

October 11, 1999

Preliminary Report:

Challenges to Relations Between the State of Washington and the Washington Tribes

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A. INTRODUCTION

1. *Background*

The purpose of this report is to document concerns about relations between State and Tribal governments in the State of Washington. Although the report also includes suggestions offered by individuals interviewed for the project, this is not its primary focus. Instead, the report is intended to summarize various perspectives and concerns in advance of a November 1999 meeting to assist State and Tribal leaders in identifying opportunities for strengthening Tribal-State Relations. The report was prepared by an independent fact-finder, under contract with the Office of the Attorney General and with guidance from the Planning Committee on Tribal-State Relations (see the Appendix for a list of Planning Committee members).

2. *Approach to Fact-finding*

With the assistance of the Planning Committee, interviews were scheduled over the summer of 1999 with State and Tribal leaders (see list below). Due to the limitations of time and resources, as well as the extremely busy schedules of State and Tribal leaders, it was not possible to interview everyone whose information and insights could have contributed to this effort.

Each interviewee received a brief background document and set of questions to consider in advance of the interview (see Appendix), but interviewees were free to address any aspect of Tribal-State relations. To help capture common themes and test potential areas of agreement, the fact-finder sometimes asked interviewees to react to ideas offered by others. To help assure frank and candid responses, interviewees were told that the report would not attribute specific comments to specific individuals.

Most State officials were interviewed in small groups. Most Tribal officials were interviewed individually. Some interviews were conducted by telephone. In some cases, interviewees invited staff or colleagues to observe and/or participate in the interviews. Generally, however, only the principal interviewee is listed below.

List of Interviewees

Tribal Perspective:

- The Honorable W. Ron Allen, Chair, Jamestown S'Klallam Indian Tribe
- The Honorable Tim Ballew, Chair, Lummi Business Council, Lummi Nation
- The Honorable Pearl Capoeman-Baller, Chair, Quinault Business Committee, Quinault Nation
- The Honorable Colleen Cawston, Chair, Colville Business Council, Colville Confederated Tribes
- The Honorable Brian Cladoosby, Chair, Swinomish Indian Senate, Swinomish Tribe
- Billy Frank, Jr., Chair, Northwest Indian Fisheries Commission
- The Honorable Edward L. Goodridge, Sr., Chair, Stillaguamish Board of Directors, Stillaguamish Tribe
- The Honorable Denny Hurtado, Chair, Skokomish Tribal Council, Skokomish Tribe
- The Honorable Lawrence W. LaPointe, Chair, Puyallup Tribal Council, Puyallup Tribe
- John McCoy, Executive Director of Government Affairs, Tulalip Tribes
- Joe Pakootas, Colville Confederated Tribes
- Larry Sanchez, Operations Director, Nisqually Indian Tribe
- The Honorable Marilyn Scott, Chair, Upper Skagit Tribal Council, Upper Skagit Tribe
- Joe DeLaCruz, Quinault Nation
- Elmo Ward, Yakama Indian Nation
- Bob Whitener, Squaxin Island Tribe

- The Honorable Russell Woodruff, Sr., Chair, Quileute Tribal Council, Quileute Tribe

State Perspective:

- The Honorable Jennifer Belcher, Commissioner of Public Lands
- Ben Bishop, Executive Director, Washington State Gambling Commission
- Tom Fitzsimmons, Director, Department of Ecology
- Rick Garza, Liquor Control Board
- Carver Gayton, Commissioner, Employment Security
- The Honorable Christine Gregoire, Attorney General
- Gwen Gua, DSHS Tribal Liaison
- Jim Jesernig, Director, Department of Agriculture
- Fred Kiga, Director, Department of Revenue
- Jeff Koenigs, Director, Department of Fish and Wildlife
- Kathy Kreiter, Acting Director, Department of Community Trade and Economic Development
- The Honorable Gary Locke, Governor
- Gary Moore, Director, Department of Labor and Industries
- Sid Morrison, Secretary, Department of Transportation
- Bob Nichols, Executive Policy Advisor, Governor's Executive Policy Office
- Larry Peck, Deputy Director, Department of Fish and Wildlife
- Cleve Pinnix, Director, Washington Parks and Recreation Commission
- Eugene Prince, Chairman, Washington State Liquor Control Board
- Lyle Quasim, Secretary, Department of Social and Health Services
- Mary Selecky, Secretary, Department of Health
- Curt Smitch, Chairman, Joint Natural Resources Cabinet

Other Perspective:

- Jim Anderson, Executive Director, Northwest Indian Fisheries Commission

3. Caution

This report is only a starting point for further discussions and represents a summary, not a full record of the interviews. Note that only a subset of Tribal and State leaders were interviewed. Most interviews lasted only about one hour and, therefore, issues could not be discussed in depth. The fact-finder did not independently investigate the information provided in the interviews. It is possible that the fact-finder failed to capture some points accurately.

4. Organization of the Report

The remainder of this report is organized under the following general headings:

- General Governance
- Natural Resources
- Economic Development
- Social, Cultural, Education, and Law Enforcement Issues

Under each heading, broad findings suggested by the interviews are stated in bold, followed by a brief discussion, a summary of interviewees' major concerns, and a list of their main suggestions. (Please note that the interviews were intended to document concerns, so the suggestions identified are preliminary only.) Tribal

perspectives and State perspectives are usually identified separately in the text, but it is important to note that there were ranges of views among Tribal leaders and also among State leaders.

B. GENERAL GOVERNANCE

Finding 1: Communications between State and Tribal government leaders need improvement.

State leaders expressed a desire to work with Tribes in a government-to-government relationship to ensure there is mutual respect, that racial bigotry problems are addressed, economic opportunities increased and natural resources preserved for future generations. Tribal leaders generally expressed a similar desire. Most State and Tribal leaders said they were looking forward to the November summit as an opportunity to be productive, re-energize State/Tribal relations, and put Washington in the forefront in government-to-government relations.

Many interviewees said that strong, respectful Tribal/State relations are especially important today in light of the trend toward more management responsibility for States and Tribes, and less for federal agencies. Almost all interviewees acknowledged that maintaining effective Tribal/State communications is also extremely challenging due to the complexity of State government, regular turnover in State and Tribal leadership and/or staff, and the large number and diversity (in terms of location, size, and economic situation) of Tribes.

Tribal leaders generally commented that Tribal/State relations reached a high point with the 1989 signing of the Centennial Accord. Many of them noted that, since then, communications have improved in some respects and worsened in others, with considerable tension and uneasiness characterizing the relationship today, despite general good will between the Tribes and the current leadership of the State's executive branch. The level of concern about communications was considerably higher in certain issue areas than in others. Some leaders on both sides said that working together has become increasingly painful, time-consuming and unproductive in certain issue areas. Several State leaders suggested both sides needs to restore and foster respect. One interviewee described relations between the State and the Tribes as "mature, but conflicted and contentious," due to the difficulty of the issues they must address together and the lack of an institutional framework for resolving differences.

While most interviewees focused on relations between the Tribes and the executive branch of State government, many noted that communications and relations with the legislature are more problematic. Some Tribal leaders also expressed serious concern about their working relationships with local governments, while others said their working relationships with local government are better in many respects than with the State.

Major Concerns Identified by Interviewees

Level of Communication

Many Tribal leaders expressed a desire to work more directly with Governor Locke and other elected leaders. This was seen as important, among other reasons, because Tribal leaders' broad range of responsibilities is more comparable to the Governor's than to that of other State officials who may not appreciate the pressures and demands on Tribal leaders. Some Tribal leaders noted that the Tribes need to avoid sending staff representatives to meetings with high-level State officials.

State leaders similarly expressed a strong desire to work with Tribal chairs on important policy matters rather than with Tribal staff who are not authorized to speak for Tribes, or whose perspective may be relatively narrow. Senior State leaders said that, on some highly important occasions (e.g., during shellfish negotiations), they were very disappointed that Tribes sent technical staff to critical high level negotiations. Some State leaders added that effective government-to-government relations must also include Tribes' working with field staff on many matters and that senior State officials cannot be available for personal consultation on all issues.

Both State and Tribal leaders complained about frequent reliance on lower level staff by the other side, yet both acknowledged the frequent need to rely on staff due to extraordinary demands on the time of senior officials and the need to bring in technical expertise on many issues.

