U.S. 481 (1973). In the Mattz case, the Court found that

the 1892 act allotting the lands did not employ clear termination language. The Court found that a Congressional determination to terminate must be expressed on the face of the act or be clear from surrounding circumstances and legislative history.

A case that reached a contrary result was Decoteau v. District Court, 95 S.Ct. 1082. In that case, there was action on the part of the Indians and not a unilateral act of Congress, so the Decoteau Court found termination.

STATUS OF THE PUYALLUP INDIAN RESERVATION ARGUMENTS FOR AND AGAINST

I have attached a map which shows the boundaries of the City of Tacoma marked in blue, with the "Historic Puyallup Indian Reservation" marked in red.

Arguments and Cases Indicating Puyallup Reservation No Longer Exists

Early State Court cases, such as State v. Smokalem, 37 Wash. 91, held the reservation to be terminated. Later cases, such as "Puyallup I", 70 Wn.2d 245, at page 253, concluded that the Puyallup Reservation had been terminated.

In the early Federal case of United States v. Kopp, 110 F. 160, the Court held that a defendant could not be charged with selling liquor to Indians on the Puyallup Reservation, as the Indians were no longer under supervision of an Indian guardianship or under supervision of a superintendent, in 1901. Dicta: The Court indicated that the allotment and sale of the Puyallup Reservation extinguished and abolished the reservation except at the site of the Indian Training School. It is interesting to note that the early Federal case, United States v. Ashton, 170 F. 509, decided in 1909, held that the history of the Puyallup Indian Reservation and an examination of the treaty disclosed that the tideland ownership was not conveyed to the Puyallup Tribe by the treaty of 1854 or any subsequent governmental act, either Federal or State, so in any event the reservation, if it exists, would not extend to the tidelands under the authority of Ashton.

The "Treaty of Medicine Creek" was executed on December 26, 1854, between the United States and the various Indian tribes. By this treaty, the Puyallup Indian Reservation was established. The reservation established by treaty was changed by Presidential Executive Orders dated January 20, 1857, and September 6, 1873. The Executive Orders can be found in Indian Affairs, Laws and Treaties, Kappler, 1904, pp. 1919, 1922, and 1923. In 1884, the U. S. Congress permitted the allotment of lands which were included within the Puyallup Indian Reservation. 23 Stat. 76, 88-89. The State of Washington, after being admitted to the Union in 1889, in 1890 passed an act removing all restrictions on the alienation of lands allotted to the Puyallup Indians subject to Congressional approval. RCW 64.20.010. After a Congressional enactment (26 Stat. 336, 354) a three-man commission was appointed in 1890 to study the nature of land title within the Puyallup Reservation and to make recommendation to the Secretary of the Interior concerning the future disposition of that land. Because of the inconclusive nature of a Puyallup Commission

report dated March 11, 1891, Congress on March 3, 1893 enacted the Puyallup Allotment Act, 27 Stat. 612 at 633. The Act provided for a three-member commission appointed by the President to select and appraise property within the Puyallup Reservation, and further provided for the sale of lands within the reservation with the approval of the Secretary of the Interior. The Act provided:

> ". . . which deed shall operate as a complete conveyance of the land upon full payment of the purchase money . . . provided that the portion of the agency tract selected for sale shall be platted into streets and lots as an addition to the City of Tacoma, . . . And provided further, That the Indian allottees shall not have power of alienation of the allotted lands not selected for sale by said Commission for a period of ten years from the date of the passage of this act . . ."

As of January 19, 1904, all of the lands except approximately 36 acres of the 18,000 acres had been allotted under the 1893 act. To answer any questions as to the ten-year prohibition on the alienation under the 1893 act, Congress enacted the Cushman Act, 33 Stat. 565 in 1904, giving Congressional consent to the removal of restrictions on alienation, providing:

> "That the Act of Congress approved March third, eighteen hundred and ninety-three (Twenty-seventh Statutes, page six hundred and thirty-three), authorizing the sale of the Puyallup allotted lands, with restriction upon alienation 'for a period of ten years from the date of passage' thereof, shall be taken and construed as having expressed the consent of the United States to the removal of restriction upon alienation by said Puyallup Indians to their allotted lands from and after the expiration of said period shall be given effect of having been made without any restrictions upon the power of the allottee to alienate his land."

