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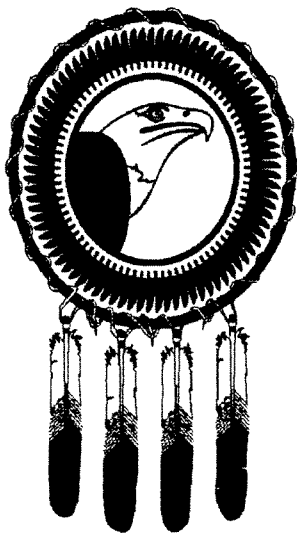
*Evaluating Land Use Proposals: A Comprehensive System for
the Puyallup Tribe of Indians*

by

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PRS91-2

April 1991



**Harvard Project On
American Indian Economic Development**

PROJECT REPORT SERIES

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Executive Summary

The Puyallup Tribe of Indians is a 1,500-member tribe with an 18,000-acre reservation located in the Tacoma, Washington area. Several features of the tribe's setting and history, including scattered control of land, hostility from neighboring populations, and traditional dependence on fishing, present it with a unique set of land-use management challenges. The tribe's current land-use management process is characterized by two central deficiencies -- a lack of long-range planning and the absence of a coherent land-use evaluation system. Both deficiencies must be addressed if the tribe is to reestablish control of its historic land holdings and realize the potential created by its 1988 land-claims settlement.

This analysis focuses on the second problem. Land-use projects are currently assessed on an "ad hoc" basis, with approval decisions dependent primarily on individuals and politics. Moreover, the Puyallup community plays only a minimal role in this process. This report seeks to provide the Puyallups with a comprehensive system for evaluating land-use proposals -- a system based on objective criteria and an inclusive, regularized process. Such a governing system, while flexible, would be objective and predictable, and thus would enhance the credibility of land-use decision-making both inside and outside the tribe. Institutionalized systems like this support tribal sovereignty, and are crucial to the long-term success of self-determination.

This report attempts to strike a balance between the complexity necessary to address the critical land-use management problems facing the tribe and the simplicity required to make such a system feasible to implement. The proposed land-use evaluation system consists of two parts -- an analytic model and an implementation process. The analytic model establishes a set of criteria by which to judge land-use projects. In the absence of a traditional zoning system, which is impractical for the Puyallups, these development criteria will provide a consistent basis for assessing proposals. The second component of the system, the implementation process, lays out a decision-making apparatus for the Tribe. It is essentially a comprehensive permitting process which seeks to coordinate various decision-making institutions, apply the model criteria, and provide a role for the community. Although this system is not a substitute for long-range planning, it is a useful tool that can be implemented quickly. The establishment of land-use priorities and a planning policy would make it even more effective.

A well-implemented, coherent evaluation system should enable the tribe to use staff and other government resources more efficiently. Staff members will be able to avoid wasting time inventing new ways to evaluate each land-use proposal. More importantly, busy Tribal Council members will only need to become involved in the most critical projects. Consequently, they will save valuable hours and be able to spend their time addressing broader policy issues.

THE ANALYTIC MODEL

Any systematic approach to land-use development appraisal must be based on a clear set of criteria. These criteria should serve essentially as a check-list by which all development proposals are judged. They should be based on both traditional measures of project worthiness and viability, and objectives unique to the Puyallup Tribe.

We propose two types of criteria: Baseline criteria and variable criteria. The baseline criteria are fundamental standards for development which can be clearly defined and measured, and they should be applied uniformly to all development projects regardless of land-use type or current tribal policy priorities. The proposed baseline standards fall into the following four categories:

- o Building and safety
- o Environmental
- o Fisheries habitat
- o Other land use

The variable criteria are a set of more subjective standards that cannot easily be measured. They should be applied to varying degrees depending on the type of land-use project and tribal policy priorities at the time of project consideration. The proposed variable standards fall into the following six categories (listed alphabetically):

- o Cultural enrichment
- o Economic development
- o Financial benefit
- o Human service provision
- o Natural resource preservation
- o Sovereign identity promotion

THE IMPLEMENTATION PROCESS

The analytic model alone is useless without some means of putting the baseline and variable criteria into practice -- that is, a way of implementing the model. Any implementation scheme must apply the development criteria in a manner that addresses the shortcomings of the current land-use "process," particularly the lack of community input, the uncoordinated decision-making, and the highly politicized nature of the current reviews. In order to accomplish these objectives, we are proposing a comprehensive permitting process. This process is composed of the following five phases (see flow charts for a summary of the overall process and the details of each phase):

- o Phase 1: Baseline Code Review
- o Phase 2: Staff Analysis
- o Phase 3: Community Evaluation
- o Phase 4: Planning Commission Decision
- o Phase 5: Tribal Council Oversight

Any proposed land-use project, from minor building renovations to major commercial construction, will go through Phase 1. Small projects such as home alterations or other minor construction ("low-impact projects") will pass only through Phase 1 before proceeding to Phase 5 for the required Tribal Council Oversight. Projects of significant size or impact such as commercial developments or other major construction ("high-impact projects") will proceed to Phases 2 through 5.

The analytic model and the comprehensive permitting process together make up an overall land-use evaluation system. While

there are several remaining unresolved planning and political issues, this proposed system should be useful immediately. The combination of a well-defined analytic model and a process for implementing it should allow the Puyallup Tribe to manage and enhance its substantial resources in a rational and consistent manner. It will not only guide today's decision-makers, but will provide long-term direction as well. Finally, if the Puyallups are able to make such a system work, it could become a model for other tribes and thus provide benefits to Indian people throughout the country.

Introduction

The Puyallup Tribe of Indians is a 1,500-member tribe with an 18,000-acre reservation located in the Tacoma, Washington area. Several features of the Puyallups' setting and history, including scattered control of land, hostility from neighboring populations, and traditional dependence on fishing, present them with a unique set of land-use management challenges. The tribe's current land-use management process is characterized by two central deficiencies -- a lack of long-range planning and the absence of a coherent land-use evaluation system. Both deficiencies must be addressed if the tribe is to reestablish control of its historic land holdings and realize the potential created by its 1988 land-claims settlement.

At the request of the Land Use Division, this analysis focuses on the second problem. Land-use projects are currently assessed on an "ad hoc" basis, with approval decisions dependent primarily on individuals and politics. Moreover, the Puyallup community plays only a minimal role in this process. This report seeks to provide the Puyallups with a comprehensive system for evaluating land-use proposals -- a system based on objective criteria and an inclusive, regularized process. Such a governing system, while flexible, would be objective and predictable. It would, therefore, serve to enhance the credibility of land-use decision-making both inside and outside the tribe. The specific reforms proposed attempt to strike a balance between the complexity necessary to address the critical land-use management

problems facing the tribe and the simplicity required to make such a system feasible to implement.

The report is divided into five sections. Section I begins by briefly reviewing the history of the Puyallups and their current economic conditions. It then describes the context within which the tribe operates -- its assets and liabilities, including its economic environment, political setting, cash and land, legal powers, and tribal organization. Section II lays out the unique planning conditions facing the tribe, the deficiencies in the current land-management system, and potential reforms. Section III gives an overview of our proposal for a land-use evaluation system, and describes our research and design methods. The proposal itself is detailed in Sections IV and V. Section IV outlines the analytic model -- the four baseline criteria and six variable criteria for development. Section V describes how these criteria should be implemented through a comprehensive permitting process.

I. Background

Brief History of the Puyallups¹

The Puyallups possess an 18,000-acre reservation at the mouth of the Puyallup River on Commencement Bay in Puget Sound. The portion of the reservation land which they actually own, approximately 900 acres, is smaller than that of any other tribe in Washington (see Exhibits 1 and 2 for maps of the Puyallup reservation and of the key new land holdings). They have had their territory and customs systematically eroded by white settlers during the last two hundred years.

The first agreement between the Puyallups and white settlers was the Treaty of Medicine Creek in 1854, through which they were granted a 1,280 acre reservation on Puget Sound; but the tribe actually received only a small inland tract of land. In 1855-56, the Puyallups and a number of other tribes waged war against whites in order to obtain the land they had been promised. An 1857 Settlement granted the tribe 23,000 acres of land on Commencement Bay (where the city of Tacoma is located today), but the official survey was lost and copies were destroyed in a fire. During the next fifty years, through the efforts of the federal government, railways, land companies, and lumber interests, marine access was severed, reservation acreage was reduced, and tribal land was sold to the public. By 1910, little more than 35 acres of the reservation remained. Beginning in the 1930s, the

¹ Data for this section was drawn from "The Puyallups: Tribe at a Crossroads," Tacoma News Tribune, October 21-26, 1990.

United States Bureau of Indian Affairs (BIA) helped further erode the tribe's cultural identity through its policy of forced assimilation.

After a number of decades of inactivity and decline in tribal population, the Puyallups began to demand rights. In 1965, six Puyallups were arrested for asserting their right to fish for salmon without licenses. In 1970, a large group of Puyallups and their supporters built a fishing encampment on the banks of the Puyallup River, which the state of Washington immediately dismantled by force. In response, the federal government sued the state on behalf of the Indians. A 1974 court decision granted 20 Washington tribes, including the Puyallups, the right to catch up to 50% of the salmon and steelhead in their traditional fishing grounds in and around Puget Sound.

Since the mid-1970s, the Puyallups have sought, through a series of direct confrontations, lawsuits, and negotiations, to restore their legal control and use of reservation land -- control which had been guaranteed by treaties signed in the 19th century. In 1976, a group of tribal members successfully occupied and evicted the state (which was somewhat weakened by its 1974 lawsuit defeat) from a former Indian hospital on the reservation. The hospital building and its grounds now comprise the Puyallup tribal headquarters campus in northeastern Tacoma. In 1981, the tribe won a court claim to 12 acres of riverbed owned by the Port of Tacoma. The filing of a 1984 suit asserting tribal ownership of 160 acres in the Tacoma tidal flats convinced

a group of non-Indian interests, including local, state and federal governments as well as affected businesses (such as the Union Pacific Railroad and Burlington Northern Inc.), to form a bargaining committee and begin negotiating with the Puyallups. After four years of meetings and a series of confrontations, an agreement was finally reached in 1988. This "land-claims Settlement" granted the tribe land, cash and social support programs worth \$162 million. The terms of the Settlement were final; the Puyallups have agreed to file no more claims for land or damages.

CURRENT PUYALLUP CONDITIONS

The number of registered Puyallup tribal members rose from a low of 300 in the early 1970s, to 1,500 by 1990. Most of the Puyallups live near the reservation in Pierce and Thurston Counties, an area that includes the city of Tacoma. Their traditional livelihood has been fishing, but they are now substantially integrated into an urban economy and thus have a variety of new occupations. They are part of a larger Native American community in the Puget Sound area that suffers from serious social problems caused by years of systematic interference and mistreatment by newer settlers. Fewer than 2% of the 5,000 Native Americans in the Puyallup service area earn more than \$7,000 each year. In Pierce County, 66% of Native Americans are unemployed. 95% of local Native Americans have, or are affected by someone who has, a substance-abuse problem. An Indian living in Tacoma is 48 times more likely than other city

residents to die in a fire. Like other economically-disadvantaged urban populations, the Puyallups are in desperate need of social services, educational improvement, housing, and a means of promoting employment and economic development.

Puyallup Assets and Liabilities: The Context

In order to assess the Puyallups' current land-use management process and propose workable solutions, it is important to understand the context -- both internal and external -- in which land-use management takes place. The external context can be broken into two parts, the economic environment and the political setting. While the tribe has so far been isolated from the economic fortunes of the region, today's healthy Washington economy has the potential to be an asset for the tribe. Any effective land-use management system must also work with a number of external political forces that have historically been at odds with the tribe.

More importantly for this analysis, the Puyallups must recognize their internal strengths and weaknesses in three relevant categories, which are cash and land assets, legal powers and organizational structure. Land-use planning, like other tribal functions, must include careful management of an improved cash and land resource base. An understanding of the tribe's legal powers on reservation land -- particularly as they relate to land-use -- is also crucial. Finally, any land-use management system will have to operate within a complex tribal organization;

it is useful to recognize how this organization is set up.

ECONOMIC ENVIRONMENT

The Puyallup Tribe is situated in an economically robust region, though most of the tribal members themselves have remained economically disadvantaged. The challenge facing the Puyallups in the future is to take advantage of a growing economy and raise the tribal standard of living. A land-use management system must recognize the sources of, and prospects for, this economic growth.