Manner of Communication and Consultation

Most interviewees expressed a desire for collaborative relationships between the State and Tribes. Both State and Tribal leaders said collaboration is usually the most successful approach but that, unfortunately, issues are all too often turned over to lawyers who focus on problems and details that make agreement difficult if not impossible. Interviewees did not agree, however, on who is responsible for this trend. Each tended to blame the other. It was generally acknowledged, however, that both sides play a role. Many leaders noted that, historically, when progress has been made, legal issues have been set aside while agreement is reached on shared goals and basic principles. Interviewees had many different interpretations of what is or should be required for "co-management" or "cooperative management." [Note: Co-management issues are discussed in more detail in the Natural Resources section of this report.]

Many interviewees noted that differences in Indian/non-Indian communication styles can present challenges during meetings of State and Tribal officials. For example, Tribal leaders generally stressed the importance of personal relationships, putting issues in long-term future and historical context, and recognizing interrelationships among issues. Many State leaders, in contrast, stressed the importance of focusing on specifics and efficiency in achieving closure. Some Tribal leaders felt that State officials often expect Indians to behave like non-Indians and do not appreciate the importance of native culture and traditions related to meeting protocol. Some State leaders said that Tribal leaders tend to make rhetorical statements about past problems rather than seeking solutions that can be implemented now. Several interviewees noted that State and Tribal attendees too often leave a meeting with different impressions of the outcome. One State leader also said that, when meeting with more than one Tribe, State officials are repeatedly asked the same question, making discussions with Tribes more time-consuming than with other parties.

Many Tribal leaders were concerned about the manner and means for routine State agency consultation with Tribes. (Specific concerns are mentioned throughout this report, particularly in the natural resources section.) Tribal leaders often noted that State officials do not appreciate the limits on Tribal resources or the extent of demands on them by federal and local agencies, as well as the many different State agencies. The volume of paperwork coming into Tribal offices makes written correspondence, especially use of fax and regular mail, an ineffective means to communicate or consult with most Tribal leaders on urgent matters. Some Tribal leaders felt that State agencies claim to have consulted but they have instead made haphazard or perfunctory, often undocumented, contact with Tribes. Some noted that one contributing factor is that non-Indians, including State employees, seem reluctant to visit reservations, when in fact Tribes welcome such visits as a way to improve understanding and trust.

State leaders noted that Tribes are increasingly requesting formal MOUs and detailed "legalistic" documentation. This approach was seen by senior State leaders as an insurmountable barrier to reaching timely decisions when events are moving quickly. In addition, this was often seen as counterproductive to more desirable collaborative approaches. Some State leaders noted that Tribes tend to be more formal in

documenting decisions than State agencies and the State could do better in accommodating this difference, even as the parties work to avoid letting minutia get in the way of progress.

Some State and Tribal leaders noted that communication among State agencies and Tribes is most effective when it is multifaceted, with links to both Tribal leaders and staff at appropriate points and a combination of both regular meetings (perhaps through Tribal consortia or established advisory committees) and special issue-oriented conferences when appropriate. However, several State agency leaders noted that they have been provided no federal or State funding to consult or coordinate with Tribes and therefore must take resources from already under-funded program activities to do so. State officials also noted that Tribes often do not appreciate the limits on State agency resources or the costs associated with consultation on a multitude of issues with each of the Tribes. Some State leaders said they would be interested in working more often with Tribes on a regional or treaty-by-treaty basis. Some interviewees suggested the multifaceted Tribal outreach and communications efforts of DSHS could be a model for other State agencies. (While several interviewees had suggestions for improving DSHS' Tribal interactions, a significant number noted that DSHS has perhaps the best and most improved system of all State agencies.) However, some State leaders noted that, unlike some other State agencies, DSHS' jurisdiction and relationships with Tribes are tightly defined by federal law, leaving relatively little room for dispute compared to natural resource, taxation, and other issues.

Group versus Individual Communications

State leaders noted that Tribes often ask the State to deal with them individually but, at the same time, a single Tribe may prevent all other Tribes from reaching agreement with the State. State leaders suggested that Tribes need to find better ways to communicate collectively and work toward consensus (both among themselves and with other parties). State leaders, especially those at the highest level, said they have been unable to obtain quick decisions from Tribes. State leaders recognized that this is partly because Tribal governments are "spread too thin" and cannot maintain well-informed staff with the time and ability to build consensus among Tribes. Nevertheless, State leaders saw this as a challenge Tribes must strive to meet in order to participate effectively in State policy-making.

Both State and Tribal leaders noted that Tribal consortia, such as the Northwest Indian Fisheries Commission, appear to be less successful in facilitating Tribal consensus than in the past. This was attributed by some to the increasing economic strength of some Tribes and the change in focus of some Tribal leaders from traditional issues (e.g., natural resources) to emerging issues (e.g., gaming and business development).

Many Tribal leaders acknowledged that Tribes could do a better job of communicating and working to build consensus among themselves to expedite constructive interaction with State and federal authorities. Some expressed strong support for existing special issue consortia and for an effective, general interest consortium (such as the Association of Washington Tribes) to track important high level State executive and legislative developments. However, a few Tribal leaders expressed deep concern that consortia represent a threat to Tribal sovereignty and that unelected consortia members and staff should not be involved in policy-making. These leaders also pointed out that larger, wealthier Tribes often dominate consortia because they are better able to participate. Many Tribal leaders expressed concern about the expense to Tribes of supporting consortia.

Dispute Resolution

Both Tribal and State interviewees lamented the need to resolve important issues through litigation. Many deplored the costs, delays, and hard feelings involved.

State leaders expressed a strong desire to find better ways to negotiate with Tribes so that issues can be settled out of court, but said that differences among Tribes sometimes prevent successful settlement of issues, even when almost all Tribes are willing to agree. State officials said that certain settlement negotiations with Tribes have been unsuccessful because no one is able to speak for the Tribes or persuade Tribes to accept an offer

from the State, even when that offer is very advantageous to the Tribes. Some State officials said that they would like to be able to negotiate with Tribes individually to speed settlements in cases where this is possible, but they are concerned that any concession made to a Tribe in negotiations becomes a floor for future negotiations with other Tribes, thereby making negotiation with all Tribes necessary in virtually every situation. These State officials were also concerned that, for the same reason, it is often not possible to negotiate reasonable tradeoffs with a Tribe that has several issues with the State (e.g., a natural resource and a taxation issue).

Many Tribal leaders similarly expressed a desire to avoid litigation whenever possible but felt that State leaders sometimes fail to acknowledge the legal correctness of Tribal positions due to pressure from non-Indian constituents. As a result, Tribes feel they must litigate. Others expressed a desire to work more often with the State on a policy basis, but saw the State as often relying on narrow, legalistic interpretations (e.g., about States' rights or jurisdiction) rather than using State discretion to interpret the gray areas of the law in favor of Tribal interests. They said this compels them to turn to their own lawyers for help. Tribal leaders also pointed out that State agencies generally do not coordinate well with one another, making tradeoffs among issues difficult, if not impossible.

Some interviewees suggested that litigation is occasionally pursued even though an issue could be settled or the State's lawyers know they will lose in court, at least partly because this helps placate non-Indian special interests. (Shellfish and slot machine cases were cited as examples.) Some interviewees said a dispute resolution process is needed and most were willing to consider such a process, although there was some skepticism on both sides and a wide range of views about how to structure an appropriate forum. Some interviewees suggested strongly that a single forum or process would be unwieldy and that several subject-area forums are needed, perhaps under a single umbrella organization.

