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# Common Boundaries: Moving Toward Coordinated and Sustainable Planning on the Oneida Reservation

Rebecca M. Webster  
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# Walden University

College of Social and Behavioral Sciences

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Rebecca Webster

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2014

Abstract

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Moving Toward Coordinated and Sustainable Planning on the Oneida Reservation

by

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MPA, University of Wisconsin-Robert M. La Follette School of Public Affairs, 2003

J.D., University of Wisconsin Law School, 2003

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Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

August 2014

## Abstract

Comprehensive planning can help communities engage in purposeful and sustainable land use development. Previous research has indicated that Indian reservations in the United States often face unique roadblocks to these planning efforts: checkerboard patterns of tribal and nontribal ownership, and the presence of both tribal and local governments exercising land use authority within the same shared space. These roadblocks can lead to uncooperative, uncoordinated, or unsustainable development. Despite these noted problems, there remains an important gap in the current literature regarding solutions to overcome these roadblocks. The purpose of this study was to address that gap. Guided by Forester's critical planning theory to critically examine the social and historical roots of planning within a particular community, this qualitative case study examined government records and conducted 18 interviews of tribal and local government officials. Data analysis consisted of coding data to reveal emergent themes relating to cooperative land use planning in the future. These themes included: (a) approaching planning with a regional philosophy in mind, (b) strengthening interpersonal relationships, (c) finding ways to fairly compensate each other for government services, (d) continuing to acknowledge each government's ability to govern within this shared space, and (e) refraining from asserting authority over a neighboring government. This research is an important contribution to the existing literature and enhances social change initiatives by providing guidance for tribal and local government officials to increase cooperative land use planning.



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## Dedication

I dedicate this study to my children and those of their generation. They will inherit the legacy we create today, just as we have inherited the legacy of our own forefathers. Throughout my pursuit of higher education and my career as an attorney, I have gained an appreciation for the work our forefathers accomplished in preserving tsi niyukwalihota (our ways) and restoring our land base. They have done so in the wake of generations of federal policy aimed at assimilating Indian people into mainstream society and breaking up tribal landholdings. While we cannot turn back the clock to rewrite history, we can learn to accept reality, adapt, and move forward in a positive manner.

As a result of our history, people from many different backgrounds now share the Oneida Reservation, and several different governments administer their laws within this same shared space. This is our reality today. My goals for the future include instilling in my children the values that will help them adapt and move forward in a positive manner. I want them to have pride in being ukwehu·wé (of the original people), of being OnΛyote?a·ká (Oneida). I also have faith they can move beyond simple tolerance of those that are different from them. I believe they can accept others with an open-mind and that others will accept them. I anticipate they will find new ways to work together as a community and refrain from attempts to dominate and oppress their fellow community members. As a community, if we can start demonstrating these values today, this can be the legacy we leave for our children's generation.

## Acknowledgments

I would first like to acknowledge my family. They have been incredibly patient and amazingly tolerant during my pursuit of this degree. My husband, Steve, our young daughters, Grace and Mia, and my parents have literally rearranged their lives at times to help make sure I could concentrate on my studies. I am sure they will all think of creative ways in which I can express my gratitude and return the many favors. To my family, I say yawΛ?kó (thank you).

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I would like to acknowledge my tribe and the greater community. In 1996, tribal members passed a resolution calling for the allocation of scholarships for any tribal members that wanted to pursue higher education. This financial support paved the way for many of us to seek and obtain college degrees. We are fortunate to live in a community that praises and applauds those educational accomplishments. To my tribe and community, I say yawΛ?kó (thank you).

I would like to acknowledge the elected officials, planners, and government relations staff that participated in this study. They dedicated their careers to serving the public and improving the lives of everyone in our community, often without enough

thanks or recognition. They took time out of their busy schedules to sit down and talk about these difficult issues with me and share hopes of improving our planning practices within this shared space. To those that tirelessly serve our community, I say yawΛ?kó (thank you).

I would like to acknowledge my committee, Dr. Day and Dr. Escobedo. They expertly guided me through this process and quickly responded to my panicked confusion that occasionally surfaced along the way. I could not have asked for a better committee. To you Dr. Day and Dr. E., I say yawΛ?kó (thank you).