The Seattle-Tacoma regional economy is anchored by Boeing Aerospace and is supplemented by the lumber industry, various services and a booming foreign trade sector. In the second half of the 1980s, employment grew at an annual rate of 5.3%, more than double the average gain in the nation's top-100 metropolitan markets. The strong economy has brought with it a significant population increase. Between 1986 and 1989 the population of Seattle grew at an annual rate of 2.2%, twice as fast as the top-100 other metro-areas. Total income growth in the region was also impressive, increasing by more than 7% during the same period.² While the city of Tacoma has grown at a somewhat slower pace than Seattle, it remains a strong market.³

Despite the national economic recession, the region appears poised for continued growth in the 1990s. In Tacoma, a thriving

² Glenn MacDonnell, Washington: Chilling Out (Boston: Data Research Incorporated - McGraw Hill, 1990), p. 163.

³ Ibid., p. 154. Total non-farm employment expanded at about 3.5% annually during the 1980s, according to DRI.

port facility, with attendant transportation and maritime operations, promises to continue spurring growth. A January 1991 study claimed that the "Port is now on the verge of a significant increase in maritime traffic," including the potential for a doubling in container traffic.⁴ Moreover, Boeing is planning an expansion project in Tacoma, and as Seattle becomes more overcrowded and costly, further growth spill-over into the Tacoma area is likely. Overall, the city should be able to withstand recession, with 1.3% annual employment growth and 6.4% income growth expected during the 1990s.⁵ The tribe's assets and determination put it in a position to take advantage of the Tacoma economy and capture some of this growth.

POLITICAL SETTING

In order to be a successful sovereign entity, the tribe must develop and reinforce working relationships with a variety of political forces. Many of these forces were signatories to the 1988 Settlement. They include the United States of America, the State of Washington, local governments within Pierce County, and several private entities. These parties know that this agreement "cannot reverse or erase all of the injustices and problems that have occurred," but they hope that it can "encourage a cooperative relationship which will reduce the danger of

⁴ Vickerman, Zachary, Miller, Blair Waterway 2010 Plan: Executive Summary (Oakland, CA: VZM Engineering and Architecture, 1991), p.1.

⁵ MacDonnell, Washington: Chilling Out, p. 154.

continued injustice and continuing conflicts in the future."⁶ Officials in the tribal government have expressed an interest in building on the foundation laid by the agreement, and further enhancing relationships with what some term the "settlement partners." At the very least, the tribe knows it will have to maintain working relationships with these and other political forces.

Using powers granted by the 1988 Settlement, the Land Use Division currently consults with local governments (Pierce County, the Cities of Tacoma and Fife, and others) regarding any land-use decision contemplated by those governments within reservation boundaries. In the interest of building further cooperation, and thus tribal credibility, the Puyallups are ready to consult with their neighbors on their own development proposals. Tribal development frequently has an impact on neighboring governments and private parties; it often involves a change in current zoning, and with new land acquisition it takes land off local tax rolls. While being sensitive to these impacts, the tribe can also build political alliances with outside interests -- real estate groups, housing advocates, etc. -- who may be supportive of particular projects and help move them forward. Puyallup land-use decisions will not be dictated by external political forces, but the tribe would be wise to make

⁶ Puyallup Tribe of Indians, Agreement between the Puyallup Tribe, Local Governments in Pierce County, the State of Washington, the United States of America, and certain property owners (August 27, 1988), pp. 2-3.

an effort to inform affected communities and residents, and in some cases build political alliances, when considering substantial land-use projects.

CASH AND LAND ASSETS

Aside from human capital, which is arguably any society's most important asset, the Puyallup Tribe's primary resources are its cash and land. A critical tribal goal is the proper management and expansion of these two assets, and any land-use system will have to work towards this goal. It is important, therefore, to review the inventory of current cash and land holdings.

Prior to the 1988 Settlement, the Puyallup Tribe operated on little income and owned relatively few acres of land. Revenue came from tax and license fees on tribal businesses, fisheries and other activities, and from Bureau of Indian Affairs grants. The historic Puyallup reservation boundaries include over 18,000 acres of land, but the tribe has only owned a small portion of that land in recent years. The tribe's primary land holding was its headquarters campus, which contains the tribal government, school, health clinic and burial grounds, and is the site of the future bingo hall. There were also scattered private tribal businesses and residences throughout the area.

The 1988 Settlement substantially boosted the tribe's cash and land assets. The agreement conveyed \$162 million worth of resources, including:

- A \$22 million trust fund.
- \$24 million in direct payments to tribal members.

- \$10 million for fisheries.
- \$10 million for economic development and land purchases.
- \$2 million to assist tribal members in developing businesses.
- \$2.2 million for social services.
- 207 acres of land, in four parcels, adjacent to the Port of Tacoma.
- 57 acres of land owned by the Union Pacific Railway.
- 27 acres of land in the town of Fife.

The tribe's revenue stream is now significantly enhanced by income from the Settlement endowments. The Puyallups also hope to leverage financial resources and property conveyed in the Settlement to generate additional revenue by investing in economic development activities. In early 1991, for example, the tribe began construction of a bingo hall and marina, both of which should soon begin to generate positive cash flow. The Puyallup land holdings also increased, but at 900 acres still represent only a small fraction of the 18,000-acre reservation (see Exhibit 2). Nevertheless, in light of the economic prospects for the region, the new land assets, particularly the port properties, hold great economic development potential. The challenge for the tribe will be to maximize the potential of these new assets while ensuring that other critical social and economic needs are met.

LEGAL POWERS

Legal powers over those portions of reservation land which are held by the tribe are an important asset. U.S. law gives Indian tribes the choice of placing property they hold in "trust" or designating it "fee" land. Although trust land is legally owned by the federal government, trust status carries with it several advantages for tribes. First, trust land, and any income

generated on it, is exempt from federal, state and local taxation. This tax-exempt status may be a determining factor in the degree of profitability of a development project. Second, Indian tribes retain substantial civil regulatory power, exempt from many state laws, on trust land. Tribes have the authority, for example, to allow certain gambling activities not permitted in most states, such as high-stakes bingo.⁷ The Puyallups are taking advantage of this authority by building a bingo hall on their headquarters site. A third advantage is the tribe's power to rezone trust-land parcels to meet its own development needs. For example, the tribe can add value to land simply by purchasing a residential parcel at a low price and then rezoning it for commercial use. As discussed above, however, a tribe that is interested in maintaining peaceful relations with its neighboring residents and governmental authorities must act reasonably and not abuse this power.

There are several disadvantages to trust status. First, the tribe must obtain approval from the Bureau of Indian Affairs to put land into trust. By the same token, the tribe cannot sell or exchange trust land without government permission. In addition, it is difficult to obtain a mortgage against trust land. Because of the legal powers and independence granted by this special

⁷ While states that allow bingo generally limit awards to \$100-\$250, high-stakes bingo on Indian reservations produces winnings in the \$1000s, with mega-jackpots sometimes reaching \$250,000-\$1,000,000. Eduardo E. Cordeiro, The Economics of Bingo (Cambridge, MA: The Harvard Project on American Indian Economic Development, 1989), pp. 5-7.

status, lending institutions are understandably wary of making mortgage loans secured by trust-land property unless a strict "willingness to be sued" clause is included in the contract. Alternative mechanisms such as long-term leases, however, may allow the tribe to raise the necessary capital for development.

Fee land, in contrast, is legally owned by the tribe or individual tribal members. The owner must, therefore, pay state and federal taxes on it, although courts have ruled in a number of cases that even fee land is exempt from taxes.⁸ On balance, however, the advantages of trust status outweigh those of fee status, and most Indians seek to place land in trust whenever possible.

TRIBAL ORGANIZATION

Political power is vested in the tribe through a Constitution that was written by the Bureau of Indian Affairs in 1938. The Constitution designates the Puyallup Tribal Council as the central governing body of the tribe. The members of the Tribal Council are elected to three year terms, but are subject to special "recall" elections. The council's responsibilities include writing laws, controlling taxation and "per-capita" payments, setting tribal enrollment standards, appointing members to various tribal boards, and establishing tribal policy priorities.

Operating at the behest of the Tribal Council is an

⁸ Margo S. Miller, Tribal Responses to Federal Land Consolidation Policy (Cambridge, MA: The Harvard Project on American Indian Economic Development, 1988), p. 40.

extensive tribal government. In fact, the number of tribal staff has grown from just seven in 1974 to 300 currently.⁹ The government is composed of more than 30 divisions, boards, and other administrative agencies, that collectively are responsible for running the day-to-day activities of the tribe. They range from Accounting and Legal to the Chief Leschi School and the Tribal Court.

The extent to which each is involved in land-use matters varies, but all of these divisions have some land-related requirements or responsibilities. At the very least, each needs its own office space. Some tribal entities, like the Bingo Committee, have plans that involve land-consumptive activities, while others, such as Environmental Protection, actually have regulatory responsibilities over land-related matters. One tribal entity that directly affects land-use management on the reservation is Puyallup International Incorporated (P.I.I.). P.I.I. was established by the Tribal Council as a subsidiary of the tribe and it is responsible for planning economic development activities on the 1988 Settlement Properties.¹⁰ Finally, at the center of the land management process is, not surprisingly, the

⁹ Interview with Rolleen Hargrove, Puyallup Tribal Council member, March 1, 1991.

¹⁰ P.I.I. is governed by a seven-member board, four members of which are non-Indians and the remaining three of which are Puyallups. The chief objective of P.I.I. is to maximize the financial return of its development projects to the tribe. As the Chairman of P.I.I.'s Board wrote, "the separation of business and politics is recognized as being vital to the success of economic development within Indian Country." From Puyallup International Incorporated, Annual Report, 1990 (Tacoma: P.I.I., 1991), p. 1.

Land Use Division itself. The division's current responsibilities include review of neighboring jurisdictions' specific land-use plans. Clearly, the Land Use Division would be at the core of any evaluation system.

II. Puyallup Land-Use Management

Unique Planning Conditions on the Puyallup Reservation

Several features of the Puyallups' setting and history -- including scattered control of land, hostility from neighboring populations, and traditional dependence on fishing -- present them with a unique set of land-use management challenges. The tribe's Legal Division has suggested that it simply adopt the "land use standards of overlapping jurisdictions" as regulations for all land within the reservation.¹¹ Because of the unique nature of their legal jurisdiction over the reservation, however, the Puyallups cannot implement standard zoning. Most of the ostensibly sovereign reservation area is not actually governed by the tribe. Instead of owning a large plot of land defined by contiguous boundaries, as would a municipality, the Puyallups control widely scattered sites in and around Tacoma. As long as large portions of the reservation are owned by non-Indians and governed in practice by a variety of municipalities and two counties, the tribe will not be able to assign standard residential, commercial, and industrial zone designations on the reservation in any legally meaningful way.

The Puyallups are also one of a small number of Indian tribes that possess real estate in the middle of a large, densely populated city. As mentioned above in the discussion of the local political setting, the tribe must therefore consult with

¹¹ John Bell, Puyallup Legal Division, "Draft Memo to the Puyallup Tribal Council Concerning Tribal Permitting Procedures," January 18, 1991, p. 5.

other governments and citizens who do not live under its laws when pursuing development projects. When the Land Use Division makes a decision, it must consider the impact not only on Puyallups but also on non-Indian neighbors who have tremendous investments in communities that are well-established on reservation land. These people are only beginning to confront the newly and justly reinstated power of the Puyallups and are resistant to tribal efforts to assert authority in land-use matters. In the town of Fife, which is located entirely within the Puyallup Reservation, residents have been extremely hostile toward Indians and to the notion that they live on Indian land.

In addition to possessing scattered land and being located in a city, the Puyallup Indians have historically been dependent on fishing. During the last century, they have witnessed the destruction of their salmon spawning grounds by logging, industrial, and shipping activity. As a result, they place a particularly high value on protecting the natural environment and pursuing active measures to improve its health.¹² Tribal staff members must therefore carefully scrutinize all land-consuming development proposals to assess their impact on fisheries and the general health of the Puyallup River, Commencement Bay, and Puget Sound.

This combination of limited control over land, an urban

¹² The importance of fisheries is clearly stated in both the Tribal Constitution and the 1988 Settlement documents. During interviews held in early 1991, staff and tribal members reiterated the central role that fisheries play in Puyallup economic and cultural life.

setting, and special priorities creates a unique setting for the tribe. These conditions will help determine the forms of land-use regulation that are feasible and the types of projects that will be approved.

