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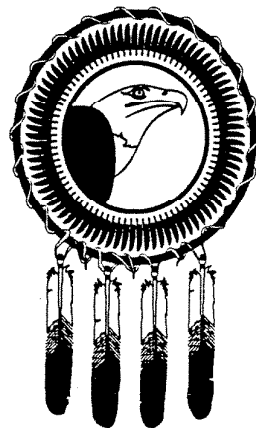
Building Effective Land Management Processes

by

Karen Filipovich and Brian Weinberger

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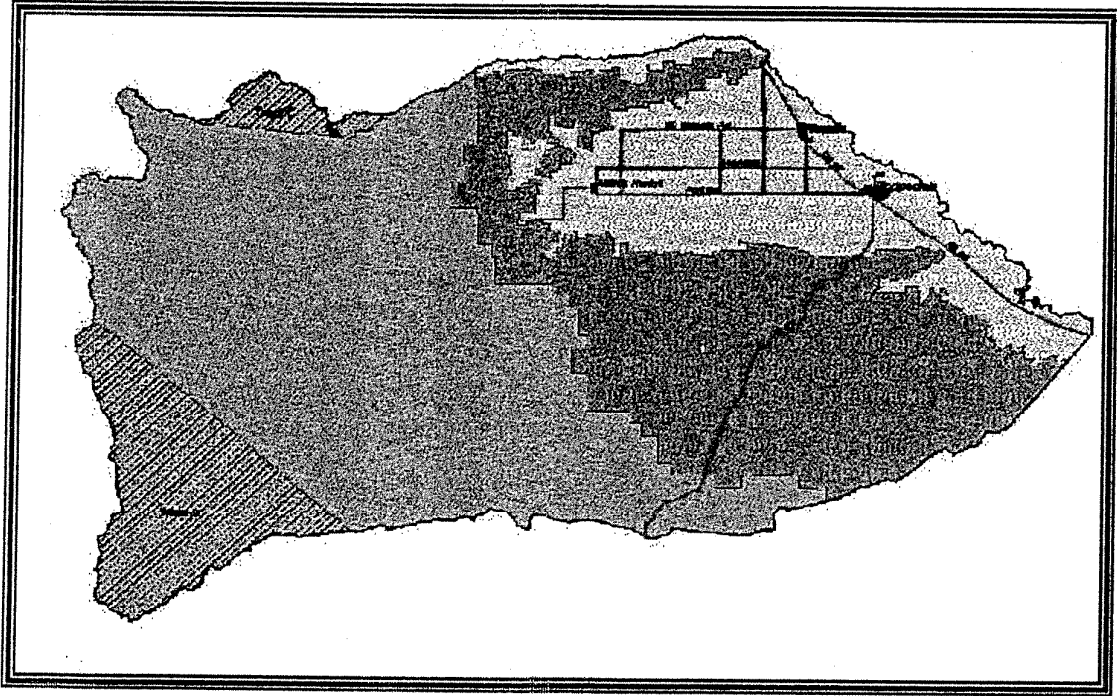


Harvard Project on
American Indian Economic Development

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BUILDING EFFECTIVE LAND MANAGEMENT PROCESSES:



SOVEREIGNTY AND STRATEGY ON THE YAKAMA RESERVATION

Yakama Indian Nation

April, 1998

Karen Filipovich and Brian Weinberger

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EXECUTIVE SUMMARY

This report examines the management of lands within the exterior boundaries of the Yakama Indian Nation's Reservation. The key difficulties confronting the Yakama Nation's land managers include: complications caused by checkerboard land ownership, significant amounts of unused agricultural land, a challenging regulatory enforcement environment, and indifference or hostility from external political actors. While the Yakama Indian Nation and its land use agencies have – in the face of these many difficulties – built a strong foundation for effective land management, significant work remains if the YIN is going to approach complete fulfillment of its goals.

The most fundamental land management goals of the Tribe are:

- *Sovereignty*
- *Conservation/preservation*
- *Economic diversification*

Challenges to the fulfillment of these goals fit into three categories:

- *Coordination*
- *Capacity*
- *Control*

Gaps in *coordination* between land use agencies manifest themselves in miscommunication and lack of collaboration among Tribal land managers. *Capacity* refers to shortfalls in some resources and areas of expertise that are important for effective land management. The category of *Control* encompasses both the Tribe's incomplete jurisdiction over reservation lands and its limited control over certain land management processes, such as fee-to-trust transfers and leasing.

POLICY RESPONSES

There are numerous policy options that have been identified or suggested to the YIN as a means of better linking their land management policies to their long-term goals. This paper evaluates a range of possible policy responses to the challenges of coordination,

capacity, and control, and recommends some promising actions that can be taken by the YIN to address these challenges.

To determine the most effective policy alternatives open to the Yakama, we used the following criteria. A successful policy alternative must:

- Fulfill one or more of the Tribe's goals.
- Produce measurable outcomes.
- Have the potential to expand future policy options.
- Constitute an effective use of Tribal resources.

We used these criteria to determine which of the range of policy alternatives open to land managers would most *effectively* and *efficiently* overcome challenges and lead to positive outcomes that would help the Tribe as a whole.

RECOMMENDATIONS:

- **Formalize annual reporting requirements for all land management agencies.**
- **Identify specific opportunities for inter-agency collaboration, such as integrating the Tribal Zoning and Environmental Protection Codes.**
- **Train Tribal members to fill crucial land management jobs, such as surveyor and land appraiser.**
- **Develop a strategy to expand the Yakama Nation's capacity to exercise its sovereignty in dealing with federal, state, and local jurisdictions**
- **Strengthen the Tribal Land Enterprise Office as a mechanism for the acquisition and development of economically productive lands.**
- **Pursue a strategy to extend the time limit on leases of Tribal lands to 99 years.**

A complete list of recommended and rejected policy options appears at the end of this Executive Summary.

Expected Results

These recommendations are designed to work in conjunction with one another. In the same way that the structural integrity of a building relies on the integrated use of strong posts and beams, the effectiveness of our recommended strategy will rely on the integrated implementation of our individual suggestions. The Yakama Nation's established governmental institutions and recent policy successes are the foundation that these posts and beams rest upon. In the future, the YIN can finish the process of taking full control over every aspect of the land management process, thus completing a strong structure. Implementing these recommendations now can yield significant value now, as well as provide support for future action. Expected benefits include:

- Greater shared knowledge among land managers.
- Higher levels of expertise among many Tribal employees.
- More flexible leasing policies.
- Greater regulatory control over the reservation.
- Reduced conflict over land uses.
- Greater potential for economic diversification and conservation/preservation.
- Stronger position from which to exert sovereignty internally and externally.

SUMMARY OF RECOMMENDED AND REJECTED POLICY RESPONSES

Encouraging Coordination		To foster greater coordination among land management agencies:
👍	We recommend:	Identifying specific policy initiatives – such as the development of an integrated environmental and zoning code – that will benefit from collaboration between Yakama government agencies.
👍	We recommend:	Formalizing annual reporting requirements for each land management agency.
👎	We reject:	Pursuing new/additional efforts at comprehensive planning.
👎	We reject:	Creating additional land management institutions or re-organizing current institutions.

Enhancing Capacity		To enhance the capacity of the Yakama Nation’s land management agencies:
👍	We recommend:	Hiring a land surveyor, land appraiser, and leasing manager, as a short-term solution.
👍	We recommend:	Training, and eventually hiring, Tribal members to fill critical land management jobs.
👍	We recommend:	Developing a strategy to expand the Yakama Nation’s capacity to exercise its sovereignty in dealing with federal, state, and local jurisdictions.

Extending Control		To extend the Yakama Indian Nation’s control over its lands:
👍	We recommend:	Strengthening the Tribal Land Enterprise Office as a mechanism for the acquisition and development of economically productive lands.
👍	We recommend:	Extending the time limit on Tribal land leases to 99 years.
👎	We reject:	Eliminating the Tribal Land Enterprise or dispersing its funds.
👎	We reject:	Immediately assuming responsibility for leasing before necessary capacity is in place.

Section I: Goals and Challenges

SECTION I IN BRIEF: Goals and Challenges

In conducting its land management activities, the government of the Yakama Indian Nation would like to advance three primary goals:

Sovereignty
Conservation
Economic Diversification

In many respects, the land management agencies of the Yakama Indian Nation have been successful in managing the Tribe's extensive land base and in advancing toward the Tribe's primary goals. However, some of this success has occurred despite the ongoing presence of some fundamental management challenges.

The challenges confronting the YIN's land management agencies fall into three basic categories:

Coordination
Capacity
Control

Specifically, the challenges include:

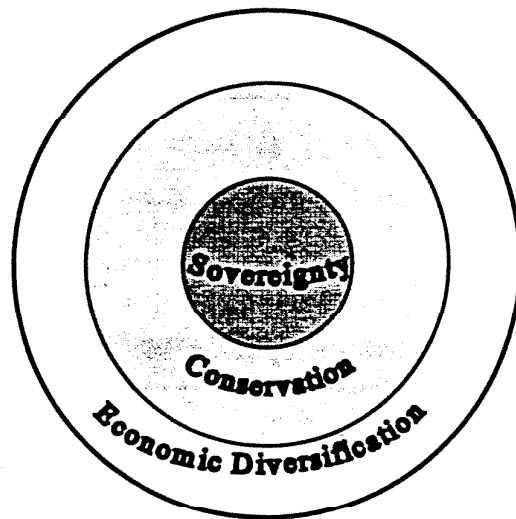
Challenges:	
Coordination	Agencies Working At Cross Purposes Missed Opportunities for Beneficial Collaboration Loss of Public Confidence in government Agencies Conflicts Over Competing Land Use Priorities
Capacity	Shortages of Staff for Land Management Functions Unavailable Expertise in Specialized Land Management Fields Limited Political Leverage in External Governmental Processes
Control	Checkerboard Ownership In Reservation's Open Area Limited Regulatory Authority Over Non-Tribally Owned Lands Large tracts of unused/unleased lands

A. Land Management Goals of the Yakama Indian Nation

Established by the Treaty of 1855¹, the reservation of the Yakama Indian Nation (YIN) covers over 1.3 million acres of south-central Washington State. These reservation lands, along with over 10 million additional acres of ceded land, have long been the foundation of traditional religious, cultural, and economic activity for the people of the 14 bands and Tribes that comprise the Yakama Indian Nation. During the last century, the reservation lands also have become an important source of non-traditional economic productivity and have been a crucial component of the Yakama Nation's efforts to assert its sovereignty.² Today, the reservation is home to over 6,000 of the Yakama Indian Nation's membership of approximately 9,000 people. All of these factors combine to make this land-base a tremendous potential source of wealth and strength for the Yakama Indian Nation.