Suggestions Offered by Interviewees

- Tribal leaders invited the Governor to **visit as many Tribes as possible**. They said such visits would help demonstrate his personal relationship with Tribal leaders and send a message to both Indians and non-Indians that a good relationship with Tribes is a State priority. State officials at all levels were encouraged to visit Tribes.
- Seek to **agree in advance on the appropriate level** of State and Tribal leadership needed at face-to-face meetings and remain flexible about meeting with technical staff where that will serve the purpose.
- Evaluate the following options that might help strengthen the State's infrastructure for working with Tribes:
 - **Review institutional arrangements in other States** to help understand what may or may not work.
 - Consider establishing a **commission on Tribal relations**, made up of Tribal and State leaders, to facilitate discussion and help resolve disputes (recognizing that defining the membership, jurisdiction and authority of such a commission would be key to its effectiveness). Consider including both large and small Tribe representatives elected by the Tribes, and both legislative and executive branch leaders from the State. Perhaps, provide for consideration of Tribal/local as well as Tribal/State issues, and offer both binding and non-binding dispute resolution. [Note: Some State and Tribal leaders did not support a commission because they felt it would further insulate the Governor's office from direct interaction with Tribes, could not realistically decide critical issues in a timely way, and/or would be unable to make its decisions binding on both the State and Tribes.]
 - Support establishment of a State **legislative committee on Indian Affairs** to help assure that the effect of legislation on Tribes is identified and considered before a vote is taken and to give Tribes a

forum for expressing their views. Seek ways to assure that such a committee would include important legislative leaders and that membership on it is not seen as politically undesirable.

- Appoint a distinguished, preferably nonpartisan, person (such as a retired Supreme Court Justice) to serve as **permanent special liaison** between Tribes and the State, provide continuity when State leadership changes, and help maintain State commitment to its past agreements with Tribes.
- **Further invigorate the hardworking Governor’s Office of Indian Affairs** to, among other things, better facilitate communications between State agencies and Tribes, serve as a “barometer” on Tribal/State relations for the Governor, maintain current directory materials, and educate State agency personnel on Tribal cultures and history. Assign the Office responsibility for organizing a regular, annual meeting between State elected officials and Tribal leaders. Consider establishing a Tribal advisory group for the Office. Give the Office more “clout” to hold agencies accountable for progress and consultation. [Note: Some interviewees thought the Office should serve as an advocate for native people within State government, while others thought this would be inappropriate or unrealistic.] The Governor’s recent actions to strengthen the Office are appreciated.
- Fully **implement relevant provisions of the 1989 Centennial Accord**, require State agencies to report regularly on their progress in this regard, and hold agency heads accountable for meeting their obligations. Possibly issue an order defining minimum procedural rules for accomplishing consultation.
- Where this has not already been done, establish **Tribal liaison positions within State agencies**. Consider elevating existing liaison positions, some of which are now seen by Tribes as “buried” in State agencies or insufficiently staffed, to build trust and handle real-time communication with Tribes. Establish Tribal advisory committees for appropriate Agency programs where this has not already been done. Possibly establish a reporting relationship for Tribal liaisons with the Governor’s Office of Indian Affairs.
- Evaluate the following options to strengthen the ability of Tribes to communicate with State government.
 - Support forming a strong **organization of Tribes** to serve as a point of communication with elected officials on high priority and rapidly emerging issues of importance to many Tribes (taking care to respect the sovereignty of individual Tribes). Consider supporting such an organization with Tribal and State funds (similar to the county and city associations) and/or work together to obtain federal funding.
 - Recognizing that larger Tribes may tend to dominate such an organization, find ways to give **special support to smaller Tribes** which face unique challenges, perhaps by providing funds from the State and/or larger Tribes to help smaller Tribes participate or form their own separate organization.
 - Where this has not already been done, identify State or State agency **liaisons within Tribes** to handle communications when Tribal chairs are not available.
 - Offer **training for Tribal officials and staff** on the organization and functions of State government (perhaps with the assistance of the Governor’s Office on Indian Affairs).
- Consider how the State and Tribes might **work more on a regional basis** when concerns differ on a geographic basis and consensus across the State is difficult to achieve.
- Make better use of **electronic communications**. For example, use E-mail more often and link State and Tribal web sites to demonstrate the government-to-government relationship to others.

Finding 2: Cultural misunderstanding, intolerance and harassment against Indians appear to be increasing in society generally.

Many Tribal leaders noted that while prejudice against Indians may have declined in recent decades, intolerance and racial bigotry are currently on the rise. They expressed concern that the situation will worsen as population growth and loss of natural resources lead to more competition and resentment against the exercise of Tribal hunting and fishing rights. They were also concerned that tension has increased because Tribes have had to rely on so-called “sin businesses” such as gaming and sales of liquor, cigarettes, and fireworks, to provide economic opportunity for Indian people. In addition, both State and Tribal leaders noted that Tribal economic development is leading to resentment from non-Indian competitors (or perceived potential competitors) as well as non-Indians in rural areas who are experiencing economic downturns of their own. Senior State leaders noted that intolerance against all minorities seems to be increasing throughout society and indicated that this is also a matter of grave concern to them.

Major Concerns Identified by Interviewees

Racist rhetoric during the Makah whale hunt, including letters to editors published in local newspapers, was frequently cited as one obvious example of a deterioration in relations between Indians and non-Indians. However, Tribal leaders gave other examples of threats or hate-related incidents directed at Indians in their geographic areas. Some noted that Indians have recently armed or said they will arm themselves in light of threats directed at their people. Governor Locke’s action in calling out the National Guard during the whale hunt was noted with approval. However, the atmosphere of tension was seen by many Tribal leaders as requiring continuing attention.

Some State leaders also said they have seen evidence that anti-Indian sentiment and harassment are on the rise. Others were not aware of the apparent trend, but did not doubt that it exists. State agency leaders generally viewed themselves and their own programs as fair and supportive of Indian rights, although many indicated that some racial prejudice exists or may exist among State agency field staff. A few stressed the importance of trust and focusing on the important substantive issues at the leadership level.

Although Tribal leaders generally viewed the Governor, the Attorney General and other leaders in the executive branch as respectful of Tribes, Tribal leaders and some State leaders noted that some politicians in State and federal government have found it politically advantageous to “campaign against” Tribes, thus helping to stir up anti-Indian bias. Several Tribal leaders suggested that to help counter this incitement to prejudice, Tribes need to step up efforts to inform the general public about their contributions to the State as a whole. As well, they said the Governor and others in State government could exert more powerful moral leadership through public statements and actions. One Tribal leader, speaking of national politics in the 1990s, said “Too many amoral judgments are made based on economic concerns alone.” Another said he hoped the State could avoid “pragmatic political balancing” when issues of equity are involved. Tribal leaders said it helps when State leaders speak out on what is morally right. Some Tribal leaders said that it is important to consider the history of exploitation of Tribes, failure to honor treaties with Tribes, and mistreatment of Indian people. This is the context within which Tribal leaders must deal with their own people on a daily basis and affects many aspects of their dealings with others. Some Tribal leaders noted that although there are many good people in State government, State leaders may be “in denial” about the bias of some State bureaucrats against Indian people. For example, one Tribal interviewee said that State employees often conduct themselves as if to say “Why can’t you be more like us? Why do you hold on to your culture?” Tribal leaders expressed concern about cuts in funding for training State agency personnel (especially field staff working regularly with Tribes) on Tribal history and culture.

State leaders said they respect the rights of Tribes and deplore racism, hate letters and harassment. However, they cannot always support decisions Tribes make in exercising their rights and believe Tribes sometimes

misinterpret or mischaracterize respectful disagreement as racial or cultural bias. Senior State leaders also questioned whether their public statements could have been effective in easing tensions. For example, in the case of the whale hunt, many people simply disapproved of the decision to kill a whale, even if they agreed that the Tribe had a legal right to do so. While they generally said they understand the Tribes' concerns about intolerance, State leaders suggested that Tribes sometimes make choices that predictably bring on anger from those who disagree with their actions. Some State leaders said that Tribes sometimes cite treaty rights and/or their need for economic development to justify actions that have adverse impacts on others in society (sale of dangerous fireworks that are illegal in the State, for example). In some cases, State officials said, Tribal decisions that bring on anger from others also appear to be unwise in terms of the health and safety of Tribal communities. Several State officials expressed the hope that when Tribes diversify economically, some of these "hot button" issues will fade away. However, State officials were concerned that Indian hunting and fishing for threatened and endangered species could exacerbate tensions in rural areas where non-Indian hunting and fishing are restricted.

Most interviewees saw education as a key to overcoming racial and cultural tensions. One Tribal interviewee said that "Tribes should inform; the State should not misinform." Several Tribal interviewees said with frustration, that educating non-Indians is a "never-ending process." Almost all Tribal interviewees and many State officials stressed the importance of such education to the future well-being of the State and the Tribes. Over the long term, education about Tribes in the public schools was seen as essential. One State leader stressed the need to start this education in the early grades because it may be too late to reverse intolerance at the high school level. Tribal leaders said it was important that such education not be guilt-producing, and instead focus on being informative and forward-looking.