Current Land-Use Management Deficiencies

The land-use functions of the tribal government are in their infancy. As the Land Use Division stated in 1990, "the absence of a land base prior to the Settlement precluded the development of a government infrastructure typical of a landed people."¹³ Consequently, the current Puyallup land-use management process is characterized by several shortcomings, including a lack of long-range planning and an ad-hoc means of project evaluation. The process is also noteworthy for its lack of assigned planning authority and the absence of community input.

The Puyallup Tribe only recently began to reestablish its eroded land base, and therefore has not yet developed a coherent, long-range planning strategy for the reservation. It has not systematically assessed its land-related policy needs and priorities. For example, no specific housing or open-space needs analyses have been conducted, and thus no long-term plans weighing the relative merits of each has been developed. Consequently, it has been impossible to develop any type of comprehensive land-use plan for the reservation, even though such

¹³ Elizabeth Tail, Puyallup Land Use Division, Interim Land Use Plan for the Puyallup Tribe (Tacoma: Puyallup Tribe of Indians, 1990), p. 3.

a plan is required by the 1988 Settlement and necessary for long-term tribal success.

The tribe also lacks a mechanism for evaluating current land-use projects. All decisions are made on an ad-hoc basis, and projects often resist regulation, taking on lives of their own. Detailed evaluation takes place in some cases, but many projects pass through only the fractious political process. The resulting inconsistent and unpredictable management of land prevents the tribe from considering all of the issues related to developments.

There are numerous examples of the ad-hoc nature of the current process. The Puyallups are currently building a bingo hall adjacent to their headquarters which is likely to be successful and will provide substantial financial rewards for tribal members. However, the committee that planned this facility considered only one location. A useful study might have analyzed the potential markets for bingo halls on various tribally-owned land parcels and compared the value of alternative uses of the site chosen. In another case, cemetery workers, understandably worried that land adjacent to their sacred site was going to be used for a new building, bulldozed the area for "expansion" without consulting the Land Use Division. A large piece of rural land was also purchased recently, before staff members learned that it had no access to utility connections. Each of these examples can be attributed to the tribe's lack of a land-use evaluation system.

The problems associated with a deficient land-use management process are compounded by inadequately defined planning roles within the tribal government. Staff members generally assume responsibilities and discuss decisions informally among themselves. Observations and interviews with staff members suggest that planning and evaluation authority is not clearly assigned. For example, the Environmental Division might take the lead on evaluating a recreational use of land near the Puyallup River, and the Land Use Division might initiate consideration of a commercial project. Neither division has been officially assigned the authority to regulate these types of uses, but they must take action to fill voids in an undeveloped process.

Finally, tribal members are justifiably concerned that the present land-use management process provides no adequate mechanism for community input. Members currently have three outlets for participation: the Tribal Council, which holds regular public meetings; tribal committees, which are representative groups appointed by the Council to manage specific issues or projects; and tribal activists, who operate informally to organize support for, or opposition to, tribal policies, and often promote recall petitions against Tribal Council members. These outlets have not given tribal members an adequate role in land-use decision-making. At a February 1991 community meeting, members expressed concern about the cost of a proposed marina to be built on tribal land in the Port of Tacoma and were angry because the project had been initiated, designed and approved

without a community hearing. Construction of the new bingo hall also began without any consideration of community feelings about its effect on other uses of the headquarters campus, such as the annual sale of fireworks. These cases seem to be typical of the current land-use assessment process.

As a result of these problems, land-based economic development is curtailed and valuable tribal government resources are wasted. The Tribal Council is forced to become involved in the details of every land-use decision, whether it involves a project as trivial as a private home alteration or as important as the construction of a new business. These responsibilities divert the Council from pursuing its primary task -- establishing broad policy objectives in all areas critical to the well-being of the Puyallup Tribe.

Potential Reforms

As the preceding discussion suggests, there are several deficiencies in the current process which the tribe must address if it is to properly manage its land resources in the future. First, the tribe needs to adopt a long-range planning strategy. Second, the tribe must implement a coherent system for evaluating pending land-use projects. Underlying both of these are, among other issues, the desire to provide the community with a meaningful role in the process, and the need to allow the Tribal Council to focus on a broader policy agenda rather than on day-to-day problems.

This analysis will focus on the second task -- developing a land-use evaluation system -- and attempt to do so in a way that addresses other land-use management deficiencies, including the need for community input and a simplified Tribal Council role.

LONG-RANGE PLANNING

While this analysis will not attempt to remedy the first problem, it is important to note what should be done in the area of comprehensive long-range planning. The Puyallups should begin by conducting a thorough assessment of land-related needs as well as land inventory. If the tribe is unable to predict its long-term needs, it should at least develop a system for identifying them in the future. The Land Use Division has initiated this needs-assessment process by compiling a list of current land-consumptive needs -- those that are being actively pursued now.

Once the tribe has assessed its land-use needs, it can then begin to weigh competing land interests and prioritize those needs. The Tribal Council, relieved of specific land-use evaluation duties, will be able to focus more on the task of prioritizing land-use needs. Ultimately, the Puyallups will be able to use those land-use priorities to establish a comprehensive tribal land-use policy. These efforts are necessary to enable the tribe both to meet internal and external expectations set in the 1988 agreement and to reap the potential benefits of its newly-acquired assets. Clearly, strong and consistent political leadership will be necessary if these goals are to be successfully pursued.

III. A LAND-USE EVALUATION SYSTEM: DEVELOPING THE PROPOSAL

Overview of Proposal

The second fundamental land-use inadequacy cited in Section II -- the lack of a system for evaluating pending proposals -- is the focus of this analysis. In order to avoid making land-use decisions on an inconsistent, ad hoc basis, the tribe needs a comprehensive land-use evaluation system. Such a system would instill objectivity and predictability in decision-making that is currently dependent primarily on individuals and politics. A land-use evaluation system would also survive over the long-term without relying solely on the dedication of the particular people involved at any given time. Finally, such a system would enhance the Tribe's credibility in the larger community and, more importantly, promote self-esteem within the Tribe itself. Institutionalized systems like this support tribal sovereignty and are crucial to the long-term success of self-determination.¹⁴

The proposed land-use evaluation system, which is detailed in Sections IV and V, consists of two parts -- an analytic model and an implementation process. The analytic model establishes a set of criteria by which to judge land-use projects. In the absence of a traditional zoning system, which we have demonstrated is impractical for the Puyallups, these development criteria will provide a consistent basis for assessing proposals. The second component of the system, the implementation process,

¹⁴ Professor Joseph Kalt, John F. Kennedy School of Government, Harvard University, from a lecture on November 20, 1990.

lays out a decision-making apparatus for the Tribe. It is essentially a comprehensive permitting process which seeks to coordinate the various decision-making institutions, apply the model criteria, and provide a role for the community. Although this system is not a substitute for long-range planning, it is a useful tool that can be implemented quickly. The establishment of land-use priorities and a planning policy would make it even more effective.

A well-implemented, coherent evaluation system should enable the tribe to use staff and other government resources more efficiently. Staff members will be able to avoid wasting time inventing new ways to evaluate each land-use proposal. More importantly, busy Tribal Council members will only need to become involved in the most critical projects. Consequently, they will save valuable hours and thus be able to spend their time addressing broader policy issues.

Design and Research

Before providing the details of the land-use evaluation system, it is important to explain how we developed the proposal. Our initial hope was that we could find a documented example of such a system for a comparable Indian Tribe. Unfortunately, we were unable to uncover such a model. We were, therefore, forced to turn to other less directly applicable land-use systems. We found useful concepts in several alternative approaches to traditional zoning which are used by a number of municipalities.

Although none of these approaches is directly transferable to the Puyallup situation, we were able to draw elements from each into our proposal. These systems, known commonly as "flexible zoning," "floating zoning," and "contract zoning," all differ from traditional "Euclidean" zoning in that they do not map out an entire jurisdiction into different "use" districts (i.e. residential, industrial, commercial, etc.). Instead, they allow the municipality to set standards and goals with which to guide market-driven development initiatives.

The most relevant of these alternative zoning schemes for our purposes is "flexible zoning." This type of regulation, which was developed recently, evaluates development proposals based on the compatibility of their individual characteristics with municipal policy priorities, rather than on whether they conform to predesignated uses for their particular locations. The city of Fort Collins, Colorado, for example, has adopted a "Land Development Guidance System," which clearly defines a set of flexible criteria for land use. Absolute criteria, which apply to all developments, cover "neighborhood compatibility, conformance [sic] with adopted plans, minimum requirements for engineering and public services, and compliance with standards for protecting resources, the environment, and site design."¹⁵ Variable criteria assign "performance points" to proposals based on the type of use and community preferences. They are designed

¹⁵ Douglas R. Porter, Flexible Zoning: How it Works (Washington, D.C.: The Urban Land Institute, 1988), pp. 161-63.

to guide projects toward the achievement of long-term development goals for the city.¹⁶ Similar systems have been used successfully in Breckenridge, Colorado and Hampden County, Kentucky. Until it has articulated policy priorities, the Puyallup Tribe cannot adopt a plan that assigns specific weights to different criteria. However, the unique characteristics of the tribe's planning setting described in Section II suggest that it would benefit from using components of such a flexible regulatory tool.

Another means of regulation which provides inspiration is the notion of "floating zoning," which has been attempted in places such as Lower Gwynedd Township and New Hope, Pennsylvania.¹⁷ Because all potential uses of land cannot be controlled or predicted, this method allows the market to guide use determination within set standards for safety and compatibility. When certain land uses begin to dominate a particular area, the city then designates the area for those prevailing uses. Comprehensive long-term goals are not abandoned, but are achieved through market-driven investment. Over time, a set of zones is thereby established. Endowed with scattered land holdings and undetermined needs, the Puyallups will have difficulty making rational "Euclidean" zoning assignments. The concept of floating zoning justifies allowing

¹⁶ Ibid., p. 163.

¹⁷ Charles M. Haar and Michael A. Wolf, Land-Use Planning: A Casebook on the Use, Misuse, and Re-use of Urban Land (Boston: Little, Brown and Company, 1989), p.216 and p.279.

current investment preferences rather than arbitrary decisions to determine use designations.

Another useful model is the concept of "contract zoning," which has been utilized by a number of cities and municipalities to regulate large developments. This method requires large-scale developers to meet with municipal officials to establish design specifications, payments or concessions, and other project components that must be provided before approval is granted.¹⁸ For example, the city of Boston uses a system whereby commercial development proposals must be submitted to the city for design approval and investors must pay linkage fees to cover new public costs imposed by the project. Specific plans are created and conditions are agreed to through elaborate negotiations that take place before zoning and construction permits are granted. A similar process would allow the Puyallup Tribe both to have input in the design specifications of projects and to reap a portion of the return on investments.

The most important underpinnings of our proposed land-use evaluation system are found not in any existing zoning scheme, but rather in the unique characteristics of the Puyallup Tribe described in Section II. The system is based on the expressed interests and concerns of tribal members and staff as well as our observations of the reservation and its setting. It reflects an attempt to incorporate needs into a coherent and workable system. We have deliberately omitted some issues which the Tribe itself

¹⁸ Ibid., pp. 283-89.

has yet to resolve and which we, as outsiders, are not in a position to address. In a number of instances, we have proposed various alternatives for the Tribe to consider. The system's guidelines and procedures, although clearly established in our recommendations, are flexible and enable the tribe to set its own priorities.

Most of the data for the proposal was drawn from interviews and meetings with tribal members and governmental staff personnel. We also gathered information from various local publications, staff materials and memos. An important document for our work was a January 1991 memo from the tribe's Legal Division which summarizes a proposed tribal permit procedure.¹⁹ The Tribal Constitution and a number of ordinances clearly outline the roles of various tribal divisions, and the 1988 Settlement documents articulate the tribe's new rights and responsibilities. Finally, the Land Use Division provided a significant amount of research material and direction.

¹⁹ Bell, "Draft Memo."

IV. ANALYTIC MODEL: CRITERIA FOR EVALUATING LAND-USE PROJECTS

Any systematic approach to land-use development appraisal must be based on a clear set of criteria. These criteria should serve essentially as a check-list by which all development proposals are judged. They should be based on both traditional measures of project worthiness and viability, and objectives unique to the Puyallup Tribe.