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## Chapter 1: Introduction to the Study

### **Introduction**

In the planning field, many scholars and practitioners are becoming increasingly aware of the necessity to engage in purposeful and sustainable development through practices that include comprehensive planning and community involvement (Dierwechter, 2013). However, scholars and practitioners have paid little attention to the roadblocks that can hinder these efforts on Indian reservations (Zaferatos, 1998; Jarding, 2004). Due to Acts of Congress, many Indian reservations in the United States are home to both tribal and local governments (Zaferatos, 1998). On such Indian reservations, both tribal and local governments exercise some level of land use jurisdiction. These governments are often forced to deal with complex layers of overlapping tribal and local government jurisdiction resulting from checkerboard patterns of noncontiguous land ownership among the tribe, individual tribal members, and nonmembers. Tribal and local governments may have different visions for how to shape this space they share, leading to uncooperative, uncoordinated, or unsustainable land use planning and development within this shared space.

In order to gain a better understanding of this phenomenon, this study focused on the Oneida Reservation in Wisconsin as a qualitative instrumental case study. The Oneida Reservation is home to the Oneida Tribe and seven local governments. Relying on critical planning theory (CPT) as a theoretical framework, this study critically examined the social and historical roots of planning on the Reservation through the examination of

official government records and in-depth interviews (Matthews, 2013). This study added to the knowledge base of planning on Indian reservations by creating an increased awareness of the difficult issues tribes and local governments face when undertaking planning in this environment. While the purpose of this study was limited to gaining a better understanding of this phenomenon, critical planning theory also calls for action on the part of planners and government officials to employ this newfound knowledge to improve planning practices (Sager, 2013). Knowing how tribes and local governments interact on Indian reservations when faced with development issues can help both entities improve planning processes.

## **Background**

### **Establishment of Tribal, State, and Local Governments on the Oneida Reservation**

In 1818, Congress passed an Act that created Brown County, along with three other counties, within Michigan Territory. Brown County spanned a majority of the eastern half of what is now the State of Wisconsin (Wisconsin Historical Society, n.d.). A subsequent Act of Congress in 1836 separated a portion of Michigan Territory into a newly established Wisconsin Territory.

The establishment of the Oneida Reservation traces its roots to the migration of Oneida tribal members from what is now the State of New York (*Tribe v. Hobart*, 2008). This migration was part of a larger federal policy to move Indian tribes west to make room for nonIndian settlers (Hibbard, 2006). Beginning in the 1820s, Oneida delegates negotiated an agreement with the Menominee Indians and the Winnebago (now called

HoChunk) Indians to share an 8 million acre area in the Michigan Territory. Soon after, three separate groups of Oneida tribal members moved to this new area and settled around Duck Creek. In 1831, the Menominee Tribe ceded 500,000 acres to the United States for the benefit of the Oneida Tribe and other Tribes wanting to migrate from New York (Treaty with the Menominee, 1831). Within this ceded territory, the United States created a 65,400 acre reservation for the Oneida Tribe (Treaty with the Oneida, 1838).

Wisconsin achieved statehood in 1848 when the voters adopted a constitution through a referendum vote (Wisconsin Legislative Reference Bureau, 2013). A few years later, in 1851, Outagamie County was created out of a portion of Brown County (Outagamie County, n.d.). As a result, the Oneida Reservation straddled the county line between Brown County and Outagamie County. In 1903 the Wisconsin Legislature passed an act creating two towns on the Reservation (Wisconsin Legislature, 1903). The act read: “An act to create two townships in Brown and Outagamie Counties from the territory now embraced within the Oneida reservation in said counties, the town in Brown county to be known as the town of Hobart and the town in Outagamie county to be known as the town of Oneida” (p. 1403).

Over time, adjacent municipalities, including the City of Green Bay and the Village of Ashwaubenon, annexed portions of the Town of Hobart (see e.g. Wisconsin Attorney General Opinion, 1987). Figure 1 is a map of the municipal governments currently located on the Oneida Reservation. Only the Town of Oneida is located in Outagamie County. The other municipal governments are all located in Brown County.