After the 1904 act, Congress had occasion to deal with the Puyallup Tribe in a number of legislative acts, but it never again referred to nor recognized the continued existence of the Puyallup Reservation.

There are many striking similarities between the history of the Puyallup Reservation and the tests used by the Court in the Decoteau case referred to above to find a termination of the Lake Traverse reservation. The argument has been advanced by the Washington State Attorney General that the Puyallup Reservation is in a similar legal position to the Lake Traverse reservation, which was held in the Decoteau case to be terminated, and is unlike the Mattz v. Arnett case. Some of the key indicators of the fact of no further Congressional recognition of the existence of the Puyallup Reservation: no restriction on the period of alienation of the allotted lands; the fact that the 1893 Puyallup Act provided that the sale of the property was to act as a complete conveyance, which was the case in the Lake Traverse Reservation.

The existence of the Puyallup Reservation was considered in "Puyallup I" when it reached the U. S. Supreme Court (391 U.S. 395) at Footnote 1, where the Court said:

> "Whether in light of this history the reservation has been extinguished is a question we do not reach."

It would therefore seem that a strong argument could be offered, even in view of the liberal construction of Indian treaties and the policy against finding implied termination in the absence of express Congressional enactment, that the Puyallup Reservation has, in fact, been terminated. Unfortunately, most of the Puyallup Reservation litigation has thus far been advanced in the context of hunting and fishing rights, which is most advantageous to the proponents of the continued existence of the reservation and other rights guaranteed by the Medicine Creek Treaty. The results might be different if the question arose in the context of the application of municipal powers to the lands within the historic reservation.

A further argument could be raised that the reservation was diminished as a result of the tribal reorganization in 1936. As to the existence of the tribe itself, see Department of Game v. Puyallup Tribe, Inc., 70 Wn.2d 245, at page 252. The Superior Court for Pierce County in that case had found that the tribe no longer existed. The Supreme Court disagreed, saying:

> "We are satisfied that so long as the United States government, through its appropriate agencies, continues to recognize the existence of the Puyallup Tribe of Indians and its tribal roll, as they clearly do, the Superior Court for Pierce County acted without jurisdiction in making a judicial determination of the tribe's termination."

Arguments That the Puyallup Reservation Exists.

The arguments in favor of the continued existence of the reservation are found in the Mattz v. Arnett case, and the principles to which I have alluded regarding the construction of treaties and abrogation of treaty rights. The cold, hard fact remains that Congress has passed no specific legislation stating unequivocally that the Puyallup Indian Reservation has been terminated. As we have seen, the fact of allotment alone does not terminate the reservation. The legal presumptions would be in favor of the position that the reservation exists, and it would require litigation and a Court decision to show that the Puyallup Reservation is in the same status as the Lake Traverse Reservation in the DeCoteau case and terminated.

In this regard, there is a per curiam decision from the 9th Circuit Court of Appeals, United States v. Washington, 496 F.2d 620 (1974), in which that Court found that the Puyallup Reservation exists, and remanded the matter to the trial court for further proceedings. No further proceedings have been taken. The question was submitted to the U. S. Supreme Court and the petition for certiorari or review by the U. S. Supreme Court was denied. The existence of the Puyallup Reservation is therefore not authoritatively determined at this time.

EFFECT ON THE CITY OF TACOMA IF RESERVATION EXISTS

When we consider the reservation and the questions of jurisdiction, we must remember the general principles that only the Federal Government has authority over Indian country. The states have no jurisdiction, nor do their subordinate municipal governments have such jurisdiction. The Federal Government has such jurisdiction as it assumed by virtue of treaties and federal statutes. The State of Washington renounced jurisdiction over Indian lands by constitutional provisions when Washington became a state. Limited criminal jurisdiction was assumed by the State of Washington pursuant to Federal law P.L. 280; however, the State of Washington, in assuming this criminal jurisdiction, acted by statute instead of constitutional amendment. The validity of that assumption of jurisdiction is, therefore, questionable.