The leaders and members of the Yakama Indian Nation have identified several goals and priorities that they would like to see the YIN pursue in managing the Tribe's lands. The priorities most frequently identified as being important to the Yakama Indian Nation can be divided into three general categories: *sovereignty*, *conservation/preservation*, and *economic diversification*.

LAND MANAGEMENT GOALS OF THE YAKAMA INDIAN NATION



Sovereignty

While nearly all members of the Yakama Indian Nation identify *sovereignty* as a priority, this term has a variety of possible meanings. The YIN can impose additional levels of enforcement on lands over which it currently has recognized authority. Alternatively, the Yakama Nation could extend its authority to impose its land use laws and regulations over a larger amount of territory. A third possible approach would be for the YIN to participate in negotiations or other cooperative arrangements to address land management issues throughout its traditional “area of influence.”

Though these definitions of sovereignty are different, they do not necessarily conflict. We focus on sovereignty as it pertains to land management and acquisition within the exterior boundaries of the reservation, which includes parts of all three definitions.

Conservation/Preservation

Many Tribal members are concerned about the *preservation* of traditional elements of Yakama culture, including the Yakama language, religious practices, and traditional knowledge. Additionally, many individuals prioritize the *conservation* of the environmental endowments that are located within the Tribe’s traditional area of influence. These environmental components, such as water, fish, roots, and wildlife are also central elements of traditional Yakama culture. This goal encourages the Tribe to further develop approaches to the management of its land that do not exploit or destroy the Yakama Nation’s cultural or natural resource base.

Economic Diversification

Tribal members frequently advocate the creation of new jobs and the establishment of economic security for the Yakama people through the continued expansion and *diversification* of the

region's economic base. Many members of the Yakama Indian Nation are eager to see the development of new businesses and industries around the reservation in order decrease the high rate of unemployment that currently prevails among Tribal members. However, other Tribal members caution that economic diversification should not replace the Yakama Nation's traditional sustainable approach to economics with a non-traditional exploitative economic approach. These individuals recognize the importance of providing new economic opportunities, but do not want this progress to occur at the expense of traditional values, culture, or resources. For purposes of this paper, we focus on non-traditional economic activity under economic diversification, and consider traditional economic systems and considerations under conservation and preservation.

Tribal Goals: What does this mean to Land Managers?

The above categories should not create the false impression that there is any widespread consensus among Tribal members about how to define these goals in more specific terms or how the Tribe should best accomplish these general goals. These three categories encompass a tremendously complex set of specific priorities and beliefs on the part of the YIN's membership. However, virtually every Tribal member we spoke to mentioned the importance of these priorities in one form or another.

Effective land acquisition and land management policies must play an integral role in the Yakama Nation's efforts to pursue its general goals.

Clearly, these goals are not uniquely applicable to the Yakama Nation's management of its lands. Questions of sovereignty, cultural preservation, environmental protection, and economic growth are also important considerations in many policy areas other than land management. However, as fundamental goals of the Yakama Indian Nation, they should serve to govern the YIN's policies and decisions relating to land acquisition and land use. Furthermore, there is some agreement among the leadership and general membership of the Yakama Nation that effective land acquisition and land management policies must play an integral role in the Yakama Nation's broader efforts to pursue any of its general goals.

It is also important to recognize that the Yakama Nation is not entirely unique in having to prioritize and integrate a variety of competing goals in managing its lands. The challenge of integrating differing priorities and cultural attitudes into land management policies is one that confronts many local and state governments, not just Indian Tribes. It is important to examine the unique problems that confront Indian nations in their land management efforts, such as their limited regulatory jurisdiction over non-Tribally owned lands. However, we should not let these differences conceal the fact that planning boards, zoning commissions, and environmental protection offices across the country, and around the world, have effectively synthesized and advanced the same fundamental land management goals that are espoused by the Yakama Indian Nation. While conflicts will occasionally arise between priorities as they relate to *specific* decisions about *specific* parcels of land, the Yakama Indian Nation is capable of developing land acquisition and management policies which, in general, further the cause of each of the Tribe's fundamental goals.

B. Laying A Foundation: Past Successes and Current Land Management Resources

In its efforts to manage Reservation lands in accordance with the Tribe's fundamental goals, the Yakama Nation has enjoyed significant successes and has developed many important resources that can be utilized to continue this progress.

There are numerous agencies, departments, and other institutions that play significant roles in developing, implementing, or enforcing land management policies for the Yakama Indian Nation. These include: The Roads, Irrigation and Land Committee of the Tribal Council; the Tribal Land Enterprise Office; the Office of Economic Development; the Division of Natural Resources; the Tribal Water Resources Office; and, the Yakama Cultural Resources Department. These institutions, and their subsidiary offices, have shown themselves to be effective in

The YIN has developed important institutions, resources, and expertise that can be utilized to make further progress towards meeting the Tribe's land management goals.

carrying out specific land management or acquisition initiatives. Indeed, around Indian Country, the YIN is widely recognized to be a model to emulate when it comes to land management organization and policy. We offer some examples of these model successes below.

SUCCESSSES IN LAND MANAGEMENT The YIN Department of Natural Resources

The Yakama Nation’s Department of Natural Resources and the Office of Wildlife Resource Management have been very active in regional efforts to mitigate and reverse the damages that have been inflicted on the fisheries of the Pacific Northwest. The Tribe was successful in acquiring funding from the Bonneville Power Administration and the Northwest Power Planning Council to develop fish hatcheries intended to increase the number of anadromous fish returning to the Yakama River Basin. Additional funding from the NWPPC has been used to reacquire and restore important riparian zones within the Yakama River watershed. Most recently, the Tribe was successful in reaching an agreement with PacifiCorp to remove a dam that it manages in the Columbia River basin and to pay the Tribe money for the restoration of salmon and steelhead runs along the river from which the dam is being removed.

SUCCESSSES IN LAND MANAGEMENT The YIN Tribal Land Enterprise Office

The Tribal Council’s Land Committee, through the efforts of the Yakama Nation Land Enterprise Office, has successfully pursued a strategy to re-acquire significant amounts of privately owned timber lands within the closed area of the reservation. The Land Enterprise has also successfully launched a series of revenue-producing initiatives on lands that it has acquired. The most recent initiative has been to develop a vertically integrated fruit production, storage, and shipping operation, located on Yakama-owned orchards and industrial lands.

SUCCESSSES IN LAND MANAGEMENT

The YIN Economic Development Office

The Economic Development Office has been active in trying to generate productivity on the large amount of unused agricultural land on the reservation, exploring options such as a timber sorting yard, a poplar tree plantation, and grass-seed production. The Economic Development Office has also added staff to help enforce zoning regulations and is developing plans to add a variety of tourist amenities to the reservation, including a golf course, retail center, and conference center.

SUCCESSSES IN LAND MANAGEMENT

The YIN Cultural Resources Division

The Cultural Resources Division has been effective in mitigating the effects of human activity on the historic resources of the Yakama Nation. In particular, the Cultural Resources Division recently succeeded in protecting the site of an historic Yakama village from encroachment by a neighboring golf course.

In pursuing these successful land management activities, the Yakama Nation has developed important *institutions, resources, and expertise* within its government that can be utilized to make further progress towards meeting the Tribe's land management goals. Additionally, many of the land-related departments of the Yakama government recognize the need to make further progress and improvements in land management policies and practices. For example, the YIN's Office of Environmental Protection is currently developing a Tribal Environmental Protection Code to strengthen the enforcement of environmental standards on reservation lands. The Tribal Zoning Office recognizes the need to update and thoroughly revise the Tribe's current zoning map and codes.

The Yakama Nation has experienced some success in its land management activities and has developed some important institutions and resources that will allow it to continue progressing towards its goals. However, these successes have been produced despite the fact that the YIN still

confronts a number of challenges in developing and implementing effective land policies. If these challenges are met, the Tribe can expect more and greater successes in the future. In the next section, we identify and discuss some of the most significant challenges to the effective management and acquisition of lands on the Yakama reservation.

C. Challenges Facing Yakama Land Managers

The Yakama Indian Nation is confronting a number of challenges in its efforts to manage its vast land base in ways that fulfill the Tribe's fundamental goals. Tribal members and managers of government agencies identified a wide range of impediments and limitations to the Yakama Nation's ability to effectively manage reservation lands. The specific land-management challenges facing the Yakama Nation can be divided into three general categories:

COORDINATION

CAPACITY

CONTROL

Coordination

Several government officials indicated that there is insufficient coordination between the agencies within the Yakama Nation's government that are responsible for making decisions relating to land use or acquisition. This perception was often expressed to us in comments such as: "We aren't ever aware of what they're up to over there in the _____ office," or "The

Office of _____ does its own thing, without ever checking in with us.” From the point of view of these government managers, this lack of coordination and communication between government departments creates a number of problems.

CHALLENGE: COORDINATION

Why Is Coordination Important?

1. Avoid Agencies’ Working at Cross-Purposes.
2. Realize Benefits of Pooling Resources and Expertise of Various Agencies.
3. Maintain Public Support and Perceptions of Effectiveness.
4. Avoid Conflict and Confrontation Over Agency Priorities.

First, when not communicating regularly, agencies have the potential to work at cross-purposes with one another. For example, the Yakama government office that is charged with improving the management and utilization of the Yakama Nation’s agricultural lands has been investigating a number of potentially profitable initiatives, including the planting of poplar stands and the large-scale harvesting of grass-seed on currently unused Tribal agricultural lands. Officials in the Department of Natural Resources expressed significant concerns about the potential environmental consequences of these projects, but seemed to lack a channel for expressing this concern or for providing input on how these agricultural initiatives might be pursued in accordance with the DNR’s priorities.

Second, by not coordinating their activities, government agencies forego potential advantages that may result from collaboration or consultation on specific projects. For example, collaboration between the Office of Environmental Protection and the Tribal Zoning Office could produce a more integrated and coherent approach to environmental regulation and land-use planning that would benefit the Tribe much more than efforts to address each of these issues independently. Currently, there is very little interaction between the managers and staff members of these two offices and there is no history of establishing collaborative efforts.

Third, by not communicating with other government agencies and the community at large, agencies tend to lose the confidence of other decision-makers and become more susceptible to public criticism. The Yakama Indian Nation Tribal Land Enterprise Office, to be discussed in greater detail later in this document, provides an example of this dynamic.

Finally, coordination and consultation between government agencies is necessary to avoid conflicts over agencies' competing priorities for specific parcels of land. For instance, the Zoning code does not allow new homesites in the closed area, but building on other sensitive areas is not specifically proscribed by the code.

Capacity

A second set of challenges that were identified by Yakama government managers involved the resources – or capacity – which the Yakama Nation can draw upon to develop and enforce its land management policies and practices. While the Yakama Nation has developed some very effective tools for managing its land base, land managers expressed frustration with some shortcomings in the Tribe's internal capacity for managing and acquiring reservation lands.