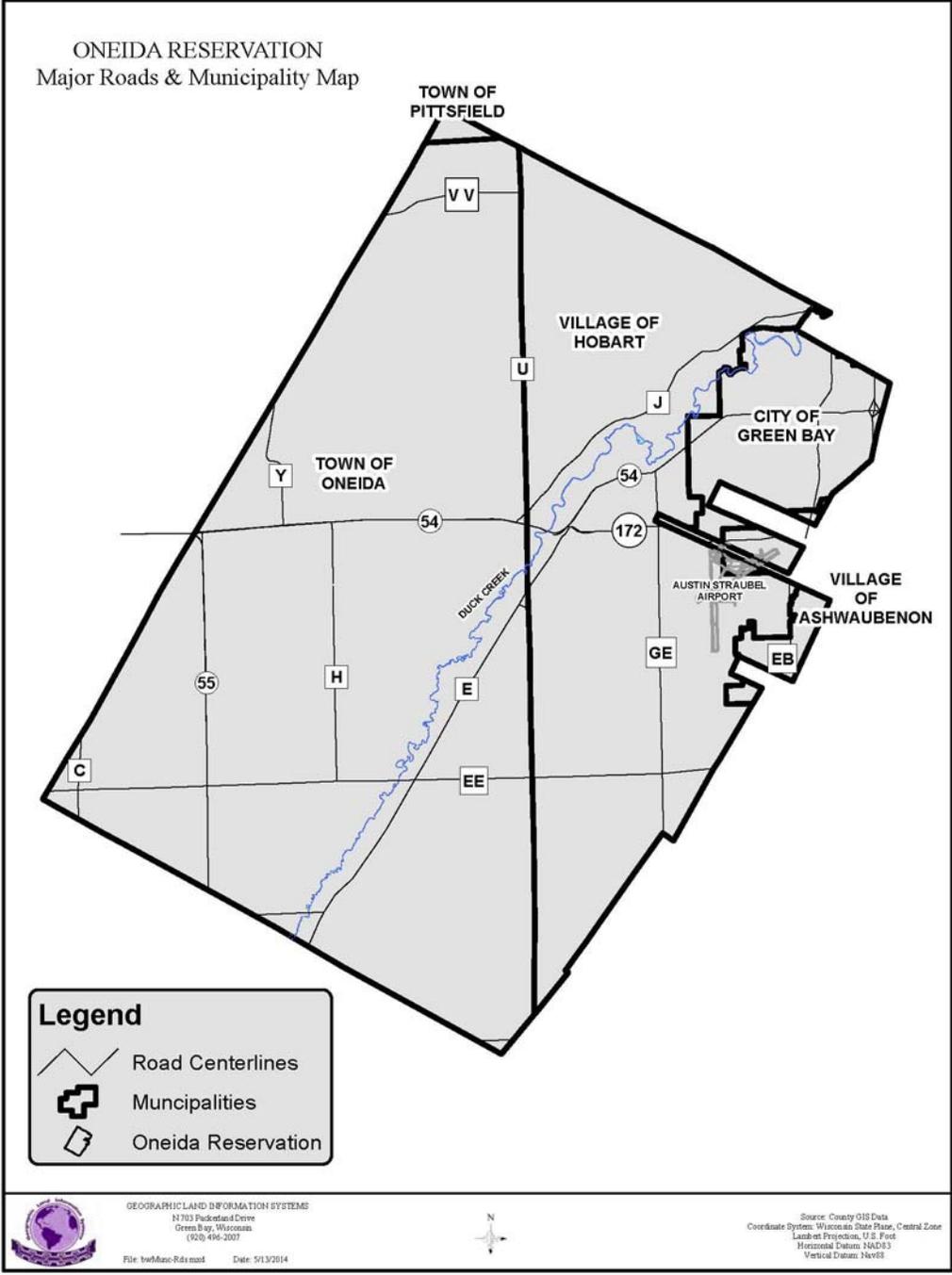


Figure 1. Oneida Reservation major roads and municipality map.

Table 1 depicts the total geographic acreage of the governments and the approximate amount of that acreage that overlaps with the Oneida Reservation (Oneida Geographic Land Information Systems, n.d.). Table 1 includes 467 acres of trust land the Oneida Tribes holds outside the Reservation boundaries. Trust land means land an Indian tribe holds pursuant to a treaty or an act of Congress (Canby, 2009). Table 1 does not include 269 acres of fee land the Oneida Tribe holds outside the Reservation boundaries (Oneida Geographic Land Information Systems). Fee land is typically land that an Indian tribe acquires on the open market (Canby). Pursuant to federal law, off reservation trust land is treated as though it were located on the reservation for jurisdictional purposes but off reservation fee land is not (Indian Country Statute, 18 U.S.C. § 1151; *Oklahoma Tax Comm'n v. Chickasaw Nation*, 1995).

Table 1

*Tribal and Local Government Areas on the Oneida Reservation*

Government	Total acreage	Total acreage on reservation	Percent on reservation
Oneida Tribe	65,910	65,443	99.3
Outagamie County	412,384	38,922	9.4
Brown County	342,036	26,548	7.8
Town of Oneida	38,922	38,922	100
Village of Hobart	21,165	21,165	100
City of Green Bay	28,422	4,060	14.3
Village of Ashwaubenon	8,291	1,100	13.3
Town of Pittsfield	20,581	196	1.0

*Note.* From Oneida Geographic Information System (n.d.), Oneida Reservation Municipal Boundaries.