Suggestions Offered by Interviewees

- Governor Locke and other State leaders should consider making **strong statements** to non-Indian groups inside and outside the State (e.g., to NGA, NAAGS, NACO, WGA, and industry groups), as well as the general public, in support of respect for Tribal treaty rights, the value of Tribal economic and cultural contributions to the State, and the importance of understanding the history and cultures of the Tribes. For example, the Governor's State of the State address presents a regular opportunity to demonstrate leadership on good relations between native and non-native people.
- **Tribes should consider ways to continue and expand their efforts** to inform the general public about Tribal culture and contributions.
- The State should consider ways to help enhance public school education about the Washington Tribes, including support for development of a **curriculum for K through 12 public schools** that is forward-looking and informative about treaties and Tribal contributions. Tribes should participate in developing the curriculum, partly to help assure an appropriate recognition of the oral history traditions of native people.
- The State should consider ways to support **public education about Tribes through agency programs**. For example, the Parks and Recreation Department is considering providing informative displays and interpretive kiosks to educate park visitors about the original native inhabitants of ceded park lands.
- The Governor's Office of Indian Affairs should reinstate its program to **train State employees** on Tribal culture and history, and, possibly train State and Tribal staff together, using role-playing and other techniques to build understanding and trust.

C. NATURAL RESOURCES

Finding 1: Salmon restoration is a priority for the State and Tribes, but the effectiveness of cooperation between the State and Tribes has been disappointing.

Almost all interviewees who addressed natural resources, including almost all Tribal leaders, agreed that the State currently lacks an effective plan and implementation measures to protect and restore salmon and saw this as an extremely urgent challenge. State leaders noted that society generally is very divided over protection of endangered species, and that the issues are particularly sensitive for Tribes because they are seen as champions of resource protection even as some of them wish to harvest scarce resources in listed areas. Tribal leaders said the loss of salmon fisheries is a major blow to their economic, social, religious and cultural well-being. It was suggested that the State should declare an emergency and take very strong action to address the problem. Tribal leaders feared that the State will “run away” from the salmon issue due to the political controversy and potential hardships involved in addressing the problem. Some State leaders feared that Tribes were not as united and committed to salmon restoration as in the past.

State natural resources leaders also expressed deep concern about past losses and current threats to salmon runs, especially the impacts of growth in western Washington and the need to build a public and political commitment to salmon restoration (including but not limited to meeting the mandate of the Endangered Species Act). Almost all interviewees who were familiar with recent developments expressed concern and regret about the outcome of the last State legislative session. Most Tribal leaders were frustrated by the State’s failure to work closely with Tribes to develop an effective strategy. One Tribal interviewee said the State tended to “talk to the ‘important people’ first, and then to Tribes.” State leaders were frustrated by limits on their ability to work quickly with Tribes to react to fast-moving developments during legislative deliberations. Both State and Tribal leaders expressed an urgent desire to work together to develop a more effective approach for the upcoming legislative session.

Major Concerns Identified by Interviewees

Co-management, Cooperation, and Consultation

Individual State officials and Tribal leaders used the terms co-management, cooperative management and consultation in many different contexts and with a broad array of meanings. Many Tribal leaders expressed concern that, although the State gives “lip service” to cooperative management, there is no agreement on the meaning of co-management or the means for implementing it. Tribal leaders said they did not assert a veto right over State management decisions, such as land use, but emphasized the need to jointly establish policies and general rules. Some Tribal leaders said they believe State leaders fear sharing any management decisions with Tribes. Tribal leaders also noted that in order for the State to provide certainty to regulated parties, it will be necessary to involve Tribes more effectively. Tribal leaders generally acknowledged that the State faces a challenge in dealing with the diverse views of the various Tribes. One Tribal leader pointed out that “there is no such entity as ‘The Tribes’.”

State officials generally said they hope to work with Tribes to develop an effective salmon restoration program. However, some noted that co-management is not a legal doctrine, although Tribes tend to see it that way. They said that while co-management is an agreed-upon approach for harvest and hatcheries management, it is not applicable to management of fish populations or habitat—responsibilities for which joint recovery plans must be developed, involving many parties, including Tribes. Some State leaders noted that Tribes’ refusal to “come to the table” with other parties sets them apart when important deliberations are underway and that

Tribes, in effect, expect a veto power afterward, rather than participating in policy-making. Some State officials noted that the State cannot give one group, such as Tribes, decision-making authority over other groups in society; yet that seems to be the expectation of Tribes. State leaders indicated that an appropriate, effective forum for Tribal participation has not yet been devised by the parties and that this has contributed to the current “stalemate.” A key concern of State leaders was that, even if a forum is identified, the Tribes may not be able to empower an effective, knowledgeable spokesperson to facilitate consensus among Tribes and speak with the confidence of Tribes when quick decisions are needed. They noted that it is impossible for State officials to slow the process to give Tribes time to “catch up.”

Several Tribal leaders said that co-management as a concept is not “broken” but needs to be “brought back into play.” Several Tribal leaders expressed deep concern that the Governor’s office drafted the salmon recovery plan without consulting Tribes and then tried to compel Tribes to concur with it. Some Tribal leaders characterized co-management as a fifty-fifty division of responsibility for managing forest, shore and aquatic lands, not necessarily as “cooperative” in implementing day-to-day responsibilities. Some said co-management means that in carrying out their respective responsibilities, the State and Tribes will carefully consider each other’s needs. Some State leaders said they implement co-management by managing “with Tribes” through consultation. Tribal leaders described their dealings with the many relevant State agencies, including DOE, DNR, DFW, and DOT, as “exhausting.” (For example, DFW now insists on yearly rather than five-year agreements on fisheries management.) Some Tribal and State leaders complained that staff lawyers on both sides tend to impede progress in policy deliberations because of jurisdictional worries.

A number of State leaders said the State has historically failed to reach out to Tribes and has pursued an “ill-advised policy” of apparently acknowledging that Tribes have co-management rights while at the same time making it necessary for Tribes to litigate to exercise those rights. Some State leaders suggested it would be helpful for Tribes to define more specifically what they (the Tribes) envision in achieving co-management. Many State leaders noted that the State cannot give up its authority over land use management. With regard to harvest and hatcheries, State leaders noted that they are attempting to “reinvent” existing co-management processes, which were designed to address problems that existed 25 years ago, before the tremendous upheavals of the Endangered Species Act listings, the shellfish decision, and other recent developments.

One interviewee noted that Tribes spend as much as 50% of their revenue on natural resources management, whereas the State invests only one-half of 1%. Several Tribal leaders viewed State water quality, fisheries and habitat protection programs as weaker than Tribal programs and suggested that, at a minimum, the State should do as much on its lands as the Tribes are doing on their lands. Several Tribal leaders said the State’s approach to watershed management is not coherent and pointed to specific cases in which the State has failed to implement or enforce its existing laws and regulatory programs to protect water quality, fish and game stocks, and habitat. A few interviewees noted that, unfortunately, declines in fisheries have led some Tribal governments to disinvest in natural resource programs and shift funding to more economically productive programs, such as gaming. Most Tribal leaders, however, said they are continuing or increasing their historic investments in natural resources protection, especially salmon habitat protection and fisheries management. There was agreement that Tribes are playing a more important role, with State assistance in some cases, in water quality monitoring and the establishment of water quality standards. Tribes were acknowledged as leaders in conducting stock assessments and habitat inventories, as well as managing hatcheries and protecting habitat.

Senior State leaders said they were very disappointed that a “one-Tribe veto” in the U.S.-Canada salmon treaty process prevented all Tribes from receiving payments above market value for fish not caught. In contrast, some Tribal leaders expressed concern about how negotiations on the U.S.-Canada salmon treaty were handled. In particular, one Tribal leader said that the Tribe’s fishery resources were sacrificed by U.S. negotiators. Several Tribal leaders expressed grave concern about the move in the U.S. Senate to condition Tribal funds under the treaty on waiving rights to sue the State.