CHALLENGE: CAPACITY

What Do We Mean By Capacity?

1. Staffing.
2. Expertise.
3. Political leverage.

Specific shortcoming in these areas of capacity include:

Staffing

There are not enough staff available to fully enforce zoning and environmental regulations. For example, the Tribal Zoning Office relies heavily upon its Administrator and one full-time Zoning Inspector to enforce the zoning code over the YIN's entire 1.3+ million acre reservation. Additional enforcement is carried out by staff of the Department of Natural Resources and by the Fish and Wildlife Office, but these enforcement activities are not coordinated (see above) and are often performed in an *ad hoc* manner while managers drive through the reservation on other government business.

Expertise

There is an absence of individuals with certain kinds of relevant expertise. For example, the fact that neither the BIA nor the YIN has a trained surveyor on staff was mentioned by many individuals with whom we spoke. People who need to have a survey conducted in order to sell their land, or determine compliance with zoning regulations must independently contract with a certified surveyor to have that work done.

Political Leverage

The YIN has insufficient influence in promoting, altering, or opposing external political initiatives that affect the well-being of the Tribe. Tribal members and officials expressed deep frustration about the ability of external political actors to obstruct the Yakama Nation's progress towards its goals. Due to the prevailing political attitudes in the Yakima region, the Tribe feels that it lacks sufficient leverage and representation within local, state, and federal political arenas. While political capabilities and resources are much less tangible than some of the other kinds of capacity discussed above, they are no less important to the YIN's long-term success.

Control

A third significant category of challenges confronting the Yakama Nation involves its control over the ownership, management, and regulation of many parcels of land within the open area of the reservation.

Within the open area, a checkerboard pattern of private and trust land ownership has been produced by many years of misguided Federal legislative actions and court rulings. Under the mandates of the General Allotment Act of 1887 and its subsequent amendments, the Federal government issued fee-patents for private ownership of lands on Indian reservations. As a result of this legislation, non-Indians were able to purchase reservation lands from individual Indian owners who possessed fee-patents for tracts of reservation land. As a result of this process, nearly two-thirds of the land that had been allotted to Indians throughout the United States was removed from Tribal ownership.

CHALLENGE: CONTROL

Why Is Tribal Ownership of Reservation Lands Important?

1. Provides Basis for Exercise of Tribal Regulatory Authority Over Those Lands.
2. Produces Economic Benefits From Revenue-Producing Agricultural Lands.
3. Makes Current Lands More Economically Viable By Eliminating Checkerboard Pattern.

On the Yakama Indian Nation Reservation, the process of land allotment produced a situation in which approximately half of the land in the reservation's open area is not Tribally owned. Most of these privately owned fee-lands are also the most productive and profitable agricultural lands within the reservation's boundaries. Private non-Indian ownership of agricultural lands limits the Tribe's economic control over reservation lands by redirecting profits from productive agricultural lands away from the YIN and its membership. Furthermore, the economic viability of many Tribally owned parcels is constrained by the segmentation that results from the

checkerboard pattern of land ownership. It is more difficult – legally, economically, and physically – to productively farm tracts of land that are non-contiguous.

The non-Tribal ownership of some fee lands within the Reservation has produced, in turn, a number of challenges to the Tribe’s regulatory control of those lands. Recent Supreme Court decisions have eroded the YIN’s regulatory powers over fee-lands within the Reservation’s boundaries by declaring some of these lands subject to the authority of Yakima County with regard to zoning regulations and certain forms of taxation. Conflicts with the County over control of fee lands on the reservation have exacerbated already poor relations between the County and Tribal governments. Furthermore, the Bureau of Indian Affairs (BIA), at least partially in reaction to a recent court case,³ has impeded the Yakama Nation’s efforts to transfer Tribally owned fee-lands to trust status, which would restore the Yakama Nation’s full sovereign authority over those lands.

D. Criteria for Choosing the Best Policy Responses

Given the challenges of *coordination*, *capacity*, and *control*, the Yakama Indian Nation must begin selecting from among numerous possible strategies for addressing these challenges. As a tool for distinguishing between possible solutions and strategies, it will be helpful for the Yakama Nation to develop a set of criteria that strategies and solutions should satisfy. Criteria include:

Strategic Criteria for Choosing The Best Policy:

- *Does the policy directly contribute to one or more of the Tribe’s goals?*
- *To what extent are the expected outcomes of the planned action or project measurable?*
- *Does the chosen action expand the potential range of policy options that will likely be available to the Yakama Indian Nation in the long-run?*
- *Can it be demonstrated that this policy is the most effective way to use Tribal resources in order to reach one or more Tribal goals?*

Contributes to Tribal Goals

Policies and strategies adopted by the Yakama Indian Nation should consciously attempt to support at least one, and preferably more, of the Tribe's long-term goals. Policy-makers should actively assess and articulate how their actions benefit sovereignty, conservation of natural resources, preservation of cultural heritage, and/or diversification of the YIN's economic base. The more strongly a given project or action contributes to the goals of the Tribe, the more likely it is that it will be a good project, as well as one that may be able to garner support and interest from Tribal members. This criterion can be used both to select which projects will likely contribute towards Tribal goals and to prioritize among several potentially beneficial projects.

Measurable Outcomes and Benchmarks

The second criterion, to establish an element of measurement in the Yakama Nation's policies, is an important test for determining how well the Tribe's policies support and contribute to the achievement of Tribal goals. The Yakama Indian Nation has a well-developed government bureaucracy that is quite capable of conducting policy-planning activities. However, the *implementation* of plans developed within the YIN's government has been less universally successful. Establishing concrete, measurable goals for its activities or projects will link planning to implementation. By establishing measurable performance benchmarks for the activities that the Tribe undertakes, future policy makers will be better able to assess how well the implementation of policy reflected the intentions of policy makers. Not all policy outcomes can be measured easily, and we do not mean to suggest that policies without measurable outcomes should be automatically rejected. However, policies should try to have some measurable component, even if it is only possible to measure benchmarks, such as number of people trained, as opposed to actually measuring how Tribal goals, like greater sovereignty, were actually fulfilled.

Expands Range of Future Policy Options

The third criterion considers whether a given short-term action or strategy expands the likely range of policy options that will be available to the Yakama Nation in the future. The progress of the Yakama Indian Nation towards its three broad goals is widely acknowledged by Tribal leaders and members to be a very long-term process. However, the YIN faces a number of acute needs, such as increasing employment, improving health care, providing housing, and strengthening education, which all require some action in the near-term. As a consequence, the YIN should be wary of the temptation – understandable though it may be – to pursue short-term fixes that will end up limiting the Nation’s long-term policy options. One such temptation is to dismantle the TLE in order to give every Tribal member a one-time economic boost. This action would have a short-term gain, but in the long-run, it would limit future options and limit the Tribe’s ability to consolidate land within the reservation. This is particularly true in the area of land-management, where the results of policy initiatives often take years to manifest themselves.

Effective Use of Tribal Resources

Finally, policy alternatives should use Tribal resources, whether monetary or human, as effectively as possible to achieve a given outcome. An effective policy alternative would more fully meet a given Tribal goal, like economic diversification, for a given outlay of money and human effort, than any other alternatives that are available. As mentioned above, this evaluation should take into account a time scale based on land management requirements, natural systems and real estate cycles, rather than short periods that don’t adequately reflect the requirements of land use management. The criterion of *effective use of resources* allows managers to demonstrate why better, though potentially more costly, alternatives actually make the best sense for the Tribe in the long run.

Section II: Encouraging Coordination

A. Policy Alternatives

Our discussions with officials in the Yakama Indian Nation's government revealed a growing consensus that the YIN should move toward greater cooperation between governmental divisions and a more unified approach to land management issues. Some of the policy alternatives that the Yakama Nation could consider in addressing the challenge of coordination are listed below.

Policy Options For Improved Coordination:

- *Development of a Comprehensive Plan*
- *Creation of a Central Land Use Planning & Policy Office.*
- *Encourage Less Formalized Coordination Mechanisms.*
- *Formalize Annual Reporting Requirements.*
- *Integrate Tribal Zoning and Environmental Protection Codes*

Development of a Comprehensive Plan

This option would produce a comprehensive planning document, with a corresponding set of maps, that would set guidelines for land use, building design, and environmental standards across the entire Reservation. This plan would provide land managers with a central reference point that they could all use to guide their own policy development and enforcement activities.

Creation of a Central Land Use Planning & Policy Office

This policy would reorganize the current structure of the Yakama Nation's government by creating a new government institution to centrally manage the activities of Yakama Nation's land management agencies. The purpose of creating a new Land Policy and Planning Office would be to produce higher degrees of consultation and coordination between YIN land management agencies through bureaucratic channels. This new office would provide centralized oversight for

land management agencies and could steer the directions of these agencies into more coordinated approaches. It also could serve as a potential arbitrator of conflicts between land management agencies over land use activities on specific pieces of Reservation land.

Encourage Less Formal Coordination Mechanisms

It is possible that less formal or institutionalized coordination mechanisms could serve a useful function without encountering many of the problems of a formal centralized planning office. For example, regularly scheduled staff meetings of personnel from each of the major land management offices could provide a less bureaucratic and hierarchical setting in which land management agencies could coordinate their activities. Alternatively, a committee comprised of the managers of all YIN land management agencies could act as a policy coordination body.

Formalize Annual Reporting Requirements

Formal reporting requirements would require all land use managers to report annually on programs and projects as well as provide an assessment of how well those projects fulfill the goals of the Tribe. This would provide a yearly report of all land use activities and would enhance coordination through increased knowledge of others' activities. It would provide measurable data for each year, show trends over time, and give land managers a chance to articulate their visions and describe concrete actions that they perform for the Tribe.

Integrate Tribal Zoning Code and Environmental Protection Code

We have identified the efforts of the Tribal Zoning Office to update the YIN's Zoning Code and the efforts of the Tribal Office of Environmental Protection to develop a Tribal Environmental Protection Code as two initiatives that could greatly benefit from *a collaborative approach between those two offices*. This option serves as an example of how Yakama Indian Nation can identify *specific policies* that can be pursued *cooperatively* by *specific land management agencies*.

B. Analysis: How well do these alternatives satisfy the criteria?

Possible Policies:	Advances Tribal Goals	Produces Measurable Outcomes	Expands Long-Run Options	Uses Resources Efficiently
Develop a Comprehensive Plan	✓	○	○	○
Central Land Use & Planning Office	○	○	○	○
Less Formal Coordination Mechanisms	○	○	○	○
Formalize Annual Reporting Requirements	✓	✓	✓	✓
Integrate Zoning and Environmental Codes	✓	✓	✓	✓

The chart above summarizes how each policy options fulfills the criteria that we have proposed. The following sections discuss, in greater detail, the advantages and disadvantages of each of the possible policy approaches that address the challenge of coordination.