## **Land Ownership Patterns on the Oneida Reservation**

While the boundaries of the Oneida Reservation have not changed since its establishment in 1838, land ownership patterns have changed drastically over time. These changes are the direct result of federal government actions that impacted land ownership on the Oneida Reservation along with many other Indian reservations throughout the United States (Locklear, 1988).

In a series of three United States Supreme Court cases in the early 1800s, the Court laid the foundation for the relationship between the federal government and tribal governments that allowed the federal government to exert authority over tribal governments (Canby, 2009). First, the federal government gained ownership of all the land in the country by virtue of discovery, and tribal governments exercised only a right of occupancy. Second, tribal governments are domestic dependent nations where the United States serves as a guardian and tribal governments are the wards, with the United States taking care of and managing the affairs of Indian tribes. Third, only the United States Congress has the plenary authority over tribal government affairs. The states can only interfere with tribal matters to the extent Congress grants such rights to the states. These three foundational principles survive in current case law.

Over time, Congress has exercised its plenary authority over tribal governments with both positive and negative results for tribal governments (Canby, 2009). As it relates to this study, two Congressional Acts significantly changed land ownership patterns throughout the vast majority of Indian reservations in the United States: the Dawes

General Allotment Act of 1887 (“Allotment Act”) and the Indian Reorganization Act of 1934 (“IRA”, 24 Stat. 388; 25 U.S.C. §§461-479). These two Acts continue to have an impact on Indian reservations today (Canby, 2009).

Congress enacted the Allotment Act during a time when public policy focused on the assimilation of Indian people into mainstream society (Merjian, 2011). Congress believed the communal way in which tribal governments held their land was incompatible with progress toward goals of assimilation. Communal ownership allowed Indian people to maintain their distinct culture and language. Fragmenting tribal landholdings and vesting title to the land in the name of individual Indians was intended to force Indian people to break away from their communal lifestyle and join mainstream society as independent farmers. With these goals in mind, Congress passed the Allotment Act.

The Allotment Act transferred ownership of reservation land from tribal governments to individual Indians (2011). The land was to be held in trust for the individual for a period of 25 years. During this time, the land would not be subject to real estate taxes. After the 25-year-period was over, the trust status would be lifted, the land would be taxable, and the individual would be able to sell, lease, or mortgage the land as any other landowner. If there were surplus lands on reservations after allotting parcels to individual Indians, the United States would sell off this land to nonIndians (Locklear, 1988). In the wake of the Allotment Act, Indians lost ownership of 65% of their land, totaling approximately ninety million acres (Merjian, 2011).

While the allotted land was originally supposed to be held in trust for a period of twenty-five years, individuals eager to acquire Indian lands lobbied Congress to speed up this process (Oberly, 2006). In 1906 Congress passed the Burke Act, which immediately removed the trust restrictions on specified allotments and directed the Secretary of the Interior to issue fee patents to the named allottees instead of waiting the full 25 years. Individual tribal members from some tribes, such as the Oneida Tribe, were subject to similar Acts where the Secretary could grant additional tribal members fee patents in addition to those specifically listed in the legislation. This newly created base of taxable property prompted the Wisconsin legislature to create the Town of Oneida and the Town of Hobart. The two towns soon hired assessors to value the property and prepare tax rolls.

While the Oneida Reservation did not have any surplus land for nonIndians, Oneida Indians fared worse than most, losing approximately 90% of their land after the Allotment Act (Locklear, 1988). The Oneida Reservation, like most reservations after allotment, became a checkerboard of land ownership with tribal land, individual Indian land, and nonIndian land. Hauptman described the dire situation on the Oneida Reservation:

Oneida lands became subject to taxation, resulting in new and impossible tax burdens, foreclosures, and subsequent tax sales of property. Moreover, land speculators, in collusion with the corrupt Indian agents, and on occasion, Oneida leaders themselves, immediately set out separating the Indian allottee from his allotment. The Oneidas, largely uneducated rural people, were encouraged to fall

into debt by borrowing money or mortgaging their homesteads to buy musical instruments, carriages, and livestock, all of which they generally did not need. Some of their homes were subsequently lost because of their inability to pay back loans. Whiskey was employed in outright swindles to dispossess them. (Hauptman, 1981, p. 72).