Endangered Species Act Issues

Both Tribal and State leaders acknowledged that the need to coordinate with several federal agencies (NMFS, FWS and EPA) on salmon restoration has made the process even more cumbersome. Some State officials were interested in learning more about the Tribes' strategy in dealing with federal agencies and were concerned about the "triangulation" of negotiations. Generally, interviewees agreed that the State, federal agencies, and Tribes need to work together to be effective. However, Tribal leaders said they are generally not interested in "pre-negotiating" issues with the State when three-way negotiations are required (e.g., in the case of DNR's habitat protection plan). State leaders said they were concerned that Tribes had negotiated with federal agencies (deciding that the 50/50 rule would extend to all species, not just salmon), and then simply delivered the decision to the State without consultation. They said the State should ensure that Tribes are at the table with federal officials and Tribes should do the same for the State.

Some Tribal leaders oppose the ESA approach to individual species protection, while others see the ESA as valuable but want it to be implemented with a better appreciation of ecological systems. One Tribal leader noted that federal funding provided to the State to implement the ESA was passed through to counties. Although Tribes may be able to obtain some assistance from the counties, the funds are very limited and inadequate for most Tribes to carry out the ESA. Many Tribes also lack resources to implement related programs, such as water quality, land use, and agricultural initiatives.

Several interviewees expressed concern about how the ESA affects Tribal treaty rights and said that litigation is likely over whether the ESA "trumps" Tribal rights. Some Tribal and State officials also noted that if hatchery fish were considered, some salmon listings would be eliminated. However, NMFS was said to be unyielding on this issue, making it more likely that litigation will be pursued. Some Tribes expressed concern that the State wants to redefine harvest standards in a way that unfairly shifts conservation burdens to Tribes. While State officials acknowledged that the Tribes did not create the problems adversely affecting salmon runs, they questioned the logic of some Tribes who wish to continue fishing in listed areas, thus speeding the extinction of certain species.

Some Tribal and State interviewees noted that resentment against Tribal treaty rights by non-Indians who are affected by ESA listing will be exacerbated by these issues. There was hope expressed on both sides that the State will show leadership on restoration. Many Tribal leaders said they will continue their voluntary commitment to salmon restoration, for example in continuing their past voluntary restraint in fishing certain species even when they are very important to Tribal subsistence and culture. They expressed concern, however, about a "paternalistic" attitude toward Tribes regarding fishery science and a failure to credit Tribes for their extensive knowledge and understanding of their own watersheds. Some Tribal leaders said the State is too conservative on "jump-starting natural production" and impedes Tribal recovery efforts.

Suggestions Offered by Interviewees

- Seek a way for the State and Tribes to work together without delay to **develop an agreed upon salmon restoration program** to present to the legislature this fall. Consider whether the Governor's office can exercise stronger leadership with legislators and how the Tribes can help. Consider whether Tribes might designate a delegation to work with the Governor's office and the legislature, perhaps with the general blessing of the Tribes for purposes of negotiating (even though the delegation could not commit each Tribe on all specific issues).

- The State and Tribes should work toward a better **understanding of the meaning of co-management and consultation and how they can be implemented** in the context of salmon recovery. A key aspect may be to improve understanding of the State's authority and obligations to all affected parties, including Tribes.
- Work to agree on specific **performance measures** that will help direct funding to the most effective implementation strategies. Focus on long term cycles and take advantage of the wisdom of people who live close to the land, not just the biologists.
- Recognize the value of **the Northwest Indian Fisheries Commission** as a clearinghouse for information and facilitator of Tribal consensus on salmon restoration; consider how the NWIFC might be more effective.
- Rely more on **electronic communications** among Tribes and between the State and Tribes, especially when a quick turnaround is required, for example to help respond to deliberations in the legislature.
- **Consider** the following to better protect salmon habitat:
 - Develop an MOU between the State and Tribes on **forest practices**. [Note: One State official said such an MOU could not legally establish more stringent standards for fee lands than for other State lands.]
 - Increase State enforcement to **prevent pollution, clean up waste sites, implement sports and commercial fishing limits, and enforce other natural resources protection laws**.
 - Increase the pace of developing plans to restore impaired waters under Section 303(d) of the Clean Water Act and **work closely with relevant Tribes in establishing TMDLs**.
 - Provide **more effective Tribal liaison** positions in individual State natural resource agencies (e.g., DNR).
 - **Reserve judgment on the need to breach dams** to aid salmon restoration until relevant evidence is collected and evaluated.

Finding 2: The State's water allocation program needs reform, but Tribes are not optimistic about the State's current efforts to improve the program.

Major Concerns Identified by Interviewees

Tribal leaders' main concern is that water is over-allocated in the State. Many Tribal leaders cited the water allocation program as a longstanding and important source of friction between Tribes and their non-Indian neighbors. They cited recent efforts to reform the State's program without Tribal involvement as an example of how the program is often managed to serve the interests of powerful economic interests rather than assuring fairness to all State citizens. Tribal leaders suggested that DOE should not have agreed to the legislatively-directed reform process without Tribal involvement and noted that this has diminished many of the good things DOE has attempted to do to improve the program. They noted that Tribal water rights predate the State's program. Some Tribal leaders noted that certain localities are working to become purveyors of water for economic gain in the long term and that the State is not resisting this trend or fully implementing its own laws. Tribes saw water allocation as a major economic battle for the future.

Some State leaders agreed that the State's historic allocation process has been a failure. They noted that although there is an adjudication process, no one wants to use it. State officials acknowledge that Tribes were excluded from the watershed model process but indicated that the legislature established a process for review of the water allocation program which unfortunately did not include Tribes. Senior State officials noted that the Governor vetoed the most onerous aspects of the legislation because Tribes were not included. Some State officials noted that the result of the watershed model process is an improvement that will benefit Tribes, even though it is understandable that Tribal leaders, not having been involved, may not recognize the improvement. State agency officials acknowledge that they need to better inform Tribes about how to work with local planning organizations.

Suggestions Offered by Interviewees

- **Work together on legislation** to reform the water allocation program.
- Consider ways to improve State implementation and **enforcement of current allocation laws**.
- Explore ways for the Tribes and Department of Health to work together to better assure the health and **safety of Tribal water supplies**.

Finding 3: Tribal and State leaders are very concerned about disagreements related to the exercise of Tribal treaty rights to hunt and fish on non-Tribal lands.

Recent arrests of Tribal members for alleged hunting violations were cited by several Tribal leaders as fueling racial tensions in some rural communities. State leaders said the hunting disputes were leading to "troubling" tensions between Tribes and county leaders. Several Tribal leaders expressed a desire to work with the State to resolve the disagreements that led to these arrests and indicated that the Inter-Tribal Hunting Committee is working to develop a Tribal position on hunting rights.

Tribal leaders expressed concern that declining fish and game lead to resentment against Indians partly because Tribal hunting and fishing seasons may be longer than State seasons. Tribal leaders also noted that some non-Indians believe that Indians take more fish and game than they actually do take. Indians are therefore sometimes blamed for declining resources, even though they have no responsibility for the far more significant impacts of pollution, land uses, and water diversions. State and Tribal leaders indicated that talks are now underway on hunting issues.

Some Tribal leaders noted that the process for developing the Tribal/State MOU on hunting was a good model for the State in working with Tribes.

Major Concerns Identified By Interviewees

Tribal leaders indicated that they believe some Tribal members have been prosecuted for hunting within territory covered by Tribal treaty rights. Some indicated that the State and Tribes disagree on the definition of ceded land. This issue may need to be resolved through litigation if the parties cannot reach agreement soon. Some Tribal leaders suggested that the definition of “usual and accustomed” hunting areas may need to be redefined by the courts because there are no places to hunt in some ceded areas due to economic and population development. Urban Tribes were seen as particularly hard hit. Some State leaders expressed a desire to find innovative solutions to this problem. Others suggested that there may be no satisfactory solution and that Tribes may need to accept the consequences of specific treaty terms.

Suggestions Offered by Interviewees

- The **hunting rights issue needs to be resolved soon**, if possible through agreement among State and Tribal leaders.
- Consider how to **define “ceded” lands** for purposes of Tribal hunting rights.
- Possibly **consider “trading” land** on which Treaty hunting rights may be exercised as one way to ensure that hunting occurs only in areas that are appropriate. [Note: One State official pointed out that State trust lands could be traded only if this would benefit the trust beneficiaries.]
- Consider whether game might be made available to Tribes from **damage control hunts** or other sources.
- Consider ways to collect better information on **causes of the downturn in elk populations** on the Olympic Peninsula.