Policy Alternative 1:

Develop a Comprehensive Plan	✓	○	○	○
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The option of developing a comprehensive plan is very similar to initiatives that have been pursued by the Tribe over the course of the past decade.⁴ With the participation of consultants and facilitators, the YIN has engaged in a series of integrative planning and strategic visioning

efforts that have produced a number of documents detailing the Tribe's goals, visions, priorities, etc.

These efforts undoubtedly have some value. By bringing Tribal decision-makers together for meetings in which fundamental differences were discussed, these planning efforts contributed to an environment in which difficult policy issues can be confronted more directly and effectively. By discussing and identifying Tribal goals in concrete terms, these efforts may have laid the groundwork for greater cooperation between government agencies by helping policy-makers identify areas of common interests.

While the benefits of integrated planning cannot be ignored, the Yakama Nation needs to move beyond planning to more effective implementation of specific policy initiatives. The Yakama Nation should not discard or ignore the products of its recent planning efforts. However, upon completion of the current strategic planning process, the YIN will have developed plans and vision statements that will be sufficient to guide its policymaking efforts in the near future.

In terms of the criteria discussed earlier, we find that further comprehensive planning is not a useful course of action for the Yakama Nation. While strategic planning helps policy-makers to identify goals and areas for cooperative action, it constitutes a very small step towards actually advancing the Tribe's goals through the implementation of good policy initiatives. To be truly effective it must be followed by effective policy implementation. Additionally, strategic planning is a process that does not create particularly measurable results. Planning tends to focus on broad strategy and vision. The difficulty of translating general plans into concrete action can be attributed to a lack of measurable benchmarks or targets against which the success or failure of these planning efforts could be measured. Finally, extensive planning efforts carried out over many years may actually constrain the Tribe's pursuit of specific policy initiatives by utilizing resources (time, money, political support) that could be mobilized to greater effect in other areas.

Advances Tribal Goals
 Produces Measurable Outcomes
 Expands Long-Run Options
 Uses Resources Efficiently

Policy Alternative 2:

Central Land Use & Planning Office	○	○	○	○
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We believe that there are a number of significant drawbacks to this approach. There is no reason to believe that adding a layer of bureaucracy to the structure of the YIN's land management agencies will improve the quality or efficiency of the policy-making process. It seems doubtful that a new oversight agency will receive support from existing land management agencies within the Yakama government. Imposing this new layer of bureaucratic oversight would be counter-productive if it is met with resistance by land managers who feel unnecessarily constrained by the new office. Finally, the General Council could, at its discretion, exempt individual agencies from scrutiny, thus making a comprehensive policy office ineffective.

Judged against the criteria, this option does not appear to be very promising. Except for the creation of a few new jobs, the mere establishment of a central planning office will not directly contribute towards Tribal goals. Clearly, the idea of the central office would be to ensure that the fundamental goals of the YIN were more effectively integrated into the policy-making process. However, this relies heavily on the support that the new office would receive from other institutions and on the resources devoted to the office's success. A central planning office might be in a good position to establish performance benchmarks for the other land management agencies in the Yakama government, but it would not necessarily be able to enforce these standards. Finally, it does nothing to expand the range of policy options available to the Yakama Nation in the long run.

Advances Tribal Goals
Produces Measurable Outcomes
Expands Long-Run Options
Uses Resources Efficiently

Policy Alternative 3:

Less Formal Coordination Mechanisms	○	○	○	○
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Informal coordination mechanisms might be more successful than the imposition of a more formal kind of oversight institution. There is some evidence that the Tribe has already begun to establish these kinds of informal networks through strategic planning processes.

Although potentially beneficial, informal coordinating mechanisms still have a number of drawbacks. As was the case with the more formal central planning office option, the creation of a new committee or staff meeting group will do nothing, on its own, to advance Tribal goals. The informal mechanisms would be even less likely to develop or enforce new measurements for ensuring cooperation. These informal organizations could allow current land management agencies to continue largely in current paths without much change. The existence of these types of informal arrangement will have no obvious impacts on the range of policy options available to the Tribe in the long term. This approach would have a minimal effect on Tribal resources.

Advances Tribal Goals
Produces Measurable Outcomes
Expands Long-Run Options
Uses Resources Efficiently

Policy Alternative 4:

Formalize Annual Reporting System	✓	✓	✓	✓
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This alternative would require that each land use agency and office produce a written report detailing that agency's activities and progress toward Tribal goals. A formal reporting mechanism could further Tribal goals by requiring land use agencies to state progress in land

management, using measurements to provide a yardstick for progress. Over time, these reports would become a valuable source of trend data, helping everyone see how specific agencies and initiatives have improved the Tribe's welfare. As the information would be publicly available, it would create an opportunity for land use agencies to learn about each other's activities, and would educate the general Tribal membership about land use management policy.

These reports will provide a source of valuable information for the YIN. It is a vital component of meeting the Tribe's goals because it will provide a means of assessing progress toward those goals. It will provide a means of measuring specific land programs and projects. By providing information, it expands future policy options, facilitates a better understanding Tribal policies, and makes it easier for land managers to identify new areas for collaboration. Finally, this is an effective use of Tribal resources because it costs relatively little but is a powerful tool for assessing progress.

Advances Tribal Goals
Produces Measurable Outcomes
Expands Long-Run Options
Uses Resources Efficiently

Policy Alternative 5:

Integrate Zoning And Environmental Codes	✓	✓	✓	✓
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Redrafting the Zoning Code, and better integrating it with a Tribal Environmental Protection Code will greatly enhance coordination. It will provide the Yakama Nation with an opportunity to move beyond planning processes to policy implementation. An improved zoning code would allow better delineation of conflicting land uses and provides a strong platform for regulatory control. By making this effort as specific as possible, it will be much easier for the Yakama Nation to measure the success of these efforts. Measuring adherence to something *general* like a comprehensive plan is much more difficult than measuring progress towards something as *concrete* as the revision of the Tribal zoning map. This approach also expands future policy options for the Tribe because it settles the physical boundaries in a more conclusive manner, giving the Tribe a more legitimate regulatory code that can be used to effectively extend control

on newly acquired lands. Finally, this is an effective use of resources because it is a specific action that will yield enhanced coordination as well as furthering all Tribal goals.

C. Policy Recommendations

Integrate Tribal Zoning and Environmental Protection Codes

In many communities throughout the United States, there is a movement towards integrating the regional approach to zoning and environmental regulation. The Yakama Nation has expressed interest in both the development of a Tribal Environmental Protection Code and a revision of its Tribal Zoning Code. This presents an ideal opportunity to coordinate the activities of the YIN Zoning Office and the YIN Office of Environmental Protection in an effort to produce an Integrated Tribal Zoning and Environmental Protection Code and Map.

This integrated approach to environmental and zoning regulation has several advantages.

- By updating the regulatory framework governing the natural and built environment on the reservation the Yakama Indian Nation will be translating two areas of fundamental sovereignty, granted to the Tribe by Treaty and by law, into a modern management context.
- By improving its zoning code, and integrating environmental regulations into a map of the reservation, the Yakama Nation will be able to argue that it has greatly improved its ability to manage *all* of its lands by itself.
- By strengthening its regulatory frameworks, the YIN will be better positioned in its efforts to decrease the influence of the BIA and Yakima County government in land use and acquisition issues.

Formal Annual Reporting Mechanism

Yakama land use agencies often don't know what projects other offices are pursuing and how those projects might relate to the goals of the Tribe. This lack of inter-agency communication can mask potential synergies or conflicts between land management projects. Through efforts like the strategic planning process, different agencies are discovering more about each other, something generally good. However, this process is *ad hoc* and only involves those who wish to be involved and parties only reveal certain types of information, leaving a spotty and insufficient picture of land use activities as a whole.

Requiring formalized requirements will:

1. Produce focused information about land management activities from all relevant land use agencies.
2. Allow everyone to see and gauge how effectively agencies are working toward Tribal goals, thus providing much needed measurements over time.
3. Foster greater coordination between agencies by helping land managers identify areas of potential conflict or common interest between their agencies.

Without projects that further the Tribe's goals, reporting requirements cannot achieve a lot. However, requiring a standardized, focused review process forces managers to evaluate how well they are meeting the Tribe's goals, articulate how current projects effectively lead to those goals, and provide measurement standards that can be tracked over time.

Section III: Expanding Capacity

A. Policy Alternatives

The second major challenge confronting YIN land managers is the need to enhance the Tribe's capacity to engage in certain kinds of land management practices. Some of the policy alternatives that the Yakama Nation could consider in addressing the challenge of capacity are listed in the figure below.

Policy Options For Enhancing Capacity:

- ***Immediately hire land surveyor, land appraiser, and leasing manager.***
- ***Train, and eventually hire, Tribal members to fill crucial land management jobs.***
- ***Develop a strategy to expand the Yakama Nation's capacity to achieve political goals in federal, state, and local jurisdictions.***

Immediately hire land surveyor, land appraiser, and leasing manager

Interviews with Tribal officials revealed that they were concerned with a lack of readily available expertise in certain critical areas of land management. In particular, the scarcity of trained surveyors and land appraisers greatly complicated the YIN's task of managing its lands effectively. One obvious response to this problem would be for the Tribe to immediately hire individuals who are trained in these important areas. Currently, no members of the Tribe have a background in these important land management fields.

Train, and eventually hire, Tribal members to fill crucial land management jobs

A possible alternative, or compliment, to the first policy option would be for the YIN to actively recruit, train, and eventually hire its own members to serve in the land management capacities that are currently in demand on the reservation.

Developing the Yakama Nation's external political leverage and visibility

Many aspects of land management that need to be addressed on the Yakama reservation are governed by Federal regulations that can only be altered through the action of the U.S. Congress. Additionally, the cooperation of local governments is becoming increasingly necessary for Tribes to successfully transfer lands held in fee into trust status. In light of these facts, the Tribe could consider ways to expand its political capacity both in confronting and working with external governments.

B. Analysis: How well do these alternatives satisfy the criteria?

Possible Policies:	<i>Advances Tribal Goals</i>	<i>Produces Measurable Outcomes</i>	<i>Expands Long-Run Options</i>	<i>Uses Resources Efficiently</i>
Hire a land surveyor, appraiser, etc.	✓	✓	✓	✓
Train & hire Tribal specialists in needed fields.	✓	✓	✓	✓
Develop external political leverage/visibility.	✓	✓	✓	✓

As is indicated by the chart above, there are a number of steps that the Yakama Indian Nation can take to expand capacity that are likely to be very beneficial to the Tribe. We discuss each of the options identified above in more detail in the following sections.