In 1928, the Institute for Government Research (later known as the Brookings Institution) commissioned a report, which became known as the Meriam Report, to evaluate the success of the Allotment Act and report on the conditions of Indians (Canby, 2009). The Meriam Report revealed that the Allotment Act succeeded in breaking up tribal landholdings, but that it failed in its goals of assimilating Indians into mainstream society. In the aftermath of the Allotment Act, Indians were still isolated from mainstream society and experienced drastic declines in health, income, and education. As a result of the Meriam Report, combined with the input from John Collier, President Roosevelt's Commissioner of Indian Affairs, public policymakers soon rejected the assimilationist goals of allotment (Canby, 2009; Pommersheim, 2013).

In 1934, Congress passed the Indian Reorganization Act to reverse the negative impacts of allotment (Pommersheim, 2013). This Act stopped the allotment process, restored control of tribal affairs to tribal governments, and allowed the federal government to reacquire land for individual Indians and for Indian tribes. This later function served as the key component to allow tribal governments to restore their lost

land bases, economic security, and self-determination. The Act provided a mechanism for tribes to vote to opt-out of reorganizing under the Act.

The Oneida Tribe voted not to opt out of the Indian Reorganization Act in 1934 (Hauptman, 1981). Shortly after, the Tribe began to work with the federal government to repurchase land on the Oneida Reservation to begin restoring the Tribe's land base. While not all Oneida Indians supported the Indian Reorganization Act, the Act produced significant benefits "including tribal relief, rehabilitation, and political reorganization . . . [and it] gave a community that had been nearly destroyed hope for some future betterment" (Hauptman, p. 87). Figure 2 depicts the amount of land the Tribe owns as of 2014.