We propose two types of criteria: Baseline criteria and variable criteria. The baseline criteria are fundamental standards for development which can be clearly defined and measured, and they should be applied uniformly to all development projects regardless of land-use type or current tribal policy priorities. The proposed baseline standards fall into the following four categories:

- o Building and safety
- o Environmental
- o Fisheries habitat
- o Other land use

The variable criteria are a set of more subjective standards that cannot easily be measured. They should be applied to varying degrees depending on the type of land-use project and tribal policy priorities at the time of project consideration. The proposed variable standards fall into the following six categories (listed alphabetically):

- o Cultural enrichment
- o Economic development
- o Financial benefit
- o Human service provision
- o Natural resource preservation
- o Sovereign identity promotion

Baseline Criteria

All land-use projects must be evaluated on the basis of a set of baseline criteria. Each of these standards should be defined by one or more specific threshold tests -- thresholds which are measured quantitatively whenever possible (e.g. maximum emissions of a given pollutant, minimum level of building material quality, exact impact on size of spawning areas, etc.). These standards should be applied uniformly to any tribally-regulated development project regardless of its location, size or type of use (although certain standards will obviously be more relevant to particular locations, sizes or uses).

Specific threshold levels may be revised to strengthen or weaken the regulations as new building and environmental technology becomes available, or as tribal priorities shift over time. If the tribe wishes to take advantage of its regulatory powers and encourage or discourage certain types of economic development, for example, it may decide to loosen or tighten requirements or allow tradeoffs in any of these baseline categories. In order to maintain a credible and predictable system, however, the standards must be applied in a non-discriminatory fashion, and thus should not be revised for any particular project.

The establishment of baseline criteria is not a new concept. All municipalities, whether they regulate land use through traditional zoning or not, include in their regulations minimum standards which apply to any development project. Moreover, the

Puyallup Tribe is already employing some minimum standards. For example, development proposals must include Environmental Impact Statements that are subject to review by the tribe's Environmental Division. However, existing criteria need to be further refined, and new ones must be added, to ensure the development of a comprehensive land-use evaluation system. Indeed, the tribe's Legal Division, in a January 1991 memo, has confirmed a consensus among staff members that the current standards should be enhanced and solidified. In the short term, the tribe should consider filling gaps with standards borrowed from other jurisdictions (e.g. Pierce County, State of Washington, etc.). In the future, however, the tribe will probably want to revise those standards to meet its particular policy goals.

The baseline criteria categories -- building and safety, environmental, fisheries habitat, and other land use -- represent commonly accepted areas of regulation, with an emphasis on specific Puyallup concerns. While a detailed checklist of requirements for each category must be established by each of the relevant tribal government divisions, this analysis can articulate the broad criteria definitions and some of the issues they must cover.

BUILDING AND SAFETY

Building and safety codes are employed by virtually all jurisdictions that have the authority to exercise police powers

in order to protect the "public health, safety, and welfare."²⁰ The Puyallup tribe should be no exception. These codes cover issues such as quality of construction materials, proper lighting and design specifications, as well as engineering, electrical, and plumbing standards. In the short term, as the Land Use and Legal Divisions have suggested, the tribe should adopt the "Uniform Building Code" or another relevant standardized building and safety scheme.²¹ If the tribe chooses to strengthen or relax particular standards in the future for cultural or economic reasons, it should codify these changes in the regulations and apply them uniformly to all development.

ENVIRONMENTAL

Environmental impact criteria have been widely adopted at all levels of government as a means of reviewing development projects. For the Puyallups, environmental standards are particularly salient given their historical connection with water and land. The tribe already has water quality standards in place. It needs to adopt additional environmental standards in order to control air quality, hazardous waste, and sources of erosion and run-off. In some cases, the tribe may simply want to employ U.S. Environmental Protection Agency or Washington State standards. In others, it may want to adopt more stringent standards to reflect its environmentally-dependent past and its future priorities.

²⁰ Haar and Wolf, Land-Use Planning, pp. 141-43.

²¹ Bell, "Draft Memo," p. 5.

FISHERIES HABITAT

One environmental area to which the Puyallups have always paid particular attention is the fisheries habitat. The tribe's roots are in fishing, and much of its recent history has been dominated by a struggle to reassert traditional fishing rights. In fact, the Puyallup government includes a separate Fisheries Division, responsible for protecting and expanding fish habitats, which is several times larger than its Environmental Division. The Fisheries Division employs standards that are consistent with those agreed to by all signatories of the 1988 Settlement. Technical Document #4 of the Settlement requires that projects result in no net degradation of the fisheries habitat, and it sets standards for mitigation of negative impacts on fisheries.²² Mitigation standards should be applied as a variable criterion ("natural resource preservation"). The baseline "no net degradation" criterion, however, should be applied across the board, though it will likely be relevant only for shoreline and other water-impact projects.

OTHER LAND USE

A final group of miscellaneous standards should apply to all assessed projects. For example, there should be standards in place that ensure the existence of necessary infrastructure such as sewers, utility lines and roads of sufficient capacity to permit the land-use development in question. Other regulations

²² Puyallup Tribe, Agreement, Technical Document #4, p. 1, p. 34, and p. 42.

might guide heights, setbacks and floor-to-area ratios (FAR). In addition, the Land Use Division may require that all new residential units include off-street parking or that retail signage fall within specified size parameters. While these codes may evolve over time to suit tribal needs, they are not intended to be a random list of flexible standards. As baseline criteria, they should only include guidelines which can be codified and applied to all development.

Variable Criteria

While all development proposals should meet baseline codes, many should also be evaluated on the basis of a set of variable criteria. Projects that receive this additional scrutiny should be those which have a high impact on the tribal and local communities, such as commercial buildings, housing developments, cultural facilities, or parks. The precise cutoff for determining which proposals fall into this category, however, must be established by the tribe itself. This issue will be discussed further in the implementation section (V).

The variable criteria -- cultural enhancement, economic development, financial benefit, human service provision, natural resource preservation, and sovereign identity promotion -- are a more subjective set of standards which should be weighed differently depending on the type of proposed land use, and tribal policy priorities at the time of project consideration.

Most proposals will fall into four broad categories of land

use:²³

- o Cultural projects
- o Human service projects
- o Income-generating projects
- o Land preservation

The category into which a project fits will partially determine the degree of emphasis placed on each variable criterion. An income-generating proposal, such as a commercial project, will be evaluated more intensively against the financial benefit and economic development criteria than a cultural project, such as a museum, which will be required to meet high cultural enrichment standards. The remaining criteria would be applied to both projects, but should be given less emphasis than the primary standards.

The degree to which the variable standards are applied will also be partially dependent on the tribal policy priorities at the time of project consideration. If, for example, the Puyallups decide that job creation is the most important tribal objective over the next several years, then all proposals should be examined more closely against economic development standards. If the tribe is seeking to actively promote its sovereign identity, then the relationship of projects to the surrounding community should be carefully assessed.

The tests that are used to measure performance under the variable criteria categories are necessarily more qualitative than those used to determine baseline acceptability.

²³ Interview with Elizabeth Tail, Land Use Division, March 3, 1991.

Quantitative thresholds simply do not apply for some of the criteria, such as cultural enrichment and sovereign-identity promotion. These require a more subjective weighing of pros and cons to determine whether a project is acceptable or not. At some point in the future, the tribe may want to place quantitative weights on each of the tests (i.e. create a point system) to make project analysis easier and less subject to the judgement of particular staff -- a solution used in the flexible zoning schemes of Ft. Collins and Breckenridge. Whether or not there is a point system in place, however, judgments will have to be made about the weights assigned to different standards for different project types. These decisions should be made based on tribal priorities when the evaluation system is established.

Like the baseline criteria, the six proposed variable criteria categories represent a combination of typical development criteria and specific Puyallup concerns, with an emphasis on the latter. They reflect what seem to be the current policy priorities for the tribe. Details within each category will have to be determined by the tribe. This analysis will articulate the broad criteria definitions and some of the issues that specific standards must cover.

CULTURAL ENHANCEMENT

Since the arrival of white settlers in the Northwest, the Puyallup Tribe has witnessed the rapid disintegration of its unique cultural characteristics and identity, which include both a communal, supportive style of living and distinct forms of

worship and artistic expression. Tribal members and leaders have expressed a desire to redevelop and preserve cultural identity as a means of strengthening the Puyallup community and asserting its presence in Tacoma.²⁴

The cultural enhancement criterion should be used to measure the extent to which proposed land-use projects promise to contribute to this effort. For some proposals, most obviously cultural projects, this criterion will be the primary measure of acceptability, while for others it will have only peripheral importance. A proposal for a tribal museum, for example, would be judged primarily on the comprehensiveness and expertise with which it presents Puyallup culture. A fast food restaurant would have other priorities, but might be credited for using Puyallup cultural symbols in the design of its building and dining area. The cultural criterion may also be the most suitable means with which to review architectural and design aspects of projects.

ECONOMIC DEVELOPMENT

Another critical objective of the Puyallups is to reap economic benefits both from assets gained through the 1988 agreement and from the growing economy of northwest Washington. The tribe has substantial economic development needs -- needs which have yet to be clearly identified and translated into policy goals. Long-term goals may include anything that increases economic well-being, such as job creation, tribal

²⁴ Maiselle Bridges, tribal elder, in Tacoma News Tribune, October 21, 1990, p. A8.

business ownership, small-business development, education, and community improvement.

The economic development criterion should be used to assess the extent to which projects promote these economic development objectives. The tribal community currently suffers from an unemployment rate of more than 60 percent, so any project that creates jobs is particularly valuable. A business or other income-producing project, such as the proposed Outer Hyllabos Marina, should be required to add commercial activity and employment opportunities to the community. All P.I.I. projects should be required to create economic development benefits. A review of a school proposal would include consideration of the long-term economic benefits of student training. If housing is proposed, the tribe would assess its potential impact on the economic condition of the surrounding Indian neighborhood. Given the tribe's urgent economic development needs, this criterion will probably be applied at some level to almost every proposal.

FINANCIAL BENEFIT

The Puyallup Tribe seeks to build its financial resources, both to eliminate want among members and to support its various programs. Given the growing local economy, many land-use projects have the potential to provide income for the tribe.

The financial benefit criterion, the only recommended variable standard that can be accurately quantified, should be used to assess the amount of income that a development may generate or consume. Standard gauges may be used, such as rate

of return on total assets and equity, cash-on-cash return, annual cash earned, and future value. P.I.I. initiatives, such as the Outer Hyllabos Marina and the proposed long-term lease of land to a waste disposal company for composting, should be judged in large part by this criterion. Proposals for tribal-owned businesses, such as bingo halls or restaurants, should also be carefully assessed for their income-producing potential, though they may seek to meet other needs. Even reviews of private-business developments owned by tribal members should include consideration of the income they may produce through tax revenue. Some projects, such as most human service facilities and internal cultural activities, will actually cost money and should be judged against the financial benefits criterion only to determine the level of subsidy they will require.

HUMAN SERVICE PROVISION

In addition to managing internal affairs and representing the interests of the 1,500 tribal members with other governments, the Puyallup government provides a range of human services to almost 5,000 registered Indians in Washington State. A school (K through 12), an outpatient medical clinic, a dental care facility, a children's services center, a teen parenting program, a resident detoxification dormitory, a housing agency, and a job training program are all located at the headquarters site. The tribe also runs a police force and a court system. These programs are supported both by grants from the Bureau of Indian Affairs and by funds generated within the tribe.

The human service provision criterion should be used to assess the degree to which a land-use development will support these extensive programs. Projects may be judged according to their potential to generate either direct services or dedicated financial contributions. An investment designed specifically to provide a human service, such as a new school or elder-care center, would be assessed primarily by its performance under this criterion, and would be expected to meet a high standard. Commercial developments, such as the bingo hall or a restaurant, might produce revenues that could be dedicated to expanding human services and would therefore be given some credit for this contribution, though they would be judged primarily by other criteria.

NATURAL RESOURCE PRESERVATION

As noted previously, the Puyallup Tribe attaches especially high value to natural resources, particularly to fisheries. Baseline requirements give fisheries special protection, but these are simply minimum maintenance standards. The 1988 Settlement asserts further that an explicit goal is "to increase the current level of salmon and steelhead production released directly into the Puyallup River and Commencement Bay Basins and to enhance the fisheries resource [emphasis added]."²⁵ The agreement specifically calls for efforts to "increase the production of naturally spawning or artificially propagated

²⁵ Puyallup Tribe, Agreement, Technical Document #4, p.1.

stocks, or to improve the habitat of such stocks."²⁶ In interviews, tribal members repeatedly mentioned the importance of both enhancing fisheries and improving the general health of other natural resources on reservation land.