Advances Tribal Goals
Produces Measurable Outcomes
Expands Long-Run Options
Uses Resources Efficiently

Policy Alternative 1:

Hire a land surveyor, appraiser, etc.	✓	✓	✓	✓
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This is a logical step to take in addressing the shortage of expertise in these crucial land management fields. The acquisition of this expertise would advance Tribal goals by making it easier to lease, farm, sell, and regulate specific parcels of land on the reservation. The outcomes of this hiring policy could be measured in many ways, including how much more rapidly sales and leases of lands are processed or how much more rapidly zoning issues are decided upon. Hiring new people will also open a range of new policy options because it can allow the YIN to begin to take over functions relating to leasing and the fee-to-trust process more effectively. However, in the long run, this is not the most effective use of Tribal resources, compared to training and hiring Tribal members to perform these functions, because the Yakama only receive the paid help with this alternative, rather than building up the capacity of the Tribe as a whole.

Advances Tribal Goals
Produces Measurable Outcomes
Expands Long-Run Options
Uses Resources Efficiently

Policy Alternative 2:

Train & hire <u>Tribal</u> specialists in needed fields.	✓	✓	✓	✓
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This option has the advantages of the previous option, but also benefits the Tribe's long-run interests by keeping the benefits of the new hiring within the Tribal membership. This will take longer than the previous alternative, but the pay-off is also considerably larger.

Advances Tribal Goals
 Produces Measurable Outcomes
 Expands Long-Run Options
 Uses Resources Efficiently

Policy Alternative 3:

Develop external political leverage/visibility.	✓	✓	✓	✓
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Developing the capacity to influence external political decisions and mobilize support for causes at the local, state, and federal levels will help the YIN advance its Tribal goals in a number of ways. The fee-to-trust process and the administration of the leasing process for Tribal lands are regulated, in large part, at the Federal level. To make progress in improving the leasing process and the fee-to-trust process, it is absolutely necessary for the Yakama Indian Nation to develop a focused political strategy to ensure that its interests are considered favorably by the necessary decision-makers. Outcomes of this recommendation are very easy to measure because a successful political strategy results in more resources, favorable statutory changes and a better negotiating position *vis-à-vis* external parties. Finally, this is an effective use of resources because this is the best (and virtually only) way to effect changes in the external political environment.

C. Policy Recommendations

Train and Hire Tribal Members to Crucial Land Management Jobs

Training and hiring Tribal members to perform tasks in appraising, surveying and general real estate functions, such as leasing, will build capacity to effectively perform functions associated with the leasing and land management more generally. This also allows the YIN to begin to take over the leasing functions from the BIA. This will, in the long run, further enhance control.

Once the training and hiring process is in place, this policy will:

1. Increase the capacity of land managers to perform necessary skills that will enhance land management efforts now.
2. Give the Yakama the capacity to be able to take over the leasing process from the BIA and to be able to negotiate more effectively for fee-to-trust transfers.
3. Increase employment to a modest degree, and have more Tribal members with marketable skills.

Develop the Yakama Nation's external political leverage and visibility

Developing the capacity to influence external political decisions and mobilize support for causes at the local, state, and federal levels will help the YIN advance its Tribal goals in a number of ways. The fee-to-trust process and the administration of the leasing process for Tribal lands are regulated, in large part, at the federal level. To make progress in improving the leasing process and the fee-to-trust process it is absolutely necessary for the Yakama Indian Nation to develop a focused political strategy to ensure that its interests are considered favorably by the necessary decision-makers at the federal level.

By having a focused message to communicate, the Tribe can effectively state its goals, communicate information about the Tribe's progress toward those goals, barriers that still exist, and ways that outsiders can contribute. Doing so can lead to:

1. Greater understanding and sympathy from the surrounding community.
2. Actions that significantly advance Tribal goals.
3. More resources to work with to meet those goals.

SECTION IV: Extending Control

A. Policy Alternatives

The third major challenge confronting YIN land managers is to extend the Tribe's control (through full ownership and regulation) over its lands within the external borders of the reservation. This challenge largely involves the Yakama Indian Nation Tribal Land Enterprise Office, which is charged with the mission of buying economically productive fee land and transferring those lands into trust status.

Policy Options For Enhancing Control:

- *Eliminate Tribal Land Enterprise and disburse land funds to Tribal members.*
- *Make Tribal Land Enterprise more visible and accessible.*
- *Extend time limit on leases to 99 years.*
- *Take over leasing process from the BIA now.*

Eliminate Tribal Land Enterprise and disburse land funds to Tribal members

There have been proposals brought to YIN General Council to break up the TLE and disperse the Tribe's land fund as a one-time per-capita payment. This alternative reflects these proposals.

Make Tribal Land Enterprise more visible and accessible

As a possible response to the concerns that have been expressed about the TLE, the TLE would take steps to regain the support and understanding of the community and other land management institutions. By raising its public visibility, assisting Tribal members with land management issues, and making itself more accessible to other government agencies, the TLE could be better positioned to continue its legacy of successful operation.

Take over Leasing Process from the BIA Now

Since many managers have expressed frustration with the BIA and its leasing practices, one logical alternative is to take over the leasing process. It is legally possible to do this, through PL 93-638. This alternative would exercise this right, and the YIN would then exercise leasing authority.

Extend time limit on leases to 99 years

Many managers expressed frustration with the leasing process as it exists now. It was cited as being too slow, unresponsive and not flexible enough to meet legitimate leasing needs. In particular, it was noted that the 25 year lease, with a 25 year optional extension, at most (see Appendix A for more details) was not sufficient to attract some very long term investors. This alternative would pursue a change in U.S. Code Title 25 Sec. 415.

B. Analysis: How well do these alternatives satisfy the criteria?

Possible Policies:	Advances Tribal Goals	Produces Measurable Outcomes	Expands Long-Run Options	Uses Resources Efficiently
Eliminate TLE and disburse funds.	○	○	○	○
Increase TLE's visibility and accessibility.	✓	✓	✓	✓
Immediately take over leasing from BIA	○	○	○	○
Extend time limit on leases to 99 years	✓	✓	✓	✓

Advances Tribal Goals
 Produces Measurable Outcomes
 Expands Long-Run Options
 Uses Resources Efficiently

Policy Alternative 1:

Eliminate TLE and Disperse Funds.	○	○	○	○
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This alternative would dismantle the current mechanism for purchasing economically productive lands and distribute the funds to all Tribal members in a one-time per capita bonus check. The YIN would no longer have an established way to buy these lands, nor would it have a formal venue for applying for trust status of fee land. This means that the Office of Natural Resources would continue to buy land for habitat purposes, no economically productive land would be purchased, and no land would be transferred from fee to trust status.

This alternative is not helpful to the Tribe in the long run, though the short-term gain has proved tempting enough to produce motions to dissolve TLE in General Council. This action would not meet any of the goals of the Tribe. Without the ability to purchase land, Yakama Nation will not be able to significantly extend its control over non-Tribally owned land within the exterior borders of the Reservation. It is difficult to measure possible positive effects of a one-time disbursement of funds, but it is very easy to measure negative effects of this action, like the cessation of economically viable land purchases. This alternative will greatly contract the range of future actions that the Tribe can undertake, and would be a short sighted and ineffective use of Tribal resources.

Advances Tribal Goals
 Produces Measurable Outcomes
 Expands Long-Run Options
 Uses Resources Efficiently

Policy Alternative 2:

Increase Visibility and Accessibility of TLE.	✓	✓	✓	✓
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Many of the criticisms voiced about the TLE focus on its isolationist attitude, bias towards on economically attractive land parcels and inability to turn fee land into trust status. TLE's charter charges the Enterprise with creating the most benefit to the Tribe through land purchases, bought with funds derived from productive use of land under its control. This shifts the Enterprise's focus toward economically productive land, especially since the Office of Natural Resources acts in a complementary fashion through its purchase of conservation land. Fee-to-trust processes have been substantially slowed on all Indian lands since a court ruling in 1996 (see Appendix B for more details). Few outside of the Tribal Land Enterprise appears to know about this situation.

Furthermore, the TLE shares little information about its activities, thus limiting support for the Enterprise and its activities. Creating more visibility, educating Tribal members and land managers about TLE's activities can lead to many positive outcomes. This will help fulfill the goals of the YIN by producing greater support for and understanding of TLE's mission. Formal reporting requirements will yield particularly valuable results in measuring the TLE's contributions towards the fulfillment of Tribal goals. Furthermore, when TLE has good working relationship with other Tribal agencies, it will enhance the range of policy options that each can pursue. Finally, this is an effective use of resources because a more effective TLE will create a foundation for more land purchases and more vigorous efforts to overcome the barriers associated with the fee-to-trust process.

Advances Tribal Goals
 Produces Measurable Outcomes
 Expands Long-Run Options
 Uses Resources Efficiently

Policy Alternative 3:

Immediately Take over Leasing from BIA	○	○	○	○
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BIA is the major leasing agent for Tribal trust and Tribal allotment lands on the Yakama Reservation. It is often cited as being slow, unresponsive and insensitive to Tribal interests. However, the Yakama do not have anyone with the key skills necessary to run a leasing program now, nor do they have the key institutional elements in place. These factors make this alternative much less attractive in the near term.

Because the Tribe doesn't have the necessary skills in place now, this alternative will not meet the goals of the Tribe because such an operation is likely to be *less effective* than the BIA Real Estate Office at this time. This alternative would be easy to measure, using benchmarks like percent decrease in processing time. Taking this step now would not significantly expand future policy options because it is unlikely to be a success yet. An unsuccessful venture in this area will have a chilling effect on future, more beneficial efforts in this area. This is not an effective use of Tribal resources at this time, and *we strongly recommend delaying this step until the necessary expertise and a modicum of experience with the leasing process is attained.*

Advances Tribal Goals
Produces Measurable Outcomes
Expands Long-Run Options
Uses Resources Efficiently

Policy Alternative 4:

Extend time limit on leases to 99 years	✓	✓	✓	✓
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Instead of taking over the entire leasing process now, the YIN can pursue a targeted alternative to change one part of the leasing process, and extend leasing options to 99 years instead of the current much shorter periods stipulated by law (See Appendix A for more details). This alternative would modify one part of the leasing law that constrains both the BIA and possible Tribal management of the leasing process.

This alternative will fulfill YIN goals because it immediately allows for greater opportunities for economic diversification. Secondly, the outcome is very focused and easy to measure. This will also expand the future range of options available to the Tribe both because it creates more flexibility in the leasing process, and because it is a chance to gain valuable experience with the leasing process. Finally, this is an effective use of resources because the possible gain is substantial for the expected outlay of effort.

C. Policy Recommendations

Increase TLE's Visibility and Accessibility

In many ways, the Tribal Land Enterprise has been very successful in pursuing its mission. The Land Enterprise has been actively acquiring tracts of land for the Yakama Nation. With these

newly acquired lands, the Land Enterprise has initiated a number of economic ventures that have, in turn, produced a source of revenue for further land acquisitions.