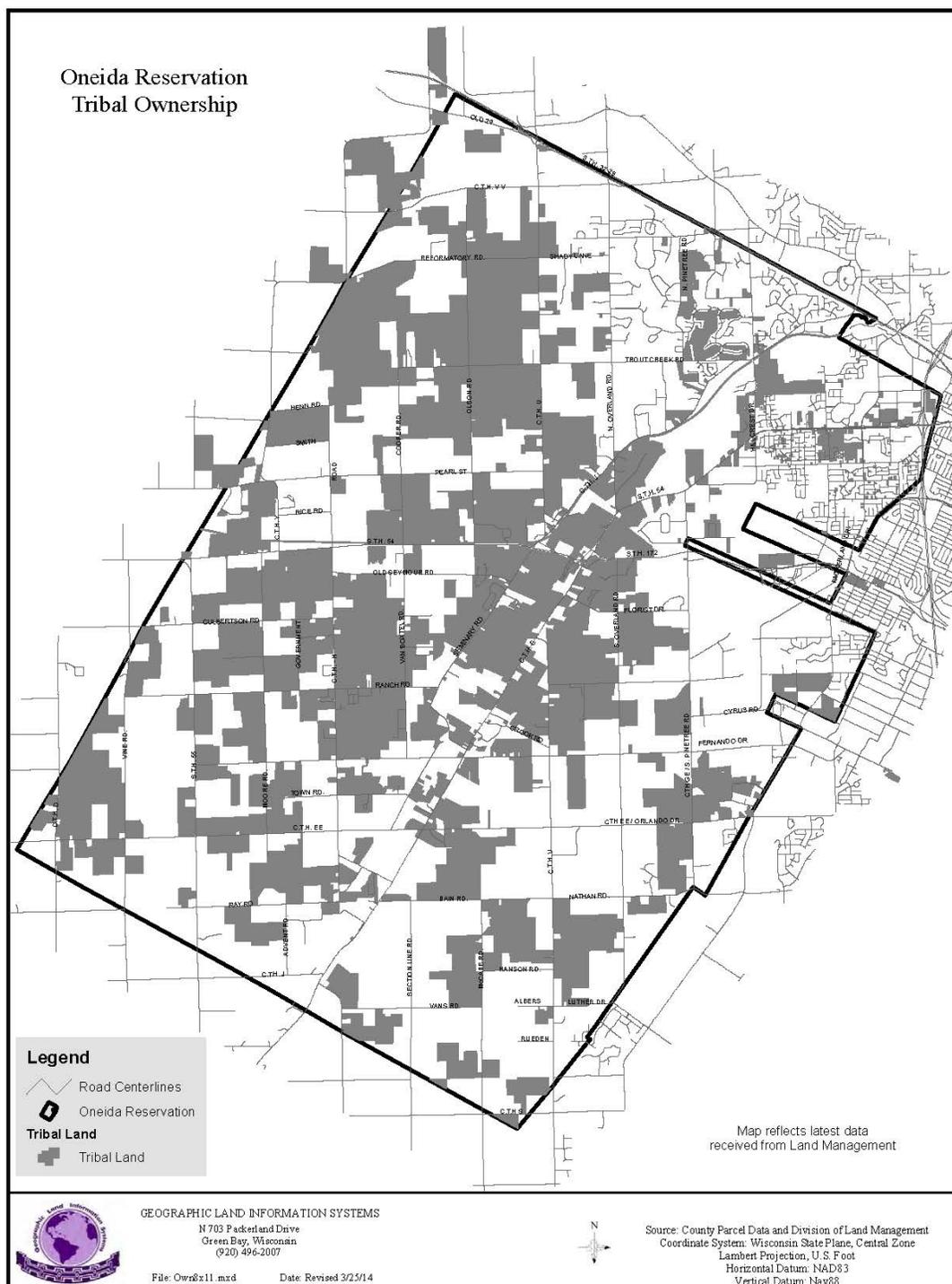


Figure 2. Oneida Reservation tribal ownership.

### **Jurisdictional Issues with Checkerboard Land Ownership**

Like the Oneida Reservation, other Indian reservations have experienced a variety of historical events that impacted their land ownership patterns (Zaferatos, 2004b; Applegate, 2013). The mix of tribal, tribal member, and nonmember land on Indian reservations is common. Also common is the additional mix of fee and trust land. Depending on the history of the particular Indian reservation, tribes, tribal members, and nonmembers can own fee land within the boundaries of an Indian reservation. Trust land, on the other hand, is land the United States holds for the beneficial ownership of tribes or tribal members – either pursuant to a treaty between the United States or pursuant to the Indian Reorganization Act. The mix of tribal trust, tribal fee, tribal member fee, tribal member trust, and nonmember fee land adds complicating layers to jurisdiction over land use development on Indian reservations, with histories similar to that of the Oneida Reservation.

Courts throughout the United States have heard disputes over whether tribes or local governments should be able to control land use development on Indian reservations (Applegate, 2013). As a general rule, the United States Supreme Court has held that local governments control the development of nonmember land on Indian reservations and tribal governments control the development of tribal trust land and tribal member trust land. However, the Supreme Court has never squarely addressed who has jurisdiction to regulate land use on land that tribes and tribal members acquire in fee status on the open market on Indian reservations. Different lower courts have come to different conclusions

on this matter (*Gobin v. Snohomish County*, 2002; *Cayuga v. Union Springs*, 2005; *Seneca-Cayuga v. Aurelius*, 2006).

As Zaferatos (2004b) and Hausam (2013) found in their studies, this study demonstrated that the checkerboard pattern of land ownership is a major point of conflict over jurisdiction. However, this study did not focus on who has jurisdiction to make land use decisions over any of the land on the Reservation and the purpose of the study was not to resolve that conflict. Rather, the purpose was to gain a better understanding of the relationships between tribes and local governments when they make land use decisions within this shared space.

### **State-Tribal Relations Literature**

Aside from the potential issues that jurisdictional uncertainty can cause, scholars and practitioners are split when it comes to determining the benefits and drawbacks of cooperative relationships between tribes on the one hand and states and local governments on the other hand. Scholars either advocate for an increase in relationship building (Fletcher, 2006; Fletcher, 2007), or warn tribes against trusting state actors to play fair (Rosser, 2006; Oeser, 2010).

### **Land Use Planning Literature**

Due to the limited number of scholarly articles dedicated to land use planning on Indian reservations in the United States, this research relied on comparisons between other indigenous groups and state-based governments in Canada, New Zealand, and Australia. These comparisons helped formulate the foundation for this study's research

problems and research questions. A review of the literature on land use planning in indigenous communities in these countries revealed three main themes. First, indigenous governments participating in state-based planning initiatives expressed concerns that the state-based governments did not adequately consider their rights, perspectives, or interests in the planning process (e.g., Morton, Gunton, & Day, 2012; Hausam, 2013). Second, literature dedicated to those indigenous governments that undertook their own planning initiatives did not consider the potential conflicts in land use with local governments (e.g., Applegate, 2013). Third, very few researchers have written about successful cases where indigenous governments worked with state-based governments on cooperative land use planning. Only one researcher examined a successful case in the United States where a tribe and a local government came together to discuss joint land use planning efforts outside of the context of either a tribal forum or a state-based forum (Zaferatos, 1998; Zaferatos, 2004a; Zaferatos, 2004b).

This study built on these works and approached the problem from a community perspective by attempting to understand current planning practices using input from tribal and local government sources. I undertook this study without a preconceived notion of which governing body is entitled to control the development of land. Instead, the focus was on gaining a better understanding of historical and current government-to-government relationships and land use planning. This study added to the limited knowledge base of land use planning on Indian reservations. It produced a greater understanding of past and current land use decision-making processes on the Oneida

Reservation and may even lead to increased cooperation in land use planning and development.