The State of Washington purported to act pursuant to RCW 37.12. This assumption of jurisdiction had an exception in that it did not apply to Indians when on their tribal or allotted lands within an established reservation and held in trust by the United States or subject to the restriction against alienation. There is substantial land within the Puyallup Reservation held in trust by the United States, and the area of that land appears to be growing daily.

RCW 37.12 had eight exceptions, and further provided that the tribes must consent to the assumption of State jurisdiction. The Puyallup Tribe has never consented to such assumption of civil and criminal jurisdiction. The eight areas in which the State has assumed jurisdiction are not material; they relate to schools, traffic law, public assistance, domestic relations, juvenile matters, etc.

When we consider Indian Reservation as a technical term, we should use the term "Indian Country", which is defined in 18 USC, §1151, as follows:

> "Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian country', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Subsection (a) of the foregoing section provides that land under the jurisdiction of the United States government, notwithstanding the issuance of any patent, is Indian country. The argument is therefore advanced that lands held in trust pursuant to 25 USC 461, et seq., are Indian country. The first problem one encounters is the inapplicability of state and municipal criminal laws to Indians in Indian country. Therefore, an attempted arrest of an Indian on

trust lands within the Puyallup Reservation is questionable; likewise the execution of search warrants and other criminal police powers could be invalid.

In a case involving a band of Indians in California, decided in 1976 by the 9th Circuit Court, 532 F.2d 655, the Court held that state and local government housing and zoning regulations did not apply to the tribal lands; thus the State Environmental Protection Act and local building and zoning codes did not apply to the tribal lands and could not be enforced. Likewise, an attempt to extend state or municipal taxing power to Indian country would meet the same bar. The Puyallup Tribe appears to have embarked upon a determined policy to convert as much land as possible within the boundaries of the historic Puyallup Reservation into "Indian country". Without a determination as to the legal status of the Puyallup Reservation, the enforcement of municipal criminal and regulatory police power activities in this newly created "Indian country" is questionable.

Our Washington Supreme Court in the case of Snohomish County v. Seattle Disposal Company, 70 Wn.2d 669, held Snohomish County zoning and special use permit regulations to be inapplicable to trust lands within the boundaries of the Tulalip Indian Reservation. In that case, the land in question was trust land which was never alienated by the Indians as to one parcel, and the adjoining parcel was trust land that had been alienated and then reacquired. The Court made no distinction between the two parcels of land, but assumed that they would be treated the same.

The legal status of alienated tribal lands which are reacquired in trust for the benefit of the tribe is therefore not finally determined, but the indications are that the courts would treat it as "Indian country". The lack of municipal jurisdiction extends to the right to assess the lands for local improvements. The policy of the Federal agencies is to pay off any outstanding assessments at the time the land is placed in trust, but thereafter the Department of the Interior and the Bureau of Indian Affairs will not consent to the assessment of trust lands within a reservation for local improvements. This is becoming a problem as petitions for local improvements are granted, the assessment rolls are prepared, and without a title search of each of the individual parcels, City authorities are unable to determine whether the land is trust land within the boundaries of the Puyallup Reservation and therefore not assessable according to the tribe and the various Federal agencies. As more trust lands are added to the holdings of the tribe and the individual members of the tribe, the liability of future local improvement assessments is jeopardized.

With the diminished state and municipal authority over the lands which become Indian country, there is a concomitant increase in Federal jurisdiction and Indian sovereignty. The courts are tending to increase the sovereign power of the Indians in recent decisions. See, for example, Oliphant v. Schlie, 9th Cir. Court of Appeals, August 24, 1976, wherein the 9th Cir. Court of Appeals extended Indian misdemeanor court jurisdiction over non-Indians within Indian reservations. That case involved the Suquamish Indian Reservation in the State of Washington. With the reserved sovereignty, it is generally held that the tribe has the power to establish a government,

determine its form, the power to determine standards for membership, power to tax the members of the tribe, and in some cases, the power to tax non-members of the tribe has been upheld, 355 F.Supp. 629, and the power to regulate tribal property. In this regard, the Puyallup Tribe has purported to enact zoning and building codes. The zoning and building codes do not conform to the comprehensive plan for the City of Tacoma. Indeed, based on the authority of Arizona v. Turtle, 413 F.2d 683, which was an extradition case, the tribal attorneys have taken the position that the tribe enjoys sovereign immunity, the same as any other branch of government.

