

Developing Tribal Environmental Codes

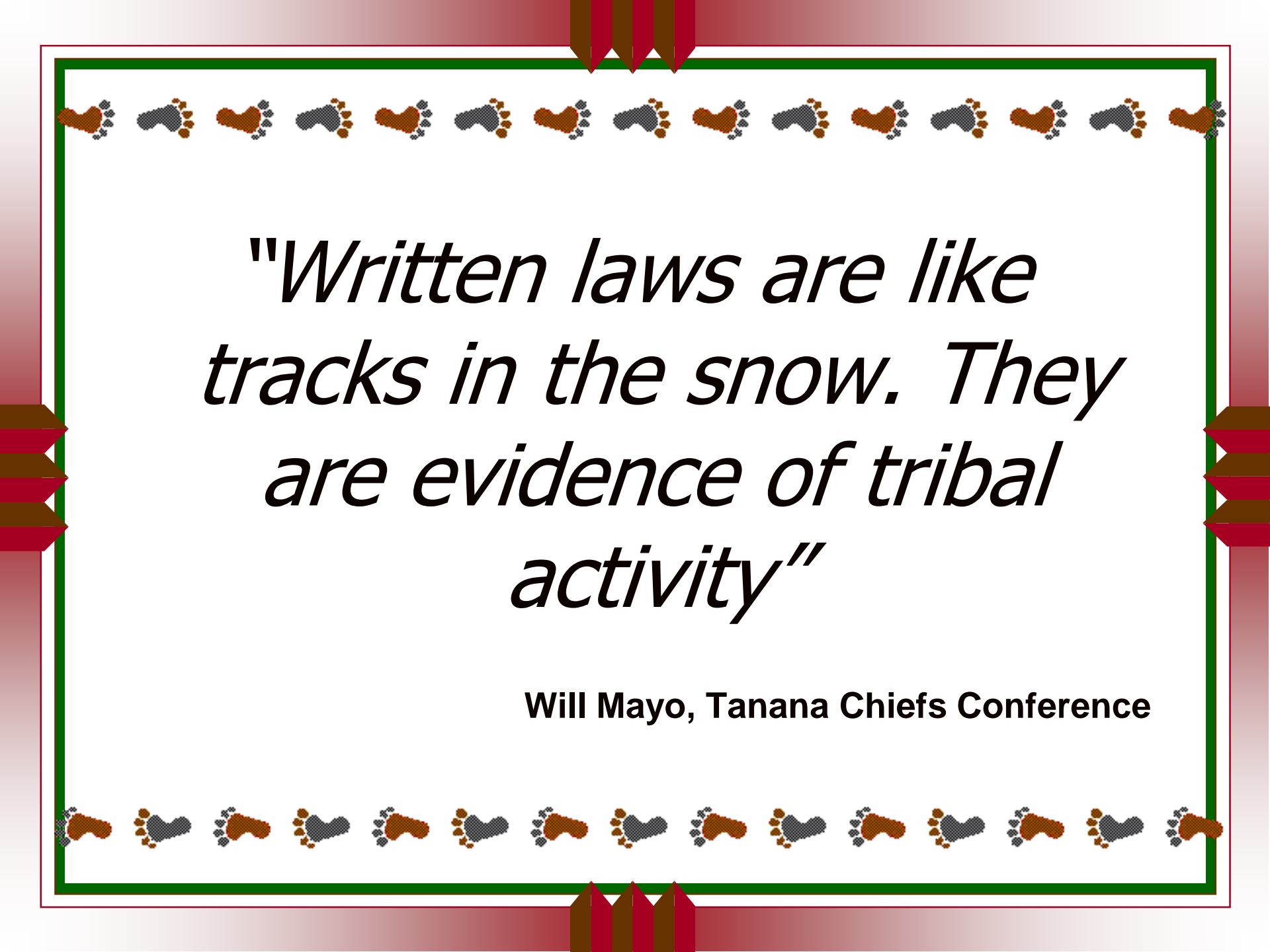


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***Respect for the land, nature,
the environment and each
other is the most common
theme in traditional Alaska
Native values.***



The slide features a decorative border with a green inner line and a red outer line. Along the top and bottom edges, there is a row of alternating brown and grey paw prints. On the left and right sides, there are three red arrows pointing outwards from the center.

*"Written laws are like
tracks in the snow. They
are evidence of tribal
activity"*

Will Mayo, Tanana Chiefs Conference

Developing written tribal codes/ordinances has become an essential piece for modern tribal governments in Alaska. The codes provide details for the structures and procedures for tribal governments, as well as the laws which the tribes wish to enforce through tribal councils and courts. Written laws are the most fair and organized way for a tribe to do business!



The existence of tribes in Alaska after the passage of the Alaska Native Claims Settlement Act, was contested by the State of Alaska. The 1980s was a decade of fighting for tribal sovereignty tribes which was acknowledged in 1993 by the Secretary of Interior who placed Alaska tribes specifically on the list of federally recognized tribes. Since then, the State of Alaska recognizes the existence of tribes in Alaska, but continues to contest the amount of jurisdiction Alaska tribes have.