The natural resource preservation criterion should be used to assess the extent to which development projects will enhance the health of natural resources in general and fisheries in particular. The proposed Outer Hyllabos Marina, for example, would be given credit if it were designed to improve water quality in the Hyllabos Creek or if it dedicated a portion of its revenues to fisheries enhancement efforts. A plan for land acquisition and the creation of a tribal park would be judged primarily by this criterion. It would perform well if it protected open lands, and would be even more likely to gain approval if it also prevented alternative uses of these lands that might have produced run-off or otherwise threatened fisheries. A project that threatens natural resources, such as the proposed composting plant, would be penalized under this criterion. This category should encourage efforts to improve the health of natural resources.

SOVEREIGN IDENTITY PROMOTION

The tribe has a vested interest in asserting itself as a sovereign entity. In order to successfully do so, it must both exercise its authority on the reservation and maintain constructive relationships with local communities. Because the

²⁶ Ibid., p. 42.

reservation is largely urbanized, tribal land-use decisions will have impact on many non-Indians. Development projects will be noticed by outside groups and may lead to the cultivation of either support or opposition. The active hostility of local outside groups will hinder long-term tribal efforts to pursue its objectives. Consultation with and support from these groups may actually enhance tribal credibility and increase its ability to function as a sovereign government.

The sovereign identity promotion criterion should be used to assess the extent to which development proposals address their social context as well as how much they contribute to tribal prestige and self-esteem. This performance standard is particularly difficult to measure. A review of plans for the development of a smokeshop or liquor store in Tacoma should place some emphasis on whether or not residents near the site have been consulted and given a chance to contribute their concerns to the planning. The effects of the new bingo hall on local traffic patterns should also be assessed. A proposed new clinic at the headquarters would be judged on the degree to which it enhances the tribe's authority and prestige. Likewise, a marina or other significant new project should be given credit if it boosts the tribe's image -- both internal and external. This criterion should be construed as a means of increasing tribal options, not limiting its power.

V. Implementation: A Comprehensive Permitting Process

The analytic model (Section IV) alone is useless without some means of putting the baseline and variable criteria into practice -- that is, a way of implementing the model. Any implementation scheme must apply the development criteria in a manner that addresses the shortcomings of the current land-use "process," particularly the lack of community input, the uncoordinated decision-making, and the highly politicized nature of the current reviews. In order to accomplish these objectives, we are proposing a comprehensive permitting process. This process is composed of the following five phases (see flow chart following page 44 for an overview of the process):

- o Phase 1: Baseline Code Review
- o Phase 2: Staff Analysis
- o Phase 3: Community Evaluation
- o Phase 4: Planning Commission Decision
- o Phase 5: Tribal Council Oversight

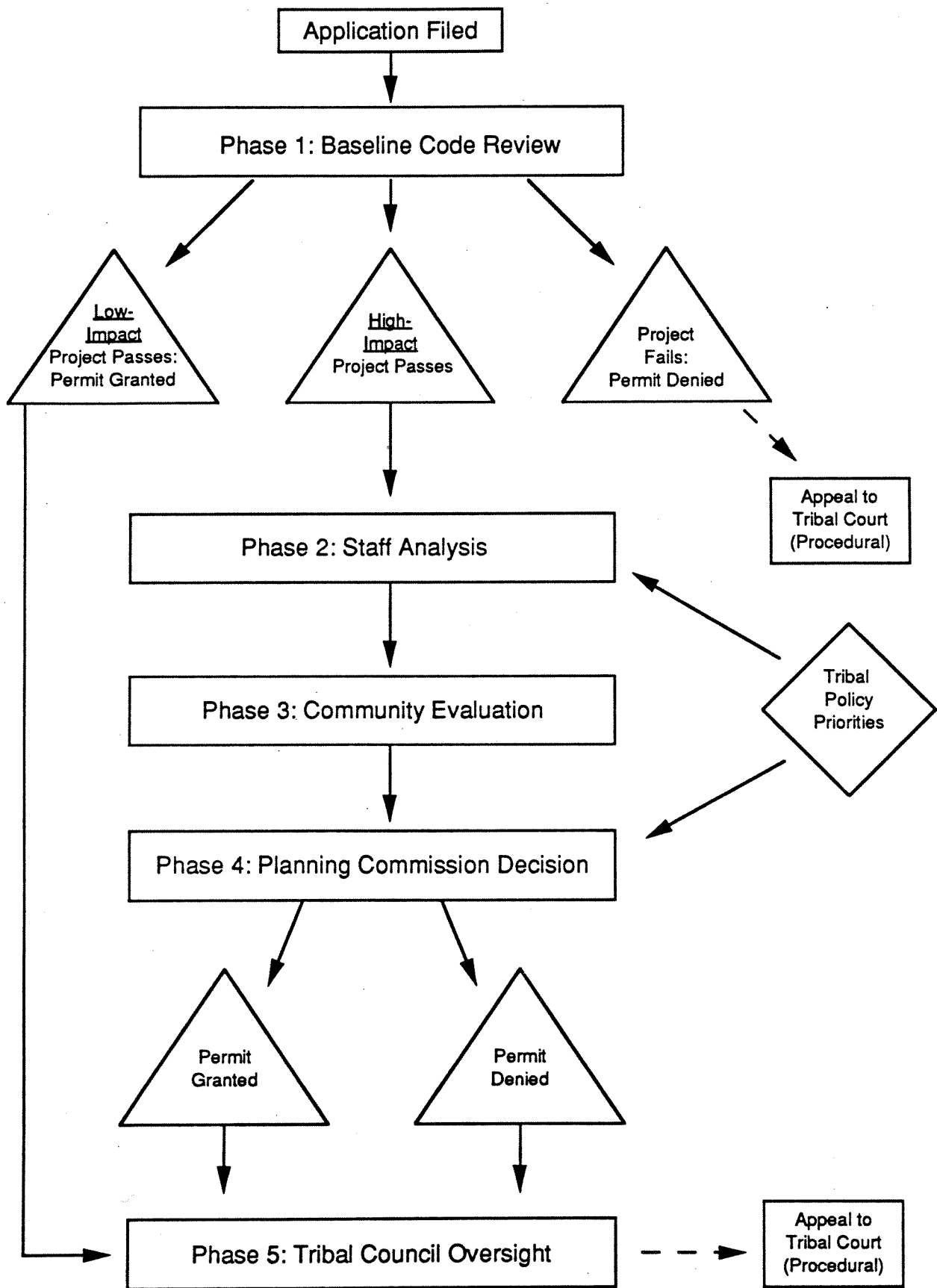
Any proposed land-use project, from minor building renovations to major commercial construction, will go through Phase 1. Small projects such as home alterations or other minor construction (hereafter referred to as "low-impact projects"), will pass only through Phase 1 before proceeding to Phase 5 for the required Tribal Council Oversight. Projects of significant size or impact such as commercial developments or other major construction (hereafter referred to as "high-impact projects"), will proceed to Phases 2 through 5.

If amendments or additional requirements (like those often required by municipalities for the issuance of a certificate of

occupancy) are added to a permit by the Planning Commission or the Tribal Council after a proposal has passed through the entire process, these changes will be sent back to Phase 1 to be reviewed as low-impact projects. This process should prevent delays in permitting that might occur through the excessive imposition of conditions.

The analytic model described in Section IV and the comprehensive permitting process detailed in this section together make up an overall land-use evaluation system.

Comprehensive Permitting Process Overview



Phase 1: Baseline Code Review

Every land-use proposal should begin the permitting process by going through a review that checks its compliance with the established baseline criteria. This initial phase is essentially a filtering step which ensures that all projects meet the minimum threshold tests outlined in the analytic model. It also guarantees that components added to proposals later in the permitting process are applied fairly and meet tribal standards. Projects which are obviously unacceptable are thereby eliminated early in the process, and developers are encouraged not to pursue frivolous ventures. These basic requirements will discourage wasteful ad-hoc activity and conserve the tribe's scarce resources. The tribe currently conducts cursory regulation of development proposals; Phase 1 will improve that process by implementing the baseline criteria in a coordinated fashion.

PARTICIPANTS

Project evaluation in Phase 1 will be carried out by staff members in the Environmental, Fisheries, and Land Use divisions. Environmental impact may be assessed using devices already agreed to by staff members, an "environmental checklist" and, for larger projects, an environmental impact statement (EIS), which should include all baseline environmental criteria.²⁷ The Fisheries Division should ensure that projects pose no threat of "net degradation to the fisheries habitat" and meet all other

²⁷ Bell, "Draft Memo," p. 7.

fisheries-related thresholds.²⁸ Compliance with building, safety, and other baseline land-use standards will be checked by the Land Use Division.

PROCESS (see flow chart following page 47)

The mechanics of the review process should be straightforward. Staff members should develop an application form, which all permit applicants will submit along with general plans and maps specifying the location and impacts of development. The application will go to the Land Use Division, which will distribute copies to the Environmental, Fisheries, and Land Use Divisions for simultaneous review. Phase 1 decisions must be made in a timely fashion, in most cases within 30 days, because time lost diminishes the value of a development.

Most low-impact projects, such as private home renovations and "ex post" conditions added to permitted proposals, will be comprehensively reviewed and either approved or rejected in Phase 1. Low-impact projects that are permitted at this stage will pass directly to Phase 5 for Tribal Council Oversight. In order to avoid embroiling staff members in disputes, applicants should be allowed to file appeals based on procedural grounds with the Tribal Court. If permits are denied on substantive grounds, applicants should make recommended changes and file new applications. A high-impact project that passes successfully through Phase 1 will proceed to Phases 2 through 5 as originally submitted or with required modifications.

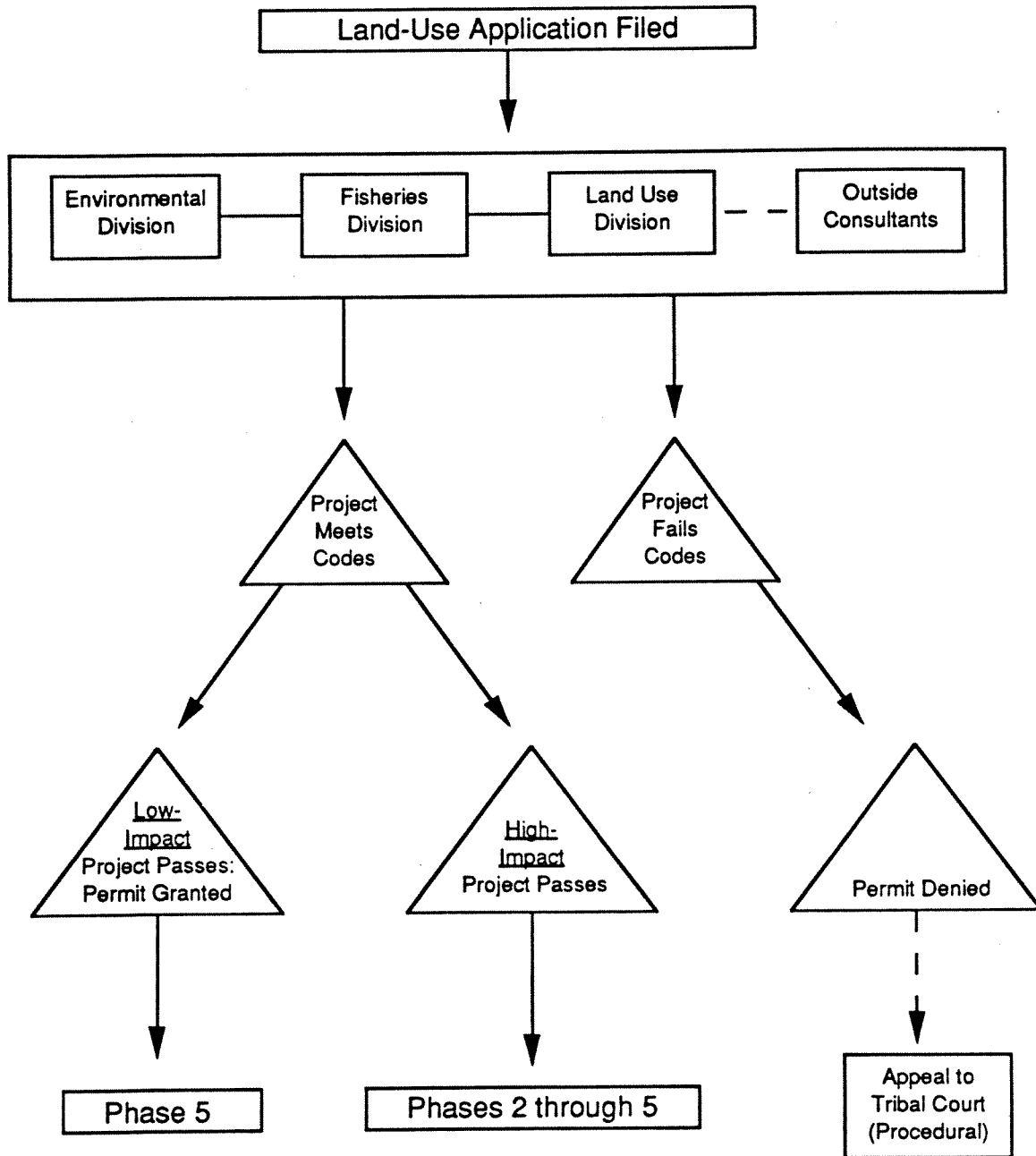
²⁸ Ibid., p. 8.