### **Problem Statement**

Comprehensive planning can help a community engage in development of its land base in a purposeful and sustainable manner (Dierwechter, 2013). On Indian reservations, tribes and local governments exercise varying levels of land use jurisdiction, depending on the ownership of the land (Hausam, 2013; Booth & Muir, 2011; Oeser, 2010; Applegate, 2013). Reservation land is often checkerboarded with noncontiguous parcels of land owned by tribes, tribal members, and nonmembers. These checkerboarded land ownership patterns and overlapping jurisdictions can lead to disputes between tribes and local governments related to appropriate land use development on the reservation (*Rincon Mushroom Corp. v. Mazzetti*, 2012). Tribes and local governments may also have competing visions for the development of land resulting in conflicts over land use within this shared space (Zaferatos, 1998).

These circumstances on Indian reservations can lead to problematic intergovernmental relations, which can lead to uncooperative, uncoordinated, or unsustainable development (Hausam, 2013). Prior research reveals only a handful of instances where tribes and local governments formed cooperative arrangements to jointly manage shared spaces (Zaferatos, 1998; Walker & Belanger, 2013; Proctor & Chaulk, 2013; Hausam). An increased understanding and awareness of the issues unique to Indian

reservations may serve as a platform for more reservation communities to improve their planning practices within these shared spaces (Barry & Porter, 2011).

### **Purpose of the Study**

The purpose of this study was to explore historical and current land use development and decision-making on an Indian reservation, using the Oneida Reservation as an instrumental qualitative case study (Creswell, 2007). The phenomenon in this study involved three components: (a) checkerboarded, noncontiguous ownership of the land by the Oneida Tribe, tribal members, and nonmembers; (b) the overlapping layers of tribal and local government land use jurisdiction; and (c) the potential for uncoordinated, uncooperative, and unsustainable land development. Relying on government records—such as comprehensive plans, intergovernmental agreements, and land use litigation—and obtaining interviews with tribal and local government staff and officials, I was able to gain a better understanding of this phenomenon (Barry & Porter, 2011; Hausam, 2013).

### **Research Questions**

This study was based on one main research question and four subquestions:

RQ: What are the common themes in land use planning and development relationships between tribal and local governments?

SQ1: How do tribal and local comprehensive plans address cooperative land use planning?

SQ2: How do intergovernmental agreements address cooperative land use planning?

SQ3: What are the common themes in land use disputes?

SQ4: What factors might lead to cooperative or uncooperative relationships as it relates to land use planning and development?

### **Theoretical Framework**

This study relied on critical planning theory (CPT) as a theoretical foundation. CPT describes two stages within its theoretical framework. I limited this study to the first stage, which requires researchers and practitioners to examine the social and historical roots of planning and development practices in order to gain a better understanding of current planning practices and decision-making processes (Huxley, 2000; Pezzoli, Hibbard, & Huntoon, 2009; Matthews, 2013). This task is best completed within the confines of a given community and its unique social dynamics (Friedman, 2008; Stein & Harper, 2012).

In this study, CPT guided the analysis of land use planning and development relationships between tribal and local governments. A critical examination of the social and historical roots of planning practices helped produce a better understanding of current practices and decision-making processes.

The second stage of CPT as a theoretical framework requires government officials to take this newfound knowledge and transform it into action and move away from planning practices that create disparities along economic, ethnic, and cultural lines

(Huxley, 2000; Sager, 2013). CPT's ultimate goal is to rid planning practices of their potentially paternalistic and oppressive methods, and to replace those methods with more inclusive discussions with all the stakeholders at the same table (Mäntysalo, 2002). While this study may be limited to the first stage of CPT, the results of this research lay the foundation for the second stage of CPT and will assist others in addressing these issues in the future.

### **Nature of the Study**

My research centered on the Oneida Reservation as a qualitative instrumental case study. An instrumental case study is appropriate in this instance because land use planning on Indian reservations is an understudied phenomenon and because each reservation has a unique social and political history (Patton, 2002; Creswell, 2007; Hausam, 2013; Yin, 2009). Focusing on the Oneida Reservation as a case study allowed me to gain an in-depth understanding of the social and historical roots of land use planning on the Reservation and of current land use decision-making processes (Patton, 2002; Creswell, 2007; Yin, 2009). This latter purpose, understanding current land use decision-making processes, also fits within Yin's description of a research topic appropriately studied through a case study. Yin explained: "the more that your questions seek to explain some present circumstance, the more that case study research will be relevant" (p. 4).