Sovereignty

The authority and responsibility to govern

Jurisdiction

The authority and responsibility to enforce laws



Tribal Jurisdiction Basics

Tribal governments have authority from two separate sources:

- **Inherent authority:**
 - A recognition by the federal government that tribal authority existed prior to the formation of the U.S. government. This is also referred to as Inherent Sovereignty. The most basic ground rule for tribal jurisdiction is that tribes have jurisdiction over almost anything that Congress has not expressly limited.

- **Delegated authority:**
 - Additional authority granted to tribal governments by the U.S. or state governments



Indian country

Territorial jurisdiction of a tribe

Indian country statute of 1948

§1151 Indian country defined

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

Current Picture of Tribal Jurisdiction

◆ Clear Jurisdiction: Exclusive

- Determining membership/citizenship
- Internal affairs, determining own form of government, and tribal justice system

◆ Becoming more clear: Concurrent

- Domestic relations among tribal members

◆ Less clear: Concurrent

- Infractions and Misdemeanors
- Enforcing regulatory law
 - Best legal theories for these are protecting the health and safety of the tribe and tribal members, when necessary to regulate internal affairs, and when parties consent

◆ No Tribal Jurisdiction

- Over matters outside the village, not involving tribal members or affecting the tribe



Written Tools of Tribal Government

◆ Constitution

- Voted on by the tribal voters
- Delegates sovereignty from the people to the tribal council
- Generally describes how the people want to be governed

◆ Codes/ordinances/statutes

- Voted on by the tribal council
- Provides details of government structures and procedures
- Describe laws for citizen behavior and to protect the citizens

◆ Written policies

- Personnel policy
- Fiscal/accounting policies
- Court rules and orders
- resolutions



Assess where the tribe is at in terms of written law

◆ Constitution

- Does it need amendments?

◆ Codes/ordinances/statutes

- What has been adopted?
- What needs amendment?
- What additional codes are needed?

◆ Written policies

- Personnel policy
- Fiscal/accounting policies
- Policies regarding property, use of halls, land

◆ Contracts/agreements

- Memorandums of Understanding or Agreements
- Terms of grants the tribe is operating



Functions of Codes

- ◆ Provide details for tribal government structures and procedures (I.e. tribal court structure, election procedures)
Judicial Code
- ◆ Outline the laws that the tribal government will enforce (I.e. curfew and vandalism of tribal property)
Domestic relations code
- ◆ Regulate activities in the village (I.e. the taking of artifacts and environmental regulation)
- ◆ Provide for a smooth flow of government and continuity between administrations
- ◆ Promote respect from other governments and institutions
- ◆ Protect Native cultural uniqueness if appropriately drafted
- ◆ Assert tribal jurisdiction

Code Drafting

Two basic kinds of ordinances:

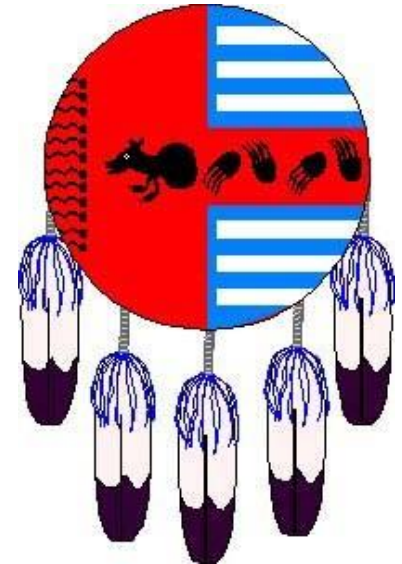
- ◆ Those that set up structures and procedures for the tribal government enforced by tribal councils, tribal courts, and by political pressure from tribal members
- ◆ Those that regulate activities and behaviors, enforced by tribal councils and courts



Overview of Types of Tribal Ordinances

Possible Tribal Code Titles:

- ◆ **Tribal Government Structures and Procedures Code**
- ◆ **Judicial Code**
- ◆ **Law and Order Code**
- ◆ **Domestic Relations Code**
- ◆ **Health, Safety, Environmental Code**
- ◆ **Land Management Code**
- ◆ **Natural and Cultural Resources Code**
- ◆ **Tribal Business Operations Code**



Unlike city governments, tribal councils have no required formal procedure for working with ordinances.

Adopting written guidance for such procedures gives the process consistency and fairness.



Procedure for adopting, amending, or repealing them usually follow the idea of 'due process':

- **Notice to tribal members that an ordinance will be on the agenda at a tribal council meeting**
- **Opportunity for tribal members to speak at the meeting about the ordinance**
- **The ordinance is fairly considered by the tribal council and the decision to adopt is done under any written guidance the council has governing these procedures**



CHILKAT INDIAN VILLAGE



"Yee gu.aa yax x'wan."

Chilkat Indian Village, IRA v. Michael Johnson

Keep it as simple as possible to get the job done!

In this case, the Chilkat Tribe sued Mr. Johnson in federal court in an attempt to retrieve some very sacred and valuable artifacts taken from their area. In 1990, the federal court ruled that the case would be turned over to the Chilkat Tribal Court to decide. It was a recognition of the tribal court's right to make a decision and on the validity of the tribal ordinance on the issue.