ADDITIONAL ISSUES

The tribe must resolve a number of issues before implementing the Phase 1 process. In areas where staff members do not have expertise, such as surveying and inspections, the tribe may have to contract with outside consultants or governments to gauge the performance of development proposals.²⁹ In addition, comprehensive environmental impact statements, which may be required in some cases, may be impossible to complete within 30 days. To ensure adequate review, the time frame for completion may need to be flexible. Another issue that needs to be resolved is how exactly to distinguish low-impact projects, which need only go through Phase 1, from high-impact projects, which must proceed to Phases 2 through 5. Finally, the staff should have a procedure in place for reviewing the Phase 1 baseline codes regularly to reflect new technology or evolving priorities. The application form will also, therefore, need to be revised from time to time.

²⁹ Ibid., p. 8. This option has already been tentatively approved by staff members.

Phase 1: Baseline Code Review



Phase 2: Staff Analysis

Any land-use application designated "high-impact" that passes Phase 1 will then move on to Phases 2 through 5. Phase 2 begins the process of implementing the variable criteria outlined in the analytic model. In this phase, the staff will analyze the strengths and weaknesses of the proposal against the six variable criteria in as objective a manner as possible. In contrast to Phase 1, no two proposals will undergo the same set of tests in an identical fashion. The weights assigned to the six variable criteria will be dictated by the type of land use (income generating, cultural, human service, or land preservation) and the tribal priorities at the time of the analysis. This procedure represents an effort to direct the ensuing evaluation process in a productive and consistent manner -- to frame the debate. It provides the flexibility in assessment required by the Puyallup Tribe's unique characteristics and needs, while applying a consistent set of standards to ensure that the remaining phases of the permitting process are as fair and predictable as possible.

PARTICIPANTS

Phase 2 review will be coordinated by the staff members who serve on the Planning Commission (the composition and mandate of the Planning Commission are described in detail in Phase 4 below). Commission staff will analyze project compliance with criteria in their respective areas of expertise. Performance under remaining standards will be evaluated by non-Commission

staff members, who will provide detailed written and/or oral reports to the Commission. In areas such as economic development and financial benefit assessment, where the tribe may lack in-house expertise, outside consultants should be hired to judge development proposals.

PROCESS (see flow chart following page 50)

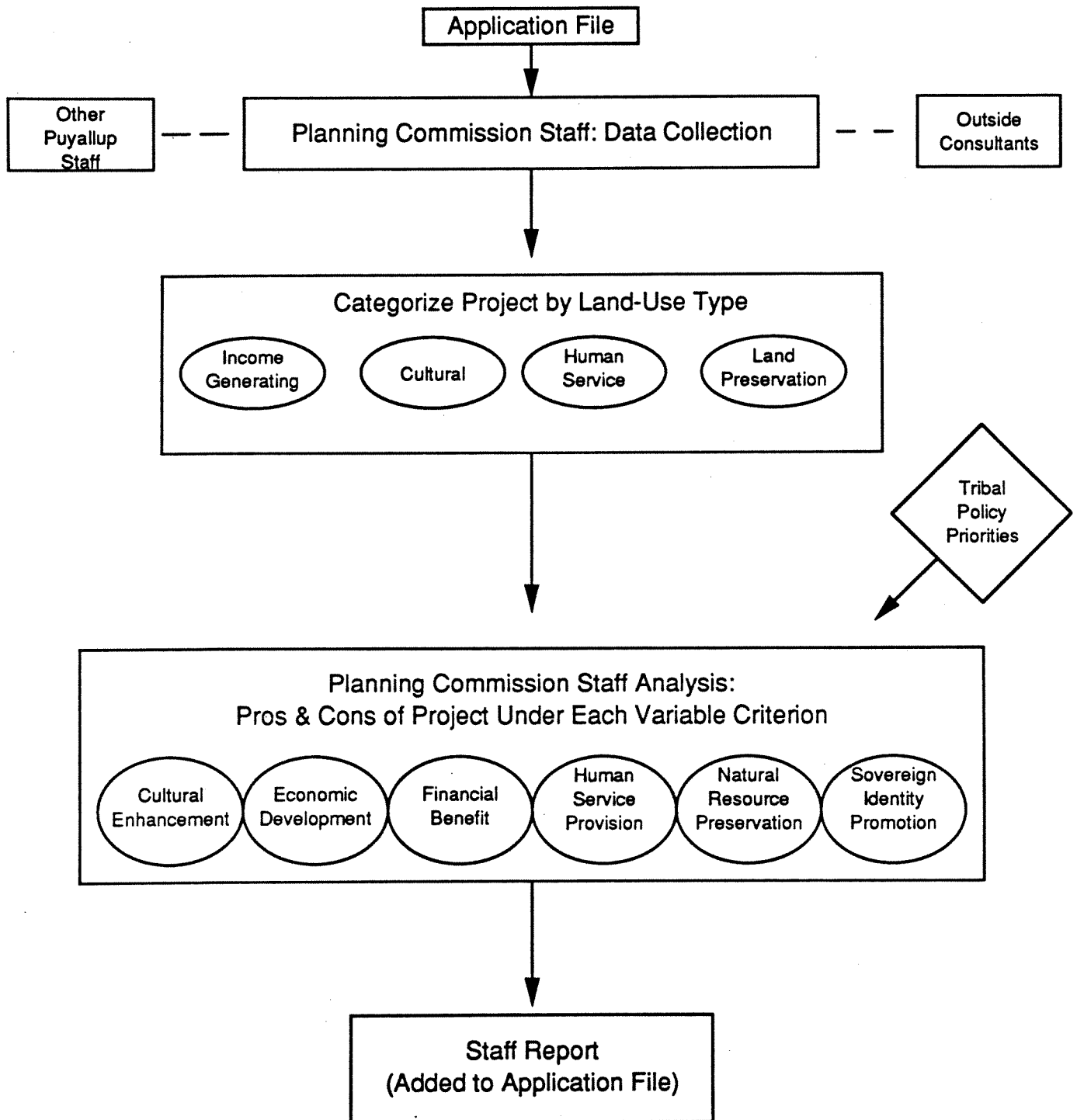
An application that passes Phase 1, and is required to go through Phases 2 through 5, will be sent to the Planning Commission staff, with or without modifications attached. The project will then be categorized by land-use type -- income-generating, cultural, human service, or land preservation. This categorization, along with any explicit tribal policy priorities, should determine the relative weighting assigned to the variable criteria. Staff members will then gather any necessary additional data, such as the job-creation potential, cash flow estimates, or neighborhood impact information. Any data collection and analysis that cannot be performed in-house should be contracted out at this point. Any information relating to the application should be placed in a file along with the Phase 1 results.

After all the data is collected, the staff should proceed by analyzing the pros and cons of the project under each criteria in order of importance. The results of this pro/con analysis should be reported in writing, with a separate page or pages for each variable criterion. This staff report should be completed within 30 days, unless outside consultants are required.

ADDITIONAL ISSUES

The primary unresolved question in Phase 2 is one that affects a number of aspects of the land-use process: What are the tribe's policy priorities? For example, the tribe may determine that job-creation and training are the top priorities for the next two years. This decision would affect the weighting given to the economic development criterion relative to the other criteria. Another issue that needs to be addressed is the appropriateness of the four land-use categories we have defined. While these reflect what tribal officials suggested were the most salient categories, there may be other ways of dividing proposals in order to prioritize criteria. In addition, the flexible 30-day time limit is merely a suggestion; experience may dictate a longer or shorter period. Finally, we have not specified the exact form of the Phase 2 staff report -- only that it be in written form with separate pages for each criterion. The tribe will probably want to standardize this report as much as possible to enhance the consistency and clarity of this process.

Phase 2: Staff Analysis



Phase 3: Community Evaluation

Each high-impact project will also go through a community review phase, including a community hearing and gathering of tribal comments. In the past, as we have indicated, the tribal community at large has generally been excluded from the land-use review process. This has been a source of internal conflict and has prevented the inclusion of valuable tribal feedback regarding development projects. Phase 3 represents an effort both to inform the community about important projects before bulldozers arrive and to provide members with regularly-scheduled opportunities for participation. In this way, all members of the Puyallup community will be true partners in the evaluation process.

PARTICIPANTS

The community review process will be coordinated by the Planning Commission. Written comments, which are likely to be submitted by concerned staff, members of key tribal committees, and the general tribal membership, should be gathered by staff members serving on the Commission. Public hearings on development proposals will be open to the entire Puyallup community and will be conducted by the chairperson of the Planning Commission with assistance from staff. No outside, non-tribal persons will be allowed to make comments during this phase; staff members should have assessed the external impacts of projects during Phase 2.

PROCESS (see flow chart following page 53)

After an application has passed through Phases 1 and 2, it will be forwarded with staff comments to the Planning Commission. In order to promote broad participation, the Commission should hold public hearings on development proposals. These hearings should be held on a quarterly basis, on a specified evening of the week after normal working hours, at the Tribal Community Center. Hearing times, along with the agenda of projects to be discussed, should be announced through direct mailings to tribal members and notices in the Puyallup Tribal News to ensure that all concerned parties are informed of their opportunity to provide input. Written public tribal comments should be accepted for ninety days following an application's completion of Phase 1, and those comments received to date should be summarized at the public hearing. If the public hearing is held before the end of the ninety-day comment period, written comments should be accepted and added to the application file until this period has elapsed. Projects should be considered at the earliest quarterly community hearing following their completion of Phase 2.

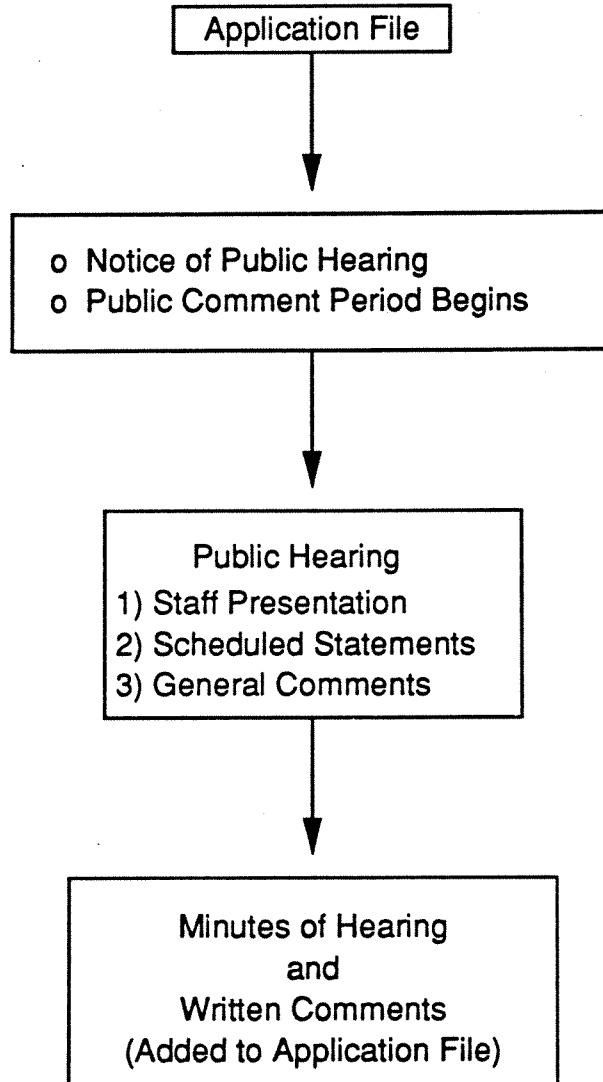
In order to ensure procedural consistency and fairness, hearings should proceed according to a standard agenda. The Planning Commission chairperson or a designated staff member should begin with an introduction and a description of the projects under consideration, followed by a summary of project results from Phases 1 and 2. Applicants or project sponsors should then be permitted to give a brief presentation or "pitch."