The practical effect of the continued acquisition of lands by the Federal Government in trust for the Puyallup Tribe and the individual members of the tribe is to remove from the jurisdiction and municipal control of the City of Tacoma the parcels of land thus acquired. This practice frustrates effective planning by way of zoning and land use regulation, and interferes with the development of municipal improvements by way of local improvement districts and otherwise. In addition, this practice raises the spectre of the exercise of Indian governmental control over a significant portion of the City of Tacoma.

SUMMARY AND RECOMMENDATIONS

To the best of my knowledge, the Puyallup Tribe has not given a clear indication of their ultimate intentions; however, the fact that the Tribe has established a police force, has enacted a zoning and building code, and by actions have indicated that they do not wish to conform to the comprehensive zoning plan and codes of the City of Tacoma, indicates the establishment of a separate governmental entity.

Discussions with some of the Federal agencies involved would indicate that there are not established Federal policies relating to the conflicts which would naturally arise from two separate sovereigns attempting to govern the same area.

If the position of the Tribe and the Federal Government is correct, you can appreciate the problems which would arise from the enforcement of City land use regulatory ordinances, City misdemeanor codes, and other law enforcement activities. In addition, the imposition of taxes, local assessment liens, and liens for unpaid City utility services would be impossible to enforce. The problems created are complex and far reaching.

Since the solution to these problems might well result in litigation, I will send you by separate document my recommendations in this matter.