The Chilkat ordinance was passed in 1976 and reads as follows:

No person shall enter on to the property of the Chilkat Indian Village for the purpose of buying, trading for, soliciting the purchase of, or otherwise seeking to arrange the removal of artifacts, clan crests, or other traditional Indian art work owned or held by members of the Chilkat Indian Village without first requesting and obtaining permission to do so from the Chilkat Indian Village Council.



When looking at developing tribal environmental codes, look at specific community factors:

- ◆ **Environmental factors specific to the community...e.g.. Rat control, or wildfire concerns**
- ◆ **Whether or not there is a city/borough in the village handling the services?**
- ◆ **If so, is the tribe the more appropriate entity?**
- ◆ **How strong/organized is the tribal government, and willing to address environmental concerns?**
- ◆ **What kind of grant money, program dollars, funding streams are available to the community.**



Environmental Code Topics

- ◆ Burn barrels
- ◆ Landfills
- ◆ Disposal of dead animals – dog yards
- ◆ Abandoned vehicles
- ◆ Water quality
- ◆ Outhouses and human waste
- ◆ Air quality
- ◆ Hazardous waste
- ◆ Hazardous materials
- ◆ Rodent control
- ◆ Littering
- ◆ Illegal dumping
- ◆ Marine debris



Implementation and Enforcement Issues

◆ Implementation:

- Implementation by tribal council or staff
- Plain language explanations
- Regular reports to the tribal council
- Letters to agencies or MOUs
- Make tribal ordinances available, and posted when appropriate

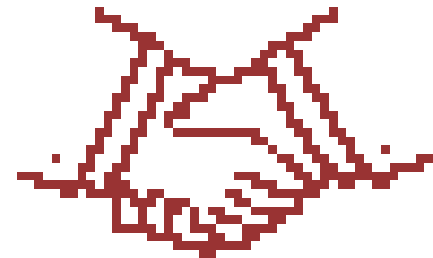
◆ Enforcement:

◆ Community 'by-in'

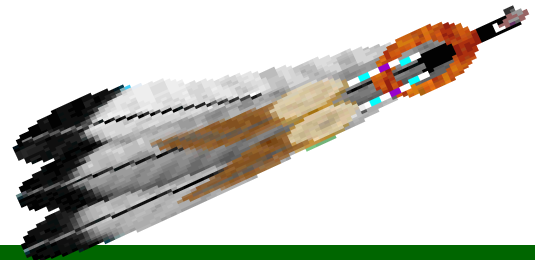
◆ Practical issues such as lack of law enforcement in a village

◆ Memorandums of Understanding, Cooperative agreements

- Federal – tribe
- State – tribe
- Tribe – tribe
- Corporation - tribe



- ◆ **Is there a tribal court established?**
- ◆ **Is there a tribal environmental office or officers?**
- ◆ **Is there a VPSO, law enforcement, or mechanism designated for citing cases into tribal court?**
- ◆ **Are the ordinances posted, or educational signs put up?**
- ◆ **'Uncharted waters' remain in the realm of tribal jurisdiction over environmental regulation**



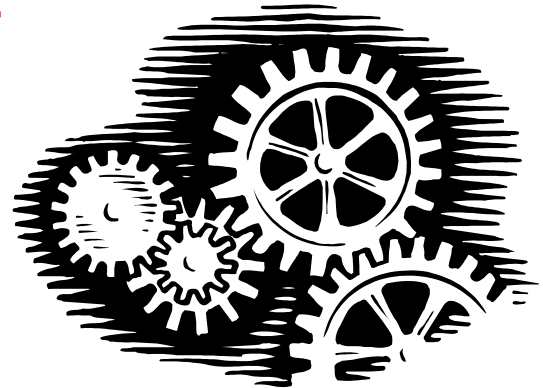
Use of Consultants for Code Development

- ◆ **Wise use of consultants, legal or otherwise, and consultation with tribal Elders is recommended**
- ◆ **If there is any question about legal issues, tribal attorneys should be consulted, preferably the one/s who would represent the tribe in the event that a legal battle occurs**
- ◆ **Recommendations for consultant credentials:**
 - **Ability to clearly communicate with the council both orally and in writing**
 - **Flexibility to produce what the tribe wants, rather than what they want**
 - **Knowledgeable about village life as well as knowledge about federal Indian law**
 - **An understanding of the relationship between written and unwritten tribal law**
 - **Experience in working with Alaska tribes in ordinance drafting**
 - **A sense of humor helps a lot 😊**



Do not re-invent the wheel! Look for sample codes that your tribe might be able to easily modify and use

- Internet
- Native American Constitution and Law Digitization Project
 - <http://thorpe.ou.edu/>
- Tribal Court Clearinghouse
 - <http://www.tribal-institute.org/>
- Cities
- States
- Other tribes
- Tanana Chiefs Conference
 - lisa.jaeger@tananachiefs.org



**Working on tribal
ordinances is an
on-going process!!!**