D. ECONOMIC DEVELOPMENT

Finding 1: State and Tribal leaders agree on the need for an Economic Development Strategy for Tribes.

Several interviewees noted that the decline in natural resources and Tribal businesses based on forestry and fishing, has led to a growing reliance on gaming and sales of gasoline, cigarettes, liquor and fireworks. Some Tribal leaders said the State needs to consider how better to share the State’s increasing prosperity with Tribes. State officials were similarly interested in exploring ways to support Tribal economic development and wanted to learn more about the economic development goals and strategies of the Tribes. Both State and Tribal officials noted that the economic vitality study recently conducted by the Governor’s Office of Indian Affairs was a good first step and that the next steps suggested by the study need to be pursued. Some State and Tribal interviewees said the study may need refinement to be more useful in dealing with bankers and business people as well as State legislators. However, senior State leaders said it is more important to move forward now on specific strategies to help attract new businesses to Tribal communities.

Many Tribal leaders pointed out that Tribal economic growth has been good for the State and localities and that this is not well understood or appreciated by the non-Indian community or the legislature. However, they noted that the most impoverished areas in the State are still Tribal lands and that non-Indians misperceive the extent to which gaming has solved the Tribes’ economic problems. While some gaming Tribes now have full employment, unemployment in the State’s Indian population is still very high, with some Tribes experiencing

levels of up to 90% unemployment. Some Tribal leaders noted that gaming is a good economic strategy for Tribes in the I-5 corridor, but not elsewhere. Others pointed out the social disadvantages of the so-called “sin businesses” for Tribal members and the criticism that Tribes face from non-Indians because of the types of businesses they pursue. One Tribal leader said that non-Indians generally do not understand that gaming revenues go to Indian communities rather than to individual business people. State leaders generally expressed the hope that Tribes will be able to reduce their dependence on gambling and tobacco sales, but they did not fault the Tribes for pursuing these businesses. Several Tribal leaders pointed out that many Tribes are “location disadvantaged” and so have had to attract outsiders to their reservations by offering special incentives, including taking advantage of “loopholes” in certain laws and sales taxes.

It was noted that Tribes generally lack a tax base and therefore become entrepreneurs to support Tribal government and their communities. Tribal leaders noted that even where they have the authority to tax, doing so “on top of” State and local taxes would only discourage business.

The differences among Tribes in terms of economic status, location, and size are considerable and Tribal leaders had a wide range of suggestions about steps the State could take to support Tribal economic development, not all of which were seen as important or even attractive to other Tribes. For example, some Tribes are major employers of both Indians and non-Indians, while others restrict employment to Tribal members. Generally, Tribal leaders said their goals were to assure safe and healthy communities for Indian people, to assure sustainability of their economic enterprises through good relations with their neighbors, and to attract visitors who will spend money in Indian country and invest in Tribal enterprises. Several Tribal leaders noted that they are working to develop specific proposals for an Economic Development Strategy, including such things as objective criteria for tax credits and other development incentives.

Major Concerns Identified By Interviewees

Tobacco and Fireworks Enforcement. Some Tribal leaders complained strongly that aggressive enforcement against non-Indians who purchase cigarettes or fireworks from Indian businesses constitutes an attempt by the State to limit Indian economic prosperity or to protect non-Indian competitors. State officials noted that enforcing the cigarette tax was seen by the legislature as a revenue issue involving the potential loss of \$104 million. They also noted that public safety was paramount in enforcing restrictions on the sale of dangerous fireworks. State officials agreed that non-Indian competitors (or potential competitors) often pressure State legislators and other officials to assure that Tribal entrepreneurs not receive “special treatment,” and that non-Indians’ understanding of Tribal economic conditions and contributions is very limited.

Gaming. Tribal leaders said that even though Tribal economic development is beneficial to both Tribal and non-Indian local economies, the State has historically blocked or attempted to neutralize Tribal enterprises. For example, the State’s legislation on mini-casinos was seen as an attempt to set up competition with Indian gaming. Some Tribal leaders also complained of State “hypocrisy” on the impropriety of gaming, especially given that Tribal casinos attract mostly middle-income customers, while the State lottery attracts mostly low-income individuals. Senior State officials noted that gaming Tribes are competing with one another for the most favorable terms in their compacts with the State. State leaders suggested that a fairer, more efficient approach would be to negotiate compacts collectively, with separate provisions only as needed to deal with anomalies in Tribal circumstances. State officials also said they need more flexibility in their compacting authority but the legislature has “stymied” the Governor’s efforts in this regard. Some Tribal leaders specifically objected to the requirement for gubernatorial approval of Tribal links for a progressive gaming operation. One Tribal leader indicated that the Tribes will soon seek such approval.

Taxation and Revenue Sharing. Tribal leaders were also concerned about policies related to taxation of gasoline sold by Tribal members and taxation of fee lands on reservations. They noted that although these taxes are collected by the State and localities, public services (e.g., highway construction and water and sewer services) are not provided by States and localities to reservations. Several Tribal leaders noted that the State

shares revenue with localities, but not with Tribes. State leaders were generally interested in ways to reach agreement with Tribes on taxation and revenue sharing issues by, for example, exploring legislative initiatives to assure that State taxes would be backed out when Tribes impose their own sales taxes. At least one Tribal leader suggested that if the legislature will not act affirmatively to address these inequities, litigation may be necessary.

Tourism. Tribal leaders were also concerned that the State has not been working with Tribes to promote tourism, even though the State often uses Tribal culture and symbols to attract tourists. Several State leaders also identified tourism as an area of potential successful cooperation. One State leader specifically discussed promotion of “eco-tourism” as a potentially lucrative, nonconsumptive use of natural resources that could benefit Tribes.

Planning. Some Tribal leaders were concerned that the State’s transportation corridors are delineated without adequate consultation with Tribes whose interest in expansion or vision for development may conflict with the State’s plans. Some noted that the Growth Management Act may limit Tribal development involving fee lands on reservations. Some noted that State agencies affecting Tribal economic development (e.g., DOR, the Department of Licensing, the Liquor Control Board) do not always get along well with one another, making comprehensive planning difficult.

Collaboration. Many State leaders expressed a strong interest in finding ways the State can help promote Tribal economic development. Senior State leaders noted that business development usually depends on strong, collaborative, non-adversarial relationships. They said they look forward to partnering with Tribes in an atmosphere of trust and supporting the Tribes in developing strong partnerships with neighboring local communities.

Federal grants. Many Tribal leaders expressed concern about how Tribal setasides in State grants are managed. Several noted that, contrary to popular belief, the federal government now spends considerably less per capita on Indians than on non-Indians. Others said that State agencies do not always keep Tribes informed about the availability of setasides for Tribes. Some Tribal leaders suggested that an economic development strategy for the Washington Tribes should include ways the State would support Tribes in obtaining more federal assistance (e.g., for infrastructure development and maintenance) and making that assistance available in a more rational way (e.g., through consolidation of the multitude of small grants that entail considerable reporting and management burdens for Tribes).

Suggestions Offered by Interviewees

- Decide whether to refine the **report on Tribal economic vitality**; pursue the next steps envisioned therein.
- Work together to establish a joint **Economic Development Strategy for Tribes** in Washington State.
- Work together to help address Tribal **infrastructure** problems, such as transportation, water supply, sewer services and fiber-optics, possibly through **revenue sharing** legislation and promoting local partnerships, as well as other means.
- Consider developing a **model compact on apportionment of tax revenues**.
- Work together to address differences on **State and local taxation of products** sold by Tribes and Indian businesses.
- Reduce costs and delays by **streamlining** State requirements and procedures (e.g., in licensing Indian-owned businesses and casino employees, in providing grants to Tribes).