However, the TLE is viewed as overly independent, solely focused on economic development, and unwilling to transfer land from fee to trust status. TLE does focus on purchasing lands with economic value, which is in line with how it interprets its mission. This is partially how it acquires additional funds to purchase more land for the Tribe. Although it does conduct important business, the TLE deserves its overly independent reputation because it has been historically very reluctant to work or communicate with other agencies.

Improving TLE's visibility and accessibility will:

1. Make TLE's land funds more secure
2. Create more Tribal capacity to effectively deal with land management issues now and in the future, thus providing a platform for increased control.
3. Strengthen the TLE's position so that it can be a stronger player when attempting to transfer land from fee to trust status.

Extend time limit on lease to 99 years

Currently, lease time limits are determined by Federal statute. The Yakama Nation, unlike many other Nations, including the Colville Nation, does not have the 99 year lease option. Instead, the Nation is considerably more constrained, with time length dependent on land use. A targeted approach to extending control over the leasing process, by acquiring the 99 year lease option will yield :

1. An immediate gain in flexibility that will enhance economic diversification.
2. A platform of experience to use a springboard for future extension of leasing control.
3. A foundation of outside political support that can also assist other efforts.

SECTION V: Recommendations

In the previous sections, we discussed the viable policy choices open to the Yakama Indian Nation analyzed how effectively each met the established criteria, and identified the best alternatives available within each critical challenge: coordination, capacity and control. It is important to note that these recommendations are mutually reinforcing. For instance, a stronger zoning and environmental regulation code, which limits conflicting land uses, also gives the Yakama better control over the lands they currently have as well as an orderly mechanism for incorporating newly acquired lands into Tribal regulatory control.

In this section, we briefly discuss each recommendation. Then, we outline the benefits that the Yakama can expect if each of these recommendations are implemented well. In Section VI, we have written a set of implementation steps that describe how each recommendation could be put into practice.

Integrate Tribal Zoning and Environmental Codes

As it stands, the zoning code does not delineate different land uses into categories narrower than “agriculture” or “range.” The difference between the open and the closed area within the reservation is a useful distinction because it allows the Tribe to control access to its timber and root-gathering sites. Further demarcation within the open area will lessen potential conflict between the needs of conservation/preservation and economic diversification. Already, important steps have been taken, such as an initiative to develop a flood plan for the Yakima Valley. This activity will help the Tribe in two major ways: it will allow wildlife to flourish in riparian areas, and protect economic and human well-being by keeping new houses out of harm’s way.

Integrated zoning and environmental regulations would build on this foundation by providing:

1. A map that ties zoning regulations to physical areas defined by environmental, economic, and cultural characteristics.

2. A set of regulations that explicitly tie land use to the priorities of the Tribe.

An integrated system, once in place and enforced, would help fulfill the three goals of the Tribe by creating:

1. Clear, easily understood boundaries between conflicting land uses that would allow all users to have an understanding of appropriate land uses for any area;
2. Clear zones devoted to economic activities that would make such activities more visible and potentially easier to promote; and,
3. A coherent system of zoning and regulation that would make oversight of activities more straightforward, thus taking better advantage of scarce human resources.

Formalize Annual Reporting System for Land Management Agencies

Land management agencies don't have a clear idea of the all the activities individual land use agencies are pursuing, how those relate to Tribal goals, and potential areas for conflict or mutual gain. Reporting can foster institutional memory between the land use agencies, and act as a reminder for the future about activities that worked well, as well as provide guidance as to why those that didn't succeed did not. Clear, standardized reporting from all land use agencies will:

1. Foster greater coordination between agencies through greater awareness of other agencies' land use activities.
2. Require all parties to focus on the connection between Tribal goals and the programs and projects designed to further those goals.
3. Provide a way to evaluate effectiveness of projects, over an appropriate time scale.

Expand YIN's Capacity to Exert Sovereignty at Local, State and Federal Level

Like all sovereign entities, the Yakama Nation's well being and ability to carry out policies is constrained by other parties. By improving external leverage, the Tribe can drive policy agenda in ways that are favorable to the YIN's interests within the reservation. Since local, state and especially national levels can impede or promote Yakama efforts, motivating outside parties will give the Tribe a greater ability to get good things done that can't be accomplished solely by the Yakama membership. These include greater resource allocation and more favorable statutory changes at the national level.

With a focused message, the Tribe can effectively state its goals, communicate its progress toward those goals, indicate where barriers still exist, and suggest ways that outsiders can contribute. Doing so can lead to:

1. Greater support and understanding from external actors.
2. Statutory changes that facilitate the pursuit of fundamental goals.
3. More resources to use to meet those goals.

Train and hire Tribal members to fill crucial land management functions

People are needed to provide skilled assistance in areas such as surveying, land appraisal, the management of Tribal land leases. Additionally, more expertise in the area of fee-to-trust transfers could improve chances of successfully completing some fee-to-trust transfers. Managers told us these gaps in expertise detracted from their overall ability to manage. In the short term, having Tribal members who are skilled in these areas will:

1. Increase the capacity of land managers to perform necessary skills that will enhance land management efforts now.

2. Give the Yakama the capacity to be able to take over the leasing process from the BIA and better be able to negotiate for fee-to-trust status.
3. Increase the number of Tribal members interested in land management issues, helping to create a new generation of skilled Tribal land managers.

Increase Tribal Land Enterprise's Visibility and Accessibility

The Tribal Land Enterprise is the institution charged with buying land and incorporating it into Tribal holdings. Though its efforts, fee land in both the open and closed areas have been bought and put to productive use. Its focus is primarily on economically productive lands. Other, fairly substantial parcels, are bought with other funds through the Office of Natural Resources for preservation and conservation reasons. TLE is also the official body in charge of all fee-to trust transfers.

In the TLE charter there are specific injunctions against dispersing the capital fund for one time gain. Such a move would be directly opposed to the Tribe's long-term interests, but fear of such an action has kept the TLE from divulging information, thus earning it a reputation as an aloof and overly independent agency.

Specific information about the cost of parcels and total amount of money in the fund should be shielded because it gives prospective sellers information about Tribal affairs that will be used as leverage against it. However, it doesn't follow that little or no information should be shared. The TLE provides a common legacy for all Tribal members by bringing more land into Tribal hands. By training future land management professionals, the TLE will be able to foster an even greater perception that it creates a legacy for the Tribe. These actions will:

1. Make TLE less vulnerable to capital runs, and thus more able to do its job without short sighted interference.

2. Create more Tribal capacity to effectively deal with land management issues now and in the future, thus providing a platform for increased control.
3. Strengthen the TLE's position so that it can be a stronger player when attempting to transfer land from fee to trust status.

Extend Time Limit on leases to 99 years

Currently, BIA has control over most leasing functions, and is often viewed as slow and uncooperative in its actions. However, the BIA is also heavily constrained by statutes that specify length of leases and other factors. Without changes at the statutory level, some of the more onerous aspects of leasing will not go away, no matter what entity actually has control of the leasing process. At this time, the YIN is not positioned well to take over the leasing function in its entirety. However, smaller, concrete steps will produce good interim results and act as a foundation for further progress in this area. As a first step, the Yakama should lobby for a 99 year lease limit on Tribal lands, rather than the current 25 year maximum with option to renew found in US Code 25.415. Numerous other Tribes are included under the 99 year exemption. Gaining a 99 year lease would:

1. Give the Tribe more flexibility in attracting economically beneficial projects.
2. Represent a significant outside political victory that the Tribe can build on to alleviate other land management problems with external actors.
3. Become a first step to extending control over the leasing process.

This recommendation dovetails with others. Clearly, a solid political strategy would be necessary to recruit enough outside support to pass the statutory amendment. Hiring and training more people who are knowledgeable about the leasing process would also create a greater ability to pursue the intricacies of leasing.

Recommendations Work in Together to Form a Firm Foundation for Land Management

Each of these recommendations, addressing different aspect of coordination, capacity and control are meant to work together. For instance, TLE's efforts to raise accessibility and visibility, through actions like offering scholarships for future Tribal land managers, will complement efforts to train and hire Tribal members to fill specific land management gaps. Newly trained people, plus a new 99 year lease option will work together to provide a strong platform for extending leasing control. Each of these recommendations will strengthen the others, and bring more benefit than implementing just one in isolation. Future successes depend on actions taken right now. Each of these steps can be begun today and will further the Tribe's goals, have measurable qualities, expand the Tribe's future options and effectively use Tribal resources. By doing so, the Tribe will gain more control over their lands, a good sense of progress toward their goals and a platform for future action.

Section VI: Implementation

This section contains a set of checklists designed to provide guidance in implementing each of the recommendations presented in this report. These checklists identify the actors who should take these actions, and suggests the amount of time that will be needed to carry out these steps.

Creating an Integrated Zoning and Environmental Code

Implementation Steps:

Time	Actor(s)	Action	✓
Start Now	Zoning Office and Environmental Protection Office	Initiate formal contact between these agencies through regularly scheduled meetings or the formation of a joint committee.	
3-9 months	All Land Management Agencies	Compile maps and data that indicate the land use priorities of each land management agency including: Natural Resources, Cultural Resources, Facilities, Water, Economic Development, Tribal Land Enterprise, etc.)	
6-12 months	Zoning/Environme ntal Protection and GIS	Employ GIS resources to incorporate all of the above information into maps which can be used as a baseline to determine areas of common interest and potential conflict over land use.	
Within 2 years	Zoning/Environme ntal Protection	Begin process of integrating the above data into a new, common Zoning/Environmental Protection Code and map.	
Within 2 years	Tribal Council/General Council	Codify the map, and the accompanying code that explains 1) the purpose of the zoning code, 2) specifies uses within each zoning region, 3) includes a mechanism for incorporating newly purchased lands, and 4) links zoning code to the developing TEPA.	

Establishing a Formal Reporting Requirements

This recommendation is simple to set up, requires relatively few resources and is extremely informative *if everyone participates in a serious and thorough manner*. The support of key land management agencies and the General Council is critical to provide the oversight and momentum that this policy will need in its first few years.

Implementation Steps:

Time	Actor(s)	Action	✓
Next 2 months	Office of Economic Development	Develop Standardized Format for Annual Reports	
2-6 months	Tribal Council, with Assistance from Office of Economic Development	Develop Support Among Targeted Agencies by Demonstrating Potential Benefits and Low Costs of Reporting	
6 months	Tribal Council	Approve Standardized Format for Annual Reports	
6 months	Tribal Council	Specify Which Agencies Will Be Required to Submit Annual Reports and Notify Them	
6 months	Tribal Council	Establish Deadline for Submitting Annual Reports (Examples: January 31 or the end of the fiscal year.)	
Yearly	All Land Use Agencies	Compile information for report by appropriate deadline	
Yearly	General Council	Have bound copies of agency reports available at General Council Meetings.	
Yearly	Tribal Council	Distribute reports to all land use managers.	
Yearly	General Council	Archive multiple copies of agency reports at YIN library to make them permanently available to public.	