WILLIAM J. BARKER
Assistant City Attorney

WJB:jec

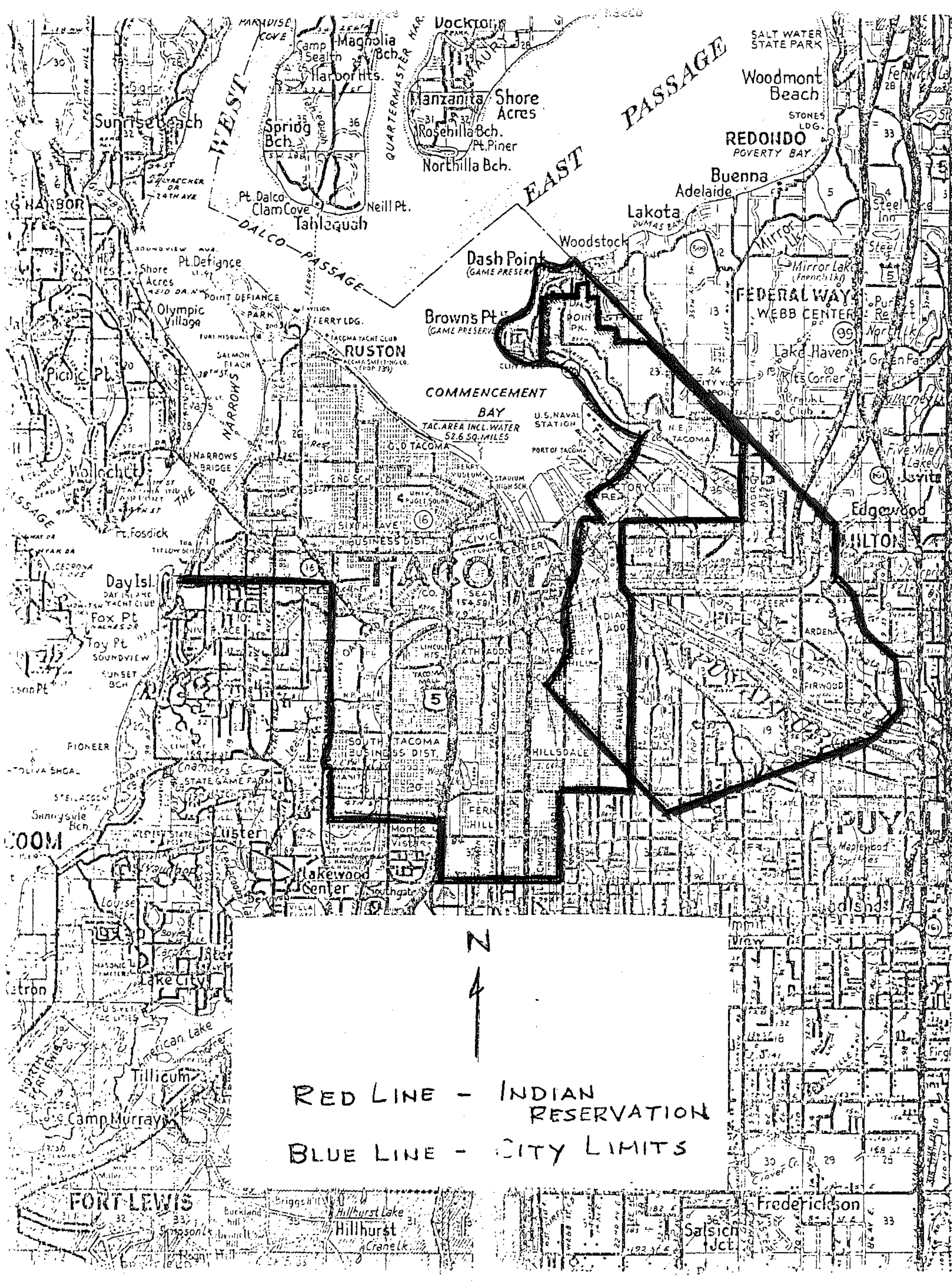
N
RED LINE - INDIAN RESERVATION
BLUE LINE - CITY LIMITS
WEST PASSAGE
EAST PASSAGE
DALCO PASSAGE
COMMENCEMENT BAY
THE NARROWS
TACOMA
RUSTON
OLD TACOMA
Dash Point
Browns Pt.
Woodstock
Lakota
Adelaide
Buenna
REDONDO
POVERTY BAY
Woodmont Beach
SALT WATER STATE PARK
FEDERAL WAY
WEBB CENTER
Lake Haven
Kits Corner
Edgewood
MILTON
FIRWOOD
ARDENA
HILLSDALE
FERN HILL
Monte Vista
Lakewood Center
SOUTH TACOMA BUSINESS DIST.
Day Isl.
Fox Pt.
Toy Pt.
Pt. Fosdick
NARROWS BRIDGE
Pt. Defiance
POINT DEFIANCE PARK
Tahlequah
Pt. Dalco
Clam Cove
Neill Pt.
Manzanita
Shore Acres
Rosehilla Bch.
Pt. Piner
Northilla Bch.
Magnolia Bch.
Harbor Hts.
Camp Sealth
Spring Bch.
Sunrise Beach
Olympic Village
Picnic Pt.
Hollochet
Shore Acres
PIONEER
Sunnyside Bch.
STATE GAME FARM
Custer
Lake City
American Lake
Tillicum
Camp Murray
FORT LEWIS
Hillhurst
Hillhurst Lake
Frederickson
Salsich Jct.
U.S. NAVAL STATION
PORT OF TACOMA
COUNTY SEAT 154,581
TAC. AREA INCL. WATER 52.6 SQ. MILES
Maplewood Springs

EXHIBIT "B"

B I B L I O G R A P H Y

63 Cal. Law Rev. 600 - Judicial Review of Indian Treaty Abrogation: "As Long as Water Flows or Grass Grows Upon the Earth - How Long is That?"

Medicine Creek Treaty of 1854.

The Limits of Indian Tribal Sovereignty: The Cornucopia of Inherent Powers. 49 N.D. Law Rev., 303

Brief of the Attorney General in the matter of Puyallup Tribe and Ramona Bennett v. Department of Game, U.S. Sup. Ct., October term, 1976, No. 76-423.

"Uncommon Controversy - Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians", American Friends Service, 1970.

22 Kansas Law Rev. 340 - "Evolution of Jurisdiction in Indian Country".

22 Kansas Law Rev. 351 - "Development of Tripartite Jurisdiction in Indian Country.

58 Cal. Law Rev. 445 - "The Indian Battle for Self Determination"

To Council
4-19-77