- Consider how the State can help with long-term, low interest loans, creative **financing and technical assistance for new Tribal and Indian-owned economic enterprises**. (Note: Potential new enterprises mentioned by Tribal leaders as currently in need of assistance include aquaculture, shellfish, nurseries for trees to be used in watershed restoration, marinas, campgrounds, gasoline stations, mini-marts and agriculture.)
- Find ways the State can support the Tribes in obtaining greater **federal assistance**, e.g., through Tribal set-asides in State grants, and improve communications to Tribes about assistance that is available.
- Seek ways that Tribes can join with the State and localities to **attract new businesses**, (e.g., through fast track development, enterprise zones, partnerships and tax incentives). Consider offering a tutorial to Tribes on attracting businesses to their communities.
- Consider ways that the **compacting process** can be improved and streamlined to reduce “dickering” and provide for more comprehensive economic planning for Tribes.
- Develop a joint strategy on **tourism** that will help attract visitors to Tribal communities.
- **Promote employment of Tribal members by State agencies and contractors** by, among other things, providing for hiring preferences for Tribal members in appropriate cases, supporting vocational training, and assisting Tribal members in becoming bonded.
- **Promote the purchase of Tribal products by State agencies and contractors** by, for example, providing more preferences for use of Tribal forest products and gravel mined by Tribes and by informing potential buyers of the economic advantages of purchasing these materials from nearby Tribes during public works construction.
- **Improve understanding of the economic realities affecting Tribes**. For example, consider ways to estimate the total taxes paid by Tribal members to the State and localities and the total revenues from the State and localities that are returned to the Tribes.
- Seek ways to assist Tribes in obtaining development **grants from local planning organizations**.
- Evaluate and **learn from successful economic initiatives of Tribes in other States** (e.g., the Mississippi Choctaw, the Wisconsin Oneida).

E. SOCIAL, CULTURAL, EDUCATION AND LAW ENFORCEMENT ISSUES

Finding 1: Although the relationship between the State and Tribes on health and social services is generally good, this is an area of enormous challenge and requires continuous improvement.

Many Tribes face tremendous challenges in assuring the social stability, health, and well-being of their communities. One interviewee noted that the Congressional Research Service estimates that unemployment for Tribal members nationally is between 70 and 75%. Rates of disease and premature death are far higher among Indian people than in the general population. In recent years, federal funding for Tribal health and social services have not kept pace with increases for non-Indians.

Pursuant to the Centennial Accord of 1989, DSHS established a director for Indian policy and support services.

Both State officials and Tribal leaders said that, since then, DSHS has made good strides in communicating effectively with Tribes through, among other means, its Tribal advisory committee and regional representatives. Tribal leaders indicated that there is agreement on the mission and objectives of DSHS programs. State officials believe that the agreed upon approach for triage of issues and concentric circles to identify concerns have helped overcome barriers and increase respect and understanding. Generally, DSHS has a Tribe-by-Tribe approach to services and this was seen as appropriate.

Several Tribal leaders noted that the Indian Child Welfare Act has been an important step and is generally working well in assuring that Indian children remain in their own communities and culture. State leaders said they were pleased to have been the first State to assume responsibility for implementing the Act and transferring authority to the Tribes.

Major Concerns Identified By Interviewees

Funding. Many Tribal leaders noted that funding for Indian welfare and health programs goes to the State and that their long term goal is for these funds to be passed through to Tribes. State officials noted that they are responsible for providing services to non-affiliated Indians as well as to Tribal members. Both the State and the Tribes acknowledged concerns about the data used to determine whether the appropriate funding levels are in fact going to Indian people. Several Tribal leaders especially questioned whether adequate mental health funding is being provided to Tribal members, noting that addiction and other mental health problems are very serious on the reservations. Tribal leaders also noted that Tribes desiring to implement federal social programs, such as the Older Americans Act and Welfare Reform, have serious problems building the needed governmental infrastructure to do so. [Note: This problem was said to exist in virtually all program areas, although social programs were mentioned most often in the interviews.]

Working Relationships with DSHS. Some Tribal leaders noted that, despite DSHS' improved communications and the current director's personal relationship with Tribal officials, working with DSHS is "like dancing with an elephant; it's easy to get stepped on." Some Tribal leaders expressed disappointment that the Tribal interface function has recently been given less access to upper management through organizational change. Others noted that although they have a good relationship with their DSHS liaison, that person is often overruled by supervisors.

Welfare Reform. With regard to Welfare Reform, both State and Tribal leaders said their main concern is to find ways to assure that those losing welfare benefits do not "fall through the safety net." They saw a need for the State and Tribes to work together on employment opportunities and vocational training for these individuals. Several Tribal leaders expressed concern about the State's failure to consult with Tribes on design of the Work First program and designate Tribes as program partners with DSHS. One Tribal leader said that the Work First program excludes Tribal casinos from receiving incentives for hiring, even though other employers (including other Tribal businesses and non-Indian cardrooms) do receive such incentives. An important concern for leaders of rural Tribes was that the Work First program could undermine the stability of Tribal communities if Tribal members are forced to leave their reservations to seek employment in urban areas. State officials were also concerned about this potential unintended impact and agreed that not consulting with Tribes earlier had been a "blunder."

Health Services. Several Tribal leaders were concerned that non-Indians have the impression that Indians are well-cared for by the federal government. Those in rural areas especially saw economic deterioration in the larger community as increasing competition for available assistance and causing non-Indians to be less sympathetic to the problems Tribes are facing. Tribal leaders also noted that the history of Indian health services needs to be better understood by non-Indians and help provided in educating Tribal members about how to use health services. (Generally, the medical establishment had refused to treat Indians because of their inability to pay and Indians learned to distrust and avoid medical treatment. As health services have become

more available, some Indian people are still learning when they do and do not need to take advantage of them, in some cases leading to overuse or underuse.) In addition, it was noted that mental health facilities that take Indian cultural traditions into account are likely to be more successful for Indian people. One Tribal leader was very concerned that, because the Indian Health Service is not funded for long term care, Tribal elders are referred to the State for such care and the State has been attaching their land (including trust land) for payment.

Relations with the Department of Health. One State official observed that the Department of Health has few contacts with Tribal Councils, but deals almost exclusively with Tribal health directors. This official questioned whether there needed to be more contact and attention to health issues from Tribal Councils. One specific area of concern mentioned was the safety of Tribal drinking water supplies.

Tobacco. A variety of views were expressed about the States' settlement with the tobacco industry. Tribal leaders noted that Indian people have higher rates of tobacco-related illness than the general population. State leaders indicated that, recognizing Tribes' sovereignty, the States lacked the authority to settle Tribal claims and so did not address them, even though the tobacco companies would have preferred that they do so. One Tribal leader expressed concern that the State had proposed an allocation of its share of the settlement without consulting Tribes and said the Tribes should have received a share of the allocation. Other leaders expressed an interest in bringing a Tribal class action against the tobacco companies. Some State leaders expressed regret that a local Tribe is apparently beginning to manufacture cigarettes. Some State and Tribal leaders expressed concern about how best to discourage Indian youth from smoking, while some Tribal leaders said they were already implementing aggressive programs to discourage youth smoking. State leaders expressed interest in establishing a partnership with Tribes to reduce youth smoking. They would support using monies from the national foundation established in the agreement and State tobacco control programs for these efforts, and would encourage the Tribes to dedicate their revenues from tobacco sales for these programs. (Some Tribes are already doing this).

Child Welfare. One Tribal leader spoke of his personal experience as a child placed temporarily in a non-Indian home and said he was very troubled by this practice and its continuing adverse impact on many Indian people. Some Tribal leaders noted that improvements are still needed to assure rapid return of Indian children to their communities, while others acknowledged that the Indian Child Welfare Act initially had "an agonizing impact" on some non-Indian families. Some State officials expressed particular concern about neglect of some Indian children by their parents and said they hope the State and Tribes can make progress together on this problem. One official noted that alcoholism was seen as the main cause of child neglect in the past, but gambling addiction is a growing cause.

Suggestions Offered by Interviewees

- Continue to work together to **address the causes and treatment for addiction, diabetes and other serious health problems** on reservations. Consider ways to improve services to Indian patients through methods that work better for Indians than traditional western techniques (for example, using shamanic counseling techniques and providing sweat lodges in recovery facilities).
- Consider how DSHS can continue to **hire more native people** in its programs for Indians.
- Work together to provide **opportunities for those leaving welfare** through the Work First program (e.g., by providing vocational training and employment opportunities), and assure that these individuals are not required to leave their reservations to find employment.
- Consider ways to provide **more health clinics** to serve Tribal members, especially in rural areas.
- Consider whether the State and Tribes could work together to better reduce **youth access to tobacco** products on reservations.