Initially, we recommend that all land use agencies and sub-agencies are required to fulfill formal reporting requirements. After this procedure is established, other Tribal agencies can also be required to fulfill these requirements. Agencies, along with their sub-agencies initially included are:

- Office of Natural Resources
- Office of Economic Development
- Tribal Land Enterprise
- Office of Facilities
- Office of Cultural Preservation
- Office of Environmental Protection

The following page contains a sample standardized format an annual reporting system:

TRIBAL COUNCIL OF THE YAKAMA INDIAN NATION

SAMPLE YEARLY STATUS REPORT

In accordance with Resolution ____, this office or sub-office is required to complete a formal status report, thoroughly responding to the following questions. These responses are due by January 31, and can be turned in at _____. These responses will be distributed to General Council and to other land use managers.

- 1) Describe the mission/goals of your Agency?
- 2) What projects and programs did you undertake in the past year?
- 3) How do these projects relate to the goals that you described in question 1?
- 4) What alternatives to these policies and programs did you examine?
- 5) Why were these alternatives rejected?
- 6) Why did you choose to prioritize the projects and programs that you did pursue this year?
- 7) How effectively did these projects fulfill your mission/goals?
- 8) How did you measure effectiveness of these programs?
- 9) Which projects and programs are you most pleased with, and why?
- 10) Describe your agency's accomplishments for the year.
- 11) What new policies or modifications of existing policies do you anticipate pursuing in the coming year?

Developing a Strategy to Increase External Political Leverage

The Yakama Indian Nation is not an isolated political actor. It is affected, as are many sovereign political institutions, by the actions of other governmental entities. Recent court cases have, unfortunately, increased the ability of other government actors to interfere with the Yakama Nation's pursuit of its goals. This suggests that YIN needs to approach its interactions with external governments strategically, and recruit and enlist support wherever possible.

Implementation Steps:

Time	Actor(s)	Action	✓
Next 3 months	Economic Development will spearhead, with input from Land Use Managers	Develop a strategic message that emphasizes clear, easily communicated message about YIN goals, significant barriers and actions external parties can take.	
3 months	Tribal Council	Develop relationships, on behalf of the Tribe, with political consultants/lobbyists who have experience representing Indian interests at state and federal government levels.	
Within 3 months, ongoing	YIN, with political consultants/lobbyists.	Identify political officials/candidates who are likely to be receptive to YIN issues. Develop relationships with their staffs. Contribute to their campaigns.	
Within 1 year, quarterly	YIN Tribal Council	Develop a brief, quarterly newsletter of accomplishments that can be sent to elected, influential and interested parties.	
Within 3 months, ongoing.	All YIN officials	Develop working relationships with media. Provide information about positive initiatives/partnerships to help develop more positive press about YIN.	

The fee-to-trust process and many issues surrounding the leasing of Tribal lands call for focused political attention on the part of the Yakama Nation. In particular, we have argued that the Tribe should obtain an extension of the 25 year time limit on leases of Tribal lands. Efforts to gain a 99 year lease option would provide a valuable focal point for the Tribe's initial efforts to develop a political strategy.

With regard to the transfer of fee lands to trust land, the Yakama Nation's political strategy will need to be aimed at local policymakers as well as the federal bureaucracy. A Recent Supreme Court decision has made it increasingly difficult for Indian Tribes to transfer fee lands to trust lands without facing administrative challenges and litigation from local governments who oppose such transfers. As a result, the Tribe will need to provide compelling reasons for local governments involved not to interfere with the Tribe's fee-to-trust applications. Additionally, the Tribe will need to convince the BIA that the applications need to be acted upon in a timely manner.

Training and Hiring Tribal Members to Fulfill Key Land Management Gaps

Implementation Steps:

Time	Actor(s)	Action	✓
Start now.	TLE/YIN Adult Vocational Programs	Coordinate actions to identify promising candidates for surveying/appraising/lease management positions.	
Start now.	TLE/YIN Adult Vocational Programs	Identify training programs for each specialized land management function.	
Within 6 months, continuing.	TLE	Provide support through funding, or work experience, to selected candidates.	

Strengthening TLE by Increasing Public Visibility and Support

While the difficult economic conditions that encourage people to call for the dispersal of the land funds are clearly powerful, they should not result in the destruction of an institution and process that is accomplishing important successes on behalf of all Tribal members.

Implementation Steps:

Time	Actor(s)	Action	✓
Within 6 months.	TLE	Develop written materials explaining the leasing process, land inheritance laws, tips for purchasing land, etc.	
Within 6 months.	TLE	Conduct periodic public seminars on real estate management topics.	
Within 6 months.	TLE	Offer internship opportunities, scholarships, or other programs for young people, to educate them about issues relating to real estate finance and business management.	
Start within 6 months.	TLE	Engage in direct communications with Yakama Tribal members through newsletters, press releases, or presentations before the General Council to highlight the progress and accomplishments of the Land Enterprise Office.	
Start within 6 months.	TLE	Provide education and assistance to individuals who are going through the process of selling, purchasing, or leasing lands.	

Opportunities for public outreach/education

The Tribal Land Enterprise can raise its profile within the community, develop greater public understanding of its importance to the Yakama Nation, and enhance the land acquisition and management process by engaging in public outreach and education activities.

We acknowledge that the Enterprise has begun to move in this direction. The TLE is developing a video that can be shown to public meetings, to publicize and promote the activities of the Land Enterprise Office. This approach is exactly the right one to take, and we recommend that the Enterprise take even more aggressive steps to communicate its message to other government managers and the entire membership of the Yakama Indian Nation.

Shielding the land funds from dispersal

The Yakama Indian Nation had the foresight, in the 1950s, to establish and contribute annually to a fund that would be used to re-acquire reservation lands that had been taken from the YIN through the allotment process. In the early 1970s, the YIN established the Yakama Indian Nation Tribal Land Enterprise Office to manage this fund and begin the process of re-acquiring non-Tribal fee lands within the boundaries of the reservation. According to its plan of operation, the Land Enterprise is intended to:

“promote the better and fuller development and utilization of the resources of the Yakama Nation; to acquire key tracts and those held in complicated heirship status; and improve and develop land now owned so that the maximum benefits will be returned to the Tribe.”

The Plan of Operation of the Tribal Land Enterprise also states explicitly, “No per capita loans or payments may be made by the Enterprise.”

And:

It is not anticipated that the Enterprise will have funds available for transfer to the Nation for Tribal purposes for some time to come. When the Enterprise does find itself with funds in excess of its needs, funds may be transferred from the Enterprise to the Nation’s general fund to replace the capital investment of the Nation in the Enterprise.

These passages strongly indicate that the intention of the Tribal Council in creating the TLE was *not* to provide a source of revenue to the Tribe's general fund or to the membership at large. This fact may need to be reinforced by the Tribal Council. There are a number of possible ways of doing this:

- Simply re-affirm by Tribal Council Resolution the intention of the Tribal Council to protect the TLE's land fund until the date (far into the future) when these funds become surplus to the Tribe's needs for re-acquiring reservation lands.
- More securely establish the principle of shielding the land fund by adopting a constitutional provision recognizing the TLE, its goals, and the necessity of preserving its stream of funding.

Fee-to-Trust

The ultimate goal of strengthening the Land Enterprise's public image and ensuring its continued operations is to allow it to better perform its mission of reacquiring lands to be placed in trust for the YIN. The experience of many other Tribes has repeatedly demonstrated the importance of developing strong Tribal institutions that can effectively exercise Tribal sovereignty through dispute resolution, agreements, or negotiations with external political institutions.⁵

There are two reasons that the Tribe needs to aggressively pursue fee-to-trust transfers:

1. By putting more land into direct Tribal control, fee-to-trust transfers put the YIN in a position of strength to begin reasserting regulatory control of all land within its boundaries.
2. The fee-to-trust process eliminates the tax burden connected to the parcels of land in question, which makes them more profitable for business or agricultural purposes and more sustainable as non-revenue-producing habitat preservation areas.

Recently, the Land Enterprise Office has submitted at least 24 separate applications to the BIA requesting trust status for specific Tribally-owned fee lands. None of these applications have been acted upon by the Bureau. According to current law⁶:

...land may be acquired for a tribe in trust status (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or, (2) when the tribe already owns an interest in the land or, (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Strengthening the institution of the Tribal Land Enterprise is, admittedly, only a first step towards addressing the complicated issues that surround the fee-to-trust process. The most formidable constraints on the transfer of fee lands into trust are imposed upon Indian Tribes by external (non-tribal) sources. In particular, recent changes in the rules that define the fee-to-trust process have created significant new opportunities for non-Tribal individuals and institutions to slow down or completely stop the fee-to-trust process. (For a more detailed discussion of the fee-to-trust process and the recent legal changes surrounding it, see Appendix B).

As a consequence of these legal changes, the Yakama Indian Nation will – in the long run – have to aggressively pursue external political strategies to make progress in transferring lands into trust. In pursuing these efforts to exercise its sovereignty within the broader political system, it will be imperative for the Tribe to be able to rely on the resources of a strong, popularly supported Tribal Land Enterprise Office.

Extending the time limit on leases to 99 years

In the short-term, there are actions that the Yakama Nation can undertake to improve the leasing process on the Reservation. In particular, we recommend that The YIN should obtain a Congressional amendment to the U.S. Code Title 25 Sec. 415(a) that would make the Yakama Indian Nation eligible for a 99-year time limit on the leasing of Tribal lands. The Yakama Nation is currently constrained by a 25-year limit on leases of Tribal lands. This limit is imposed

on the Tribe by federal statutes and regulations. However, many other Tribes have successfully acquired exemptions to these regulations, thereby allowing their lands to be leased for up to 99 years. (For example, the Confederated Tribes of the Colville Reservation acquired an exemption as recently as 1992.)

Implementation Steps:

Time	Actor(s)	Action	✓
Start now.	Office of Economic Development	Document cases in which the 25 year leasing limit has harmed YIN's economic, cultural, or sovereign interests.	
3-6 months.	Office of Economic Development	Draft, and submit to Tribal Council, a resolution expressing the YIN's interest in extending the time limit on leases to 99 years.	
Within 6 months.	Tribal Council	Adopt resolution calling for extension of leasing time limits.	
6 months to 1 year.	Office of Economic Development	Work in conjunction with experienced political consultant/lobbyist to formulate strategy for attaining Congressional action on lease extensions.	

It should be noted that these implementation steps can be greatly enhanced if the YIN has followed through on our earlier suggestion to enhance its political leverage and public relations capacity. By documenting the harm that has been caused to the Yakama Nation's interest by the short time-limit on leases, and by developing connections with influential figures in politics and the media, the Yakama Nation will be well-positioned to make a strong case in favor of 99-year lease terms.