The bulk of time should be reserved for a limited number of previously-scheduled, prepared public statements and unscheduled general audience questions and comments. General comments should be unstructured in order to allow the airing of all reactions to proposed developments. Detailed minutes of the hearing should be taken by a Planning Commission staff member and added to the application file.

ADDITIONAL ISSUES

In order to promote thorough representation and broad participation as well as timely review of applications in Phase 3, a number of design issues must be resolved. For example, proposals that are submitted on the day of or after a hearing may be damaged or threatened by having to sit for three months before being reviewed by the public. In such cases, the Planning Commission may wish to schedule special hearings. The tribal members or leadership may believe that quarterly hearings are insufficient to meet the demand for community input, in which case it would be wise to hold them on a monthly basis. The 90-day written comment period might also be lengthened in order to ensure inclusiveness. Finally, tribal officials often lament the lack of member participation in government and have actually provided small stipends to members who have attended certain public meetings in the past. The Tribal Council must carefully consider the social and financial costs of such a mechanism and decide whether or not to make payments in this case.

Phase 3: Community Evaluation



Phase 4: Planning Commission Decision

Following the community review process, applications will be formally reviewed by the Planning Commission. The purpose of this fourth phase is to synthesize all the information that has been gathered during Phases 2 and 3, and to make a decision on the application in light of the tribe's policy priorities. Because the Commission review will be framed by the staff criteria analysis, it represents another application of the variable criteria. The Planning Commission should essentially serve in this phase as a buffer and conduit between the staff and community-at-large (Phases 2 and 3) as well as the applicant, and the Tribal Council (Phase 5).

The Tribal Constitution grants the Tribal Council the power to delegate its regulatory authority over land to a Commission.³⁰ By exercising this power through the creation of a decision-making Planning Commission, the Council would de-politicize the difficult task of conducting land-use application reviews. The Commission, which would be subject to Tribal Council Oversight in Phase 5, could make informed judgments about projects without the immediate threat of electoral action. With a diverse membership, it would be both representative of the spectrum of tribal interests and responsive to the Council.

PARTICIPANTS

As of early 1991, the notion of establishing a Planning

³⁰ Puyallup Tribe, Constitution, June 1, 1970, Article VI, Section 1, Subsections C and D.

Commission had gained wide acceptance within tribal government. The Land Use Office originally proposed the idea in the Interim Land Use Plan, and the Legal Division reiterated it in a January 1991 memo.³¹ Under these proposals, the Commission would be composed of one representative each from the tribe's Environmental, Fisheries, and perhaps, Legal Divisions, one member of P.I.I., one Tribal Council member, and two Puyallup members-at-large. While the tribe must make the final decision on Commission composition, we propose several changes in this makeup based on our research. Government staff members should be part of the Commission, but they should be made ineligible to vote in order to preserve the objectivity of their analysis in previous phases. P.I.I. should not be represented on the Commission, because in many cases *its* proposals will be under consideration. Finally, in order to separate the role of the Tribal Council in this process, and to avoid the difficult decision of selecting a Councilor to serve, the Tribal Council should not have a representative on the Commission. Instead, the number of Puyallup members who serve should be expanded (perhaps to five), and they should be the voting members of the Commission. The Tribal Council should appoint these members-at-large in a manner that represents a cross-section of the community.

³¹ Elizabeth Tail, Interim Land Use Plan, p. 16, and Bell, "Draft Memo," pp. 5-6.

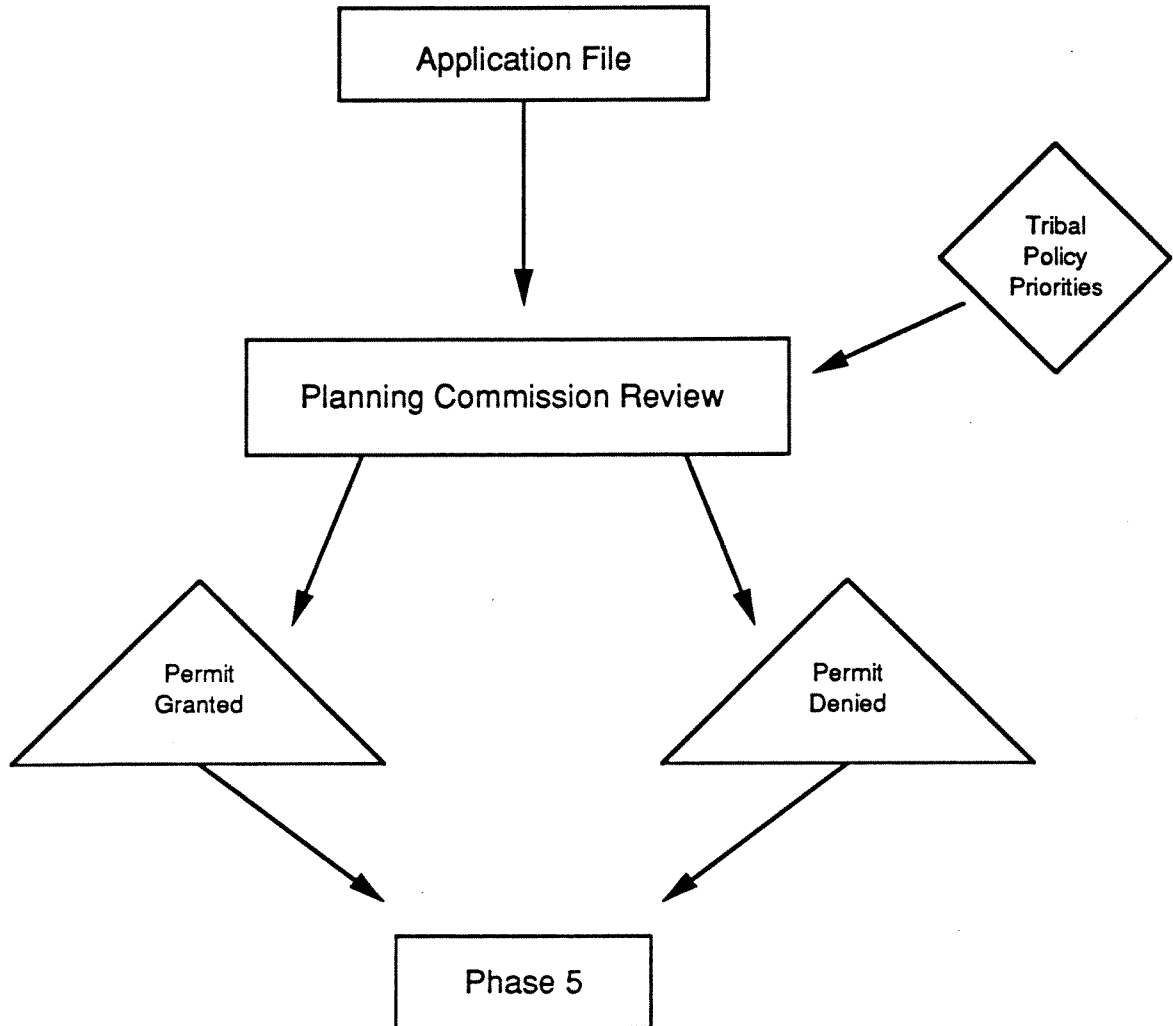
PROCESS (see flow chart on following page)

As soon as the public comment period outlined in Phase 3 has elapsed, the Planning Commission will schedule a meeting to deliberate and make a final decision on the application. The meeting should open with a staff briefing. The staff members of the Commission should report the Phase 1 conclusions, present their Phase 2 analysis, and summarize the public comments and minutes of the Public Hearing from Phase 3. The Commission should then deliberate, synthesizing the information presented and injecting comments of their own. Finally, the Commission should vote to grant the permit, grant the permit with conditions, or deny the permit to the proposal. The Commission's decision should then be forwarded to the Tribal Council for final oversight (Phase 5).

ADDITIONAL ISSUES

The most important issue to be resolved in Phase 4 is the makeup of the Commission. We have suggested an alternative to the recent Land Use and Legal Division proposals based on our interviews and research. The details of the membership will have to be determined by the tribe. In addition, the tribe must decide whether to pay voting members for their participation, or whether to make service voluntary. Finally, once again, the question of a time frame must be resolved. Phase 4 may take as little as one day, or it may require several sessions, but the tribe should set some time limit for completion -- perhaps two weeks -- starting after an application completes Phase 3.

Phase 4: Planning Commission Decision



Phase 5: Tribal Council Oversight

Planning Commission decisions regarding high-impact applications, and low-impact proposals approved in Phase 1, should be sent directly to the Tribal Council for final oversight. While the comprehensive permitting process represents an effort to depoliticize land-use decisions, it is clear from our interviews that the Tribal Council needs to retain a degree of authority over crucial matters related to development. Indeed, such a process would be incomplete without some political control. Moreover, the power of the Tribal Council to review decisions made by a "subordinate committee" is clearly granted in the Constitution, and it is consistent with tribal tradition.³²

The assumption of these recommendations, however, is that the Tribal Council will have an opportunity for oversight in Phase 5, but will in most cases simply affirm Planning Commission and Phase 1 decisions. Observations and interviews suggest that the Council may benefit by limiting its influence over the land-use permitting process.³³ The Council is responsible for a broad array of policy-making and faces a chronic shortage of time. Even the smallest land-use issues can become mired in disputes that are difficult to resolve and likely to congest the Council's schedule. By distancing itself from permitting decisions, the Council will be able to reserve time to address more pressing

³² Puyallup Tribe, Constitution, Article VI, Section 1, Subsection R.

³³ Interviews with Tribal Council members Herman Dillon, Lorolei Evans, and Rolleen Hargrove, March 1, 1991.

policy issues.

PARTICIPANTS

The five-member Tribal Council is the key participant in Phase 5. During the consideration of particularly important development applications, members of the Tribal Council may wish to sit in on Phase 4 deliberations, and even the Phase 3 hearing, so that they are prepared to conduct informed oversight. In order to provide strength and continuity in the process, the Planning Commission staff should provide any information and assistance requested by the Council during this phase.