- Work to better inform Tribes about how to participate in the **Children’s Health Insurance Program**.
- Continue to work toward **improvement in DSHS communications with Tribes and cultural education** for DSHS employees.
- Seek ways to **streamline DSHS programs** affecting Tribal members (e.g., returning children under the Indian Child Welfare Act).

Finding 2: Tribal governments seek State support in meeting the difficult challenges of crime prevention and law enforcement, even though jurisdictional issues are complex and troublesome

Many Tribal and State officials noted that crime rates are higher on reservations than in neighboring communities but also observed that offenders are often non-Indians. Tribes vary in the extent to which they cross-deputize or are cross-deputized by local law enforcement agencies, and counties have inconsistent policies about the requirements for cross-deputizations and the law enforcement services they provide. The State patrol develops policies on a Tribe-by-Tribe basis but meets regularly with the Northwest Tribal Enforcement Officers Association to communicate about policies and matters of mutual concern. Generally, for non-Indians on reservations, Tribes are responsible for civil law enforcement and the State or counties are responsible for criminal law enforcement.

Major Concerns Identified by Interviewees

Tribal leaders had a number of concerns about law enforcement against Indians but also acknowledged that, at times, illegal conduct by some Indian people is a problem. They noted that non-Indian offenses on Tribal lands are a significant problem for many Tribes. Many concerns of Tribal leaders related to jurisdictional issues and disagreements over limits on treaty rights. Tribal leaders generally said their ultimate goal is to obtain full recognition of Tribal jurisdiction over all activities on reservations and full faith and credit for Tribal courts. However, for the most part, Tribal leaders focused their comments on immediate concerns.

Cross-Deputization. The most common concern raised by Tribal leaders related to cross-deputization of Tribal law enforcement officers. They noted that some, but not all, counties are refusing to cross-deputize Tribal law enforcement officers because these officers have not been trained at the State’s facility. (Tribal leaders said these counties still expect and receive backup from Tribal officers.) Some Tribal leaders noted that, with the assistance of the Bureau of Indian Affairs, their officers are trained at arguably superior federal law enforcement facilities and counties should give full credit for this training. Other Tribal leaders noted that Tribal officers at one time could attend the State’s training facility under scholarship, but local governments have objected to this practice. They said scholarships are no longer available and many Tribes cannot afford to pay for State training. This was a very important source of friction between some Tribes and their neighboring counties. Tribes generally said cross-deputization is a key to improved understanding between Tribal communities and their neighbors. Gaining the respect of local authorities and citizens for Tribal jurisdiction was seen as requiring a long struggle and almost daily interaction with sheriffs and other officials (for example, to gain respect for Tribal arrests and warrants).

Tensions between Indians and non-Indians. Several Tribal leaders said that anti-Indian harassment has increased and that, more and more, Tribal members are arming themselves. One Tribal leader noted that Tribal fisheries officers were being seriously harassed by non-Indians. State law enforcement officials agreed that anti-Indian harassment seems to be on the rise.

Relations with Local Prosecutors. Tribal leaders suggested that the Attorney General’s Office could do more to provide leadership to local prosecutors to encourage them to work more constructively with Tribes. State leaders said that local prosecutors similarly complain that the Attorney General’s Office does not exert enough

leadership with Tribes. It was noted that the Attorney General's Office is supporting pilot projects that may be helpful. Some State leaders said that Tribes could do a better job of policing themselves and that this is a source of ill-will toward Tribes from local law enforcers.

Local Law Enforcement. Some Tribal leaders said that law enforcement by local authorities against non-Indians (including non-U.S. citizens) committing crimes on the reservation is seriously inadequate in some areas. Response is slow or nonexistent in some cases. Some Tribal leaders believe that local authorities do not want to enter (or resent having to enter) reservations. At the same time, several Tribal leaders recognized that there is not enough funding for law enforcement and noted that local law enforcement authorities are asking the Tribes to pay higher fees for their services. Not all Tribes are able to pay more. One Tribal leader said a Tribe is paying fees that are clearly exorbitant considering the number of incidents on Tribal lands compared to the rest of the county, but this Tribe does receive good service in return. One State official said some Tribes have indicated they are getting too much attention from local law enforcement.

State Law Enforcement. Several Tribal leaders expressed concern that State law enforcement is more vigorous against Indians than against non-Indians (for example in enforcement of hunting and fishing limits, as noted above). Several Tribal leaders expressed frustration over the fact that State funding for enforcement of cigarette tax laws has been greatly increased, while funding for social services is declining. One Tribal leader raised concern that State patrol officers will not write tickets to Tribal courts and another said that State patrol officers seem to be afraid to come onto reservations, except when there is a major accident. State officials expressed frustration that Tribal law enforcement directors who interact with State and local law enforcement do not always reflect the wishes of Tribal Councils (e.g., regarding writing traffic tickets on county roads).

Detention Facilities. Several Tribal leaders expressed concern about the inadequacy of State detention facilities, and especially about the State's refusal to accept Indian youths convicted in federal court. One Tribal leader questioned whether the per capita distribution of natural resources payments to Tribal members must continue to be confiscated by the State when a Tribal member is incarcerated.

Full Faith and Credit. Tribal leaders said that full faith and credit for court orders needs to be "a two-way street." Tribal leaders said that a system is needed to ensure proper conversion of State and local court orders into Tribal court orders. For example, one Tribal leader noted that when a Tribe is served with a garnishment order for non-Indian employee wages, the Tribe will execute the order only if it is first converted to a Tribal court order. The number of such orders is said to be increasing. Other examples included child custody orders and orders under the Violence against Women Act.

Suggestions Offered by Interviewees

- State and Tribal leaders may wish to identify ways to improve **relations between Tribes and local prosecutors and law enforcement officers.**
- The State should consider how to improve **training on Tribal treaty rights for personnel involved in enforcement** of fishing and hunting limits.
- The State should consider whether it can **facilitate cross-deputization by funding participation by Tribal law enforcement officers in the State's training program.** [One option might be to offer scholarships to economically distressed localities as well as Tribes. An alternative might be to persuade counties to recognize the federal training that Tribal officers receive.]
- Consider ways the State can help improve **incarceration facilities** to meet the needs of Tribes and Indian prisoners. In particular, seek better ways to accommodate Indian youth and support Tribes that are interested in constructing their own incarceration facilities.

- State leaders could help Tribes by **telling the President and the Secretary of Interior that federal funding for Tribal law enforcement is a priority.**
- Consider whether the State can help fund or support federal funding specifically for less expensive **law enforcement equipment**, such as cell phones for officers, when Tribes cannot afford to do so.
- Work together to develop a **system for speedy conversion of court orders.**

Finding 3: State agencies could show more respect for Tribal culture and traditions through certain specific improvements.

As noted above, both State and Tribal leaders acknowledged the need for better public education and training for State employees on Tribal culture and history. Also, as noted above, sensitivity to Indian traditions in the provision of social services is an ongoing challenge. The following additional points were made on this subject by interviewees.

- DOT needs to find better ways to respect Indian **archaeological sites.**
- It is important to Tribes that State officials **not romanticize or disrespect Indian culture** but instead focus on how Tribal communities are faring.
- State employees need to recognize the importance of **use of certain resources** (e.g., cedar logs and certain species of salmon), in **religious and traditional ceremonies.** These are more than just economic resources for the Tribes.
- The Parks and Recreation Department needs to make better progress on **repatriation of artifacts** (now that some funding is available for this effort).
- Important Tribal traditions need to be respected in State policies affecting employees and prisoners (e.g., **time off for funerals**).

Finding 4: Improving education for Indian children is a high priority, especially given high drop out rates.

While interviewees were not specifically invited to comment on education programs, several Tribal leaders raised this as a critical concern. (As noted above, public education about Tribes was also an important concern.) The following points were made:

- State leaders should assure full **funding of the Indian Education Office.**
- Statewide, the school dropout rate for Indian children is between 60 and 80%. It is important to the future of the State and the Tribes to **make education more relevant and more useful to Indian children.**
- **Keep expectations high** for Indian students and help publicize their successes, but be sure that those who are not college bound have options for realistic vocational training.
- The **State should not fine grandparents** of Indian children who are truants. The grandparents, who often serve as guardians because of social or health problems in the family, cannot afford the fines and it does not work as a way to get the kids to school.

- **Tribal leaders should continue to train Indian youth** to be more resourceful, have better self-esteem, and move past concerns about racism and historical inequities.