Preparing to Exercise Greater Control Over Land Management Processes

In the future, as the Yakama Nation completes the process of strengthening its internal land management institutions and coordinating its approach to land issues, it should express its

intention to assume control of the land leasing process and begin consultations with the Bureau of Indian Affairs to implement this transfer.

Currently, the BIA has control of most functions related to land leasing, in spite of the presence of a Tribal leasing office. The BIA Realty Office handles virtually all details pertaining to leases from the initial determinations of value through the paperwork and approval. This has caused anger from certain quarters within the Tribe for two reasons:

1. Leases must be let at "fair market value" as determined by formula, rather than by what the land owner (either Tribal member on allotment land or tribal trust land) actually is willing to let the land for. The rationale is that it protects the unwary, but some charge it stops otherwise completed deals from occurring
2. BIA is facing a huge backlog of unprocessed leases.

These factors lead to both a problem and an opportunity for YIN. If they are successful in building internal capacity, the Tribe, possibly under the auspices of the Tribal Land Enterprise, could take over this function and process the leases in a timely and effective manner. However, if the internal capacity is not in place, such a move would overburden Tribal agencies that have enough to do within current staffing levels.

Section VII: Conclusions

The central land management challenges facing the Yakama Indian Nation are coordination, capacity, and control.

The Land Management institutions of the Yakama Nation have successfully fulfilled Tribal goals through implementation of effective policies. However, discussions with Tribal officials and members indicate that the YIN could be significantly more effective if it addresses the three central challenges that we have identified in this paper.

The Yakama Indian Nation should employ strategic criteria in selecting land management policies

In deciding how to respond to the land management challenges that confront it, the Yakama Indian Nation should employ a set of strategic criteria to determine which policies will be most beneficial to the Tribe. These criteria should include considerations of whether policies advance Tribal goals, produce measurable results, expand the long-term policy options that are available to the Tribe, and are an effective use of Tribal resources.

In confronting its land management challenges, the YIN should focus on specific, manageable policy steps.

In addition to identifying promising general directions for the YIN to take, we link those recommendations to specific policy initiatives. It is difficult for any organization to simply implement greater coordination as an abstract concept. However, by focusing on a specific collaborative effort between two agencies, the Yakama Nation can take a small, but valuable step towards building communication channels and experience with coordinated approaches to policy initiatives. Similarly, the Yakama Nation should channel its efforts to build political visibility and leverage into a targeted effort to gain specific Congressional actions to benefit the Tribe.

The Yakima Indian Nation should support a long-term outlook for land management policies

While it may seem contradictory to say that the YIN should focus on immediate implementation of concrete policy steps while maintaining a long-term perspective, these two ideas are not in conflict. A focus on short-term implementation must be complemented by an attitude of patience and long-term support on the part of policymakers. Too often, the short-term interests of political leaders – necessitated by two or four year election cycles – result in modification and elimination of policies that require decades to produce results. Without a long-term perspective, policies implemented in the short-term will not be given a chance to demonstrate their effectiveness and fully benefit the Tribe.

The Yakama Indian Nation Needs to build on its strong foundation of land management

In the same way that the structural integrity of a building relies on the integrated use of strong posts and beams, the effectiveness of our recommended strategy relies on the integrated implementation of our individual suggestions. The Yakama Nation's good institutions and recent policy successes are the foundation that these posts and beams (our recommendations) rest upon. In the future, the YIN can finish the process of taking full control over every aspect of the land management process, thus completing a strong structure. Implementing these recommendations will yield significant value now, as well as provide support for future action.

Appendices

APPENDIX A: Leasing Information Sheet

In discussing the land management challenges that confront the Yakama Indian Nation, Tribal officials and members consistently stated that efforts to improve the land-leasing process will be crucial to the attainment of the YIN's long term goals. This fact sheet:

- Summarizes the key concerns that were expressed about the leasing process;
- Identifies some of the regulations that affect the leasing of Tribal lands; and,
- Suggests steps that can be taken to change or avoid these regulatory constraints.

Leasing Tribal Lands – Central Issues

1. YIN land managers want to extend the current limits on the terms of leases on Tribal lands.
2. YIN land managers would like changes to rules that require value of leases to be set according to BIA appraisal of fair market value.
3. Tribal officials and members would like to alter the regulations requiring that lessees continue to pay a fixed schedule of fees for irrigation, even when the lands are idle.
4. Tribal officials and members want to decrease the long waiting period/backlog in the processing of lease applications by the BIA.

Leasing Tribal Lands – Key Legal Provisions

1. Duration of Leases

Title 25 of the U.S. Code, Chapter 12, Section 415(a) establishes a 25 year limit on the length of leases of lands for:

...public, religious, educational, recreational residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of substantial investments in the improvement of the land for the production of specialized crops as determined by the Secretary. [25 U.S.C. Sec. 415(a)]

Additional limits to the duration of leases are included in Title 25 of the Code of Federal Regulations, Chapter 1 §162.8. [25 CFR 162.8] These limits include:

- A five year limit on leases for dry-farming of non-specialized crops.
- A ten year limit on leases for farming of non-specialized crops on irrigable lands.
- A ten year limit on grazing leases which require substantial development or improvement of the land.

Changes to all of these limits can only be obtained through an act of Congress that amends the current U.S. Code.

2. Determination of Rental Rates

Title 25 of the Code of Federal Regulations, Chapter 1 §162.5(b) establishes, with certain exceptions, that leases must be at “present fair annual rental,” which is determined by the BIA. Exceptions are granted which allow land to be leased at less than fair annual rent. These exceptions include:

- Leases to religious organizations or to agencies of the federal, state, or local government “for religious, educational, recreational, or other public purposes.”
- Non-commercial and non-industrial Tribal lands that are leased “for homesite purposes to tribal members.”
- Leases that have been determined to be “in the best interest of the landowners” by the BIA.

3. Payment of Irrigation Fees

The requirement that lessees pay irrigation fees according to an established fee schedule is contained in 25 CFR §162.13.

Leasing Tribal Lands – Policy Responses

1. Duration of Leases

The Yakama Indian Nation should pursue a congressional amendment to the U.S. Code, 25 U.S.C. Sec. 415(a), that would exempt the YIN from the 25-year limit on leases for most lands. Instead, the YIN would be allowed to write leases for up to 99 years in duration. This exemption has frequently been granted to other Tribes.

For example, Public Law 102-497 (Signed on October 24, 1992), contained the following language which made the Santa Clara, Colville, and Cahuilla Tribes eligible for 99 year leases:

SEC. 5. AMENDMENTS TO 99-YEAR LEASE STATUTE.

The second sentence of subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415) is amended by inserting immediately after 'Oklahoma,' the following: 'lands held in trust for the Pueblo of Santa Clara, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California,'.

The Yakama Nation should seek, in this manner, to add its name to the list of Tribes exempted from the 25 year leasing time limit.

APPENDIX B: Fee-to-Trust Information Sheet

The process of transferring fee lands to trust status is one that was frequently raised by land managers as an important consideration in the management of the Yakama Indian Nation's lands.

This fact sheet:

- Summarizes the central concerns that were expressed about the fee-to-trust process;
- Describes important laws and practices that influence fee-to-trust actions;
- Suggests courses of action for addressing the Tribe's concerns about fee-to-trust transfers.

Fee-to-Trust Land Transfers – Central Issues

Inability to transfer fee lands to trust status has a number of negative effects, including:

- Taxation of fee lands owned individually by Tribal members leaves them susceptible to authority of the County government through the potential imposition of liens on the property;
- Taxation of fee lands discourages Tribal acquisition of lands in fee for non-revenue-producing purposes (e.g. habitat protection);
- Private, non-Tribal ownership of significant percentages of land in the Yakama Reservation's open area provides continued rationale for legal erosion of Yakama Nation's sovereign authority over its own lands. (e.g. *Brendale* and *Yakima County* Supreme Court decisions.).

Fee-to-Trust Land Transfers – Key Legal Provisions

Regulations governing the acquisition of land on Indian reservations are contained in Title 25 of the Code of Federal Regulations, Part 151. [25 CFR §151]

Until 1996, the decision to acquire fee lands and place them into trust on behalf of an Indian Tribe was made by the BIA, under powers granted under Sec. 5 of the 1934 Indian Reorganization Act (48 Stat. 985), without being subject to public comment, administrative

appeals, or judicial review. This changed in 1996 as a result of a decision by the U.S. Court of Appeals for the 8th Circuit in the case of *South Dakota v. U.S. Department of Interior* [69 F.3d 878; 1995 U.S. App. LEXIS 31348]. New regulations, which were produced in response to the 8th Circuit Court's decision, make fee-to-trust transfers subject to a 30-day period for public comment, during which administrative challenges to the transfers can be initiated. [25 CFR §151.12] Once the administrative appeals process has been completed, transfers are likely to be subject to legal challenges.

Fee-to-Trust Land Transfers – Policy Responses

These legal developments have made transfers of fee lands into trust status *significantly more difficult than they were prior to 1996*. Tribes' applications for fee-to-trust transfers are now much more susceptible to challenges from non-Tribal individuals or institutions. As a result, it is becoming increasingly important for the Yakama Indian Nation to develop political strategies to both minimize the potential for legal and administrative challenges from the Yakima County region and maximize the receptiveness of the BIA to the YIN's applications to acquire lands in trust status.

There are two components of this strategy:

1. In order to ensure that the BIA acts rapidly and responsibly upon the Yakama Indian Nation's fee-to-trust applications, the Tribe needs to have a well-functioning, popularly supported Tribal Land Enterprise Office.
2. In order to have a strong political position in relation to the likely opposition from the County of Yakima, the Tribe needs to demonstrate its ability to protect its interests by gaining action at the Federal level. (For example, through a successful campaign that extends the duration of lease option to 99 years.)

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END NOTES

¹ *Treaty With the Yakima, 1855* (12 Stat. 951)

² For a detailed explanation of the important role that land and resources play in traditional Yakama culture, see: Hunn, Eugene S. (w/ James Selam and family) Nch'i-wana, "The big river": Mid-Columbia Indians and their land. (Seattle: University of Washington Press, 1990.)

³ *U.S. Department of the Interior v. South Dakota*; 117 S. Ct. 286 (October 15, 1996).

⁴ For an analysis of past integrated/comprehensive planning efforts at the Yakama Nation, see: Lee, Andrew J. From Planning to Implementation: Integrated Planning at the Yakama Indian Nation. Policy Analysis Exercise. (Cambridge, MA: John F. Kennedy School of Government, 1996.)

⁵ Cornell, Stephen and Kalt, Joseph P. (eds.) "Reloading the Dice," What can Tribes do?: Strategies and Institutions in American Indian Economic Development. (Los Angeles: American Indian Studies Center, University of California, Los Angeles, 1992.)

⁶ 25 CFR 151.3(a)