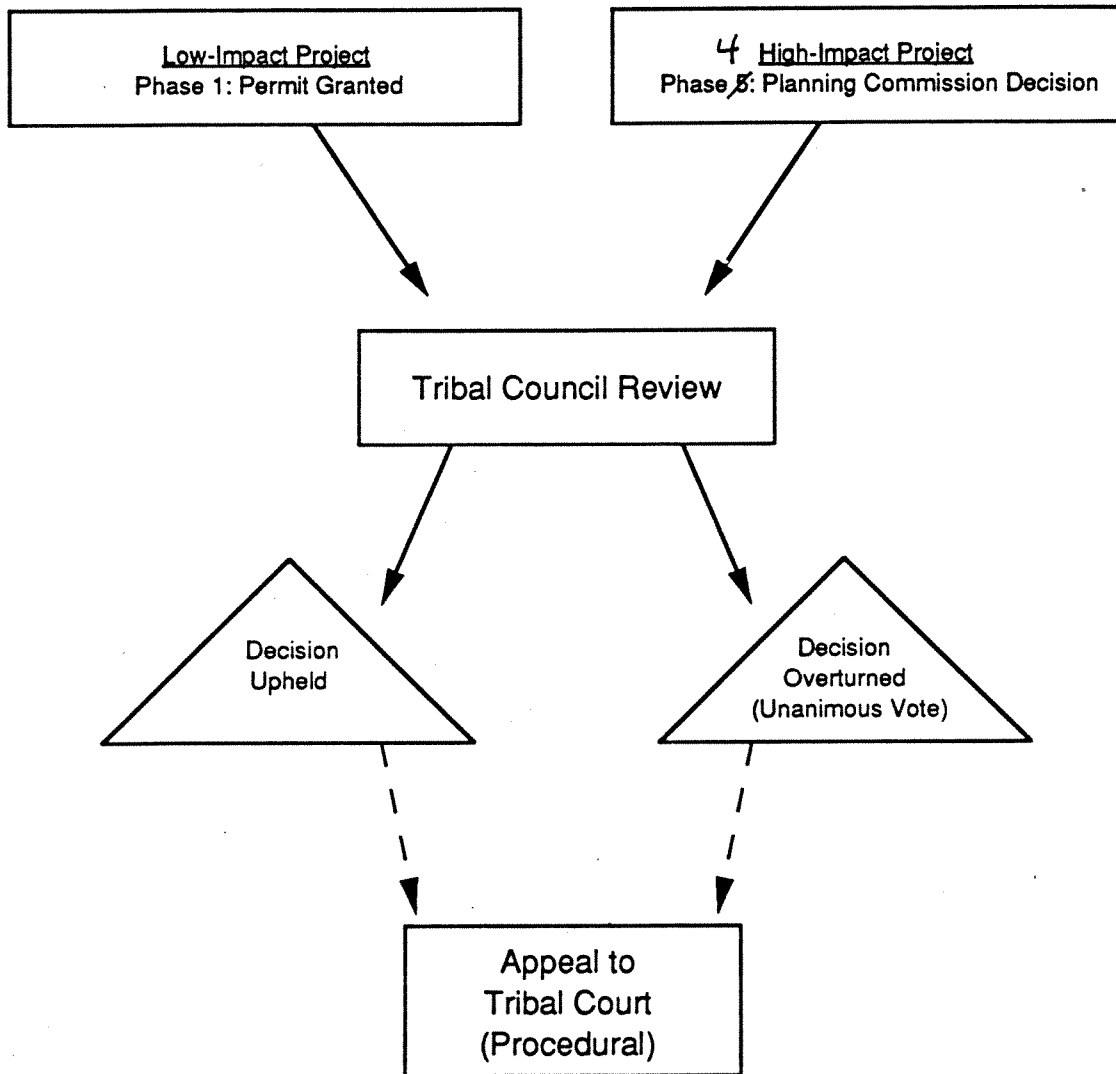
PROCESS (see flow chart following page 59)

When an application has passed through the other required phases, the Tribal Council should add it to the agenda of one of its regularly-scheduled meetings. The Planning Commission staff should be invited to this meeting to summarize the proceedings up until that point. The Council may then want to briefly debate the issue. Virtually all decisions made by staff members in Phase 1 regarding low-impact land uses should be quickly affirmed by voice consensus. Most Phase 4 Planning Commission decisions on high-impact applications should also be accepted. It is our hope that controversial projects will have been detected early in the evaluation process. In the few instances when the Council decides to overturn an earlier decision, it should be required to vote unanimously -- 5 to 0 -- to do so. As in other phases, a time frame for completion should be established.

ADDITIONAL ISSUES

While the proposed process appears to provide a good balance for the Tribal Council between involvement with, and insulation from, the contentious land-use permitting process, some members may believe that it grants them too much or too little authority. This issue must be resolved by the Council itself, but two other alternatives may be feasible. If the Council wants to distance itself further from permitting decisions, it could forego all reviews of Phase 1 and Phase 4 proceedings and allow earlier decisions to stand in all cases. If it wishes to assert more authority, it could give the Planning Commission the responsibility to make strong, detailed recommendations and reserve for itself the power to make final permitting decisions.

Phase 5: Tribal Council Oversight



Appeals Process

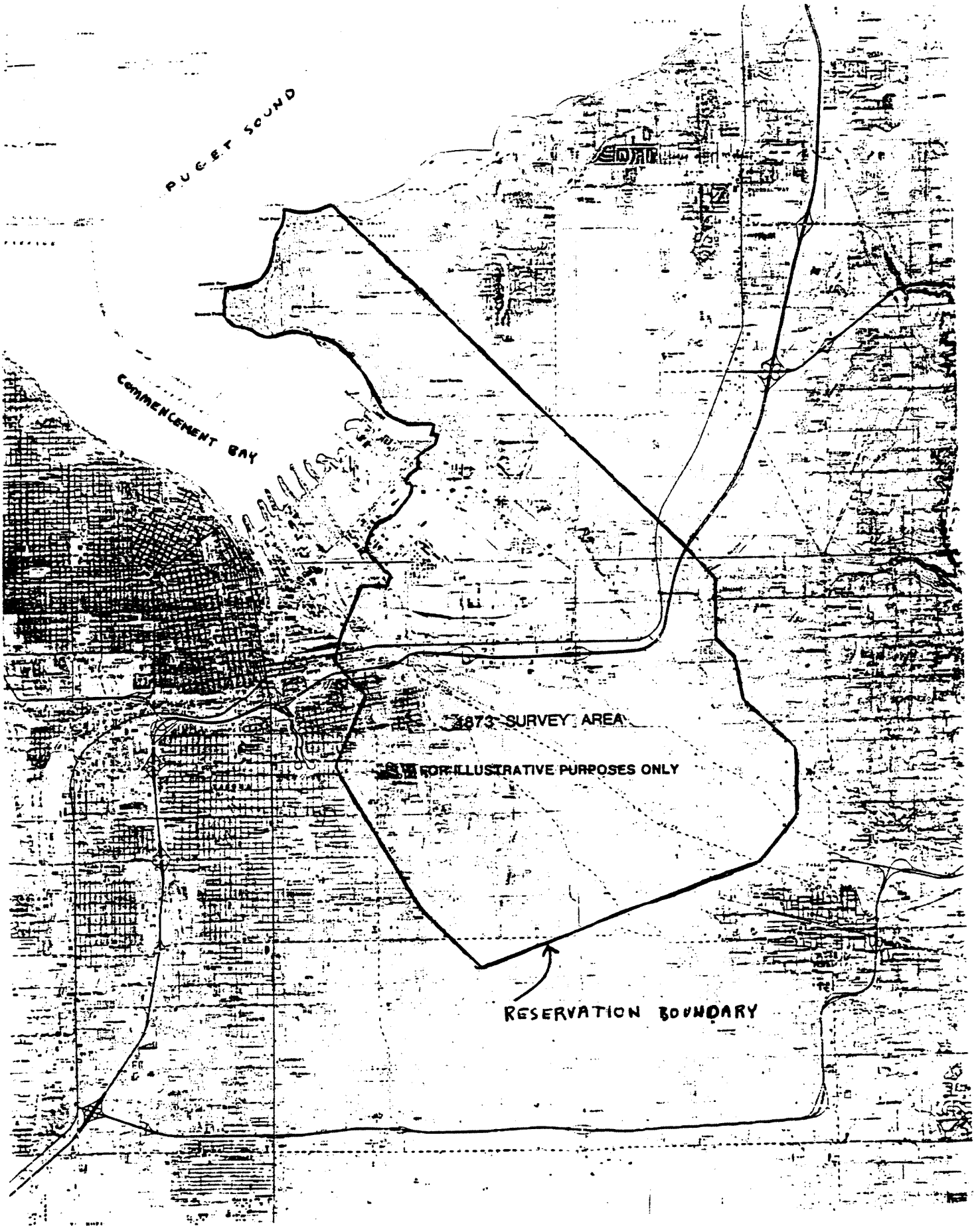
If applicants or opponents of a proposed land-use development disagree with a final permitting decision, they should be granted the opportunity to file an appeal. As discussed by staff members and recommended by the tribe's Legal Division, an appeal based on whether required procedures have been followed should be taken to the Tribal Court.³⁴ Substantive issues should be addressed in the course of the five review phases; but applicants denied permits who believe either that their proposals meet baseline and variable tribal criteria, or can be satisfactorily revised, should have the option of reapplying.

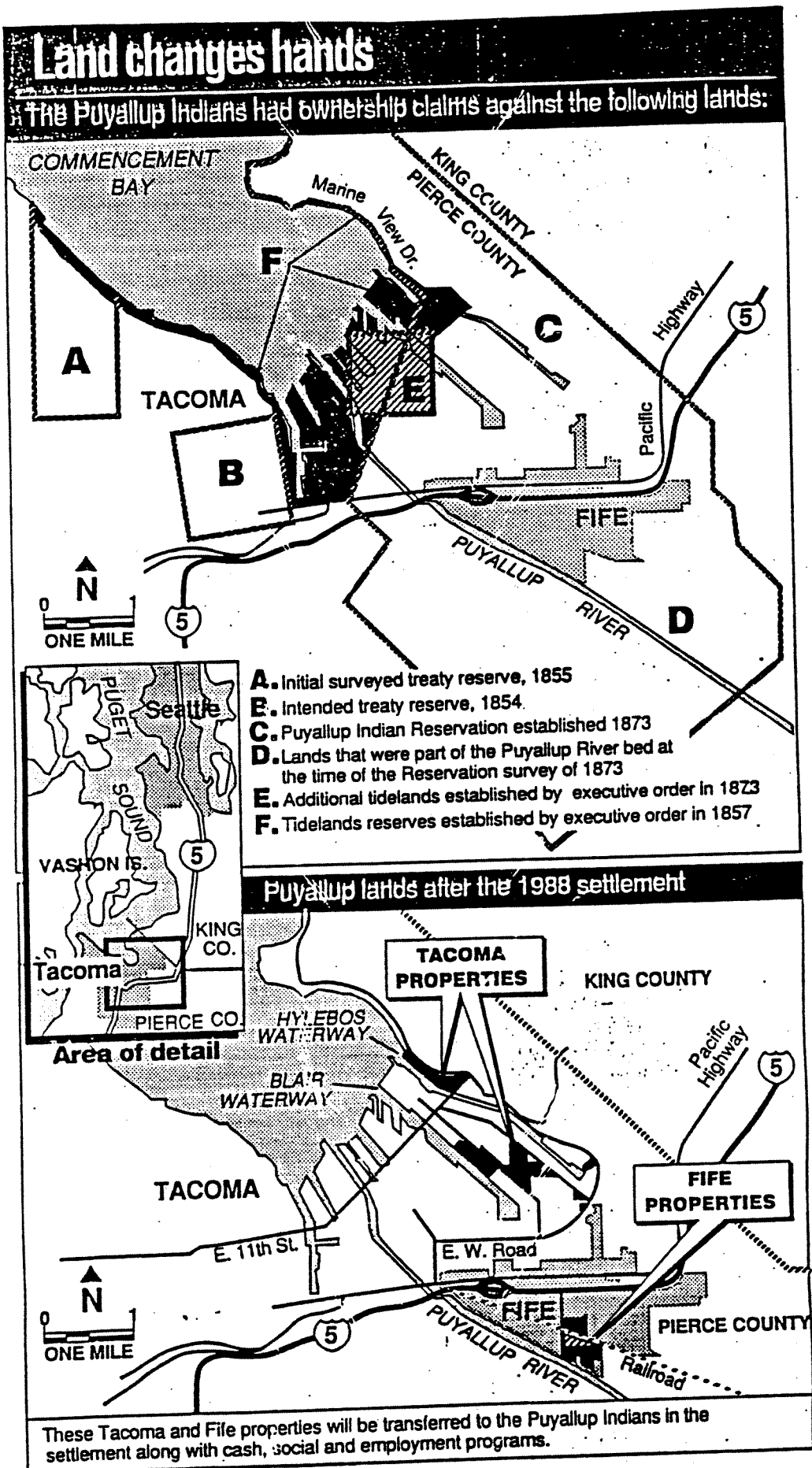
³⁴ Bell, "Draft Memo," p. 6.

Concluding Thoughts

While the comprehensive system recommended here will bring immediate benefit to the tribe, a number of issues should be addressed in order to enhance its long-term effectiveness. First, the evaluation system -- both criteria and process -- must be presented to the tribal community as a whole if it is to be adopted and effectively implemented. Second, the tribal leadership must begin to remedy the other critical land-use management gap by developing a set of land-use policy priorities. Finally, the long-term effectiveness of any project evaluation process would be improved if the tribe brought additional stability to its overall political and electoral system.

In spite of the remaining unresolved planning and political issues, this recommended evaluation model should be useful immediately. The combination of a well-defined analytic model and a process for implementing it should allow the Puyallup Tribe to manage and enhance its substantial resources in a rational and consistent manner. Furthermore, such a land-use management system -- by advocating flexibility of standards and inclusiveness of tribal views -- will itself help define future tribal priorities. Therefore, it will not only guide today's decision-makers, but will provide long-term direction as well. Finally, the framework for this system may be transferable to other tribes in Indian country. If the Puyallups are able to make such a system work, it could become a model for other tribes and provide benefits to Indian people throughout the country.





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