In order to gain this understanding, I relied primarily on official government records, such as comprehensive plans, intergovernmental agreements, litigation related to

land use disputes, historical land ownership data, subdivision maps, and tribal and local government zoning laws. I obtained these documents from the Tribe and local governments to ensure reliance on the correct and official versions of the documents. In addition to these government records, I conducted interviews with elected officials, planning staff, and government relations staff from the Tribe and local governments. These interviews supplemented the information I gathered from the government records and provided additional insight into the records. The interviews also provided tribal and local government staff and officials the opportunity to express their perspectives on land use decision making processes. After I obtained the government records and transcribed the interviews, I coded the data and identified themes that arose from it.

### **Definitions**

As an understudied phenomenon, the terminology used when discussing land use planning on Indian reservations in the United States and in indigenous communities in other countries warrants special attention and clarification (Booth & Muir, 2011). In addition to those terms helpful in appreciating their use in the context of Indian reservation planning, this section also addresses some general terms that may have multiple meanings in the planning context.

*Indigenous.* The term “indigenous” is a catchall phrase used to define those people that originated from a certain area with land rights associated with their long-standing history in the area (Pasqualucci, 2009). The literature review for this study focused on indigenous governments from the United States, Canada, New Zealand, and

Australia. In each country, researchers used a different term to describe indigenous governments. In the United States, researchers refer to indigenous governments as tribes (Applegate, 2013). In Canada, researchers refer to indigenous governments as First Nations (Booth & Muir, 2011). In New Zealand, researchers refer to the indigenous government as Māori (Schoder, 2013). In Australia, researchers refer to indigenous governments as aborigine or aboriginal (Porter, 2006). Each of these indigenous governments has exceptional differences in its government structures and historical land rights. However, the literature revealed common themes among these indigenous governments in their histories of devastating land loss and current efforts to reclaim sovereignty and protect their natural resources.

*Indian and tribal member.* Much debate surrounds the politically correct terminology for indigenous people in the United States (Applegate, 2013). Some advocate for “Native American” while others advocate for “American Indian.” The United States Supreme Court uses the term “Indian” and “tribal member.” Often the distinction is one based on whether someone is using the term in the social or political context, with the former terms being used in the social context and the latter being used in the political context. “Indian” and “tribal member” refer to an individual’s political affiliation with a tribal government. Similarly, “nonmember” is used to refer to someone that is not a member of a tribe. Because the focus of this study is on the political relationships between tribal and local governments, I used the political terminology.

*Indian reservation.* Indian reservations are areas where tribal governments, the United States, and state and local governments exercise varying levels of jurisdiction over the land and the people on the land (Holifield, 2012; Anderson, 2012). The term *reservation* was first used to describe the land left over after an Indian tribe ceded vast areas of land to the United States in exchange for reserving rights to a smaller portion. This exchange often came with the United States granting nominal monetary awards or supplies to the tribe, along with a promise to the tribe to forever secure the tribe's interest in the portion reserved for the it. However, reservation also applies to those areas tribes received in exchange for moving westward to make room for new European immigrants. As previously discussed, the Oneida Reservation falls into this latter category. The establishment of local governments within the boundaries of an Indian reservation does not change reservation boundaries. Similarly, the ownership of land by nonmembers by virtue of the Allotment Act does not change reservation boundaries.

*State-based planning.* Indian tribes largely derive their jurisdiction from their own inherent authority as governing bodies that predate the establishment of the federal government system as well as some delegated authority from the federal government (Anderson, 2012). The United States Supreme Court recognized that state and local governments have the ability to impose land use restrictions within state and local government boundaries (Batchis, 2010). In Canada, the federal government passed laws mandating land use planning over large geographic areas that often included many First

Nations (Barry & Porder, 2011). As used in this study, state-based planning refers to planning undertaken either by the federal government, state government, or local unit of government. Primarily, the term is used to distinguish between planning initiatives of nontribal governments and tribal governments.

*Fee land and trust land.* As previously discussed, land on Indian reservations often consists of a mix of fee and trust land (Zaferatos, 2004b; Applegate, 2013). Tribes, tribal members, and nonmembers can all purchase land in fee status on Indian reservations. In the legal sense, this title is often referred to as fee simple absolute (Zaferatos, 2004b). This means that anyone who owns this type of land is free to sell it, lease it, or mortgage it. States and local governments also have the ability to impose taxes on fee land.

Trust land is land that the United States owns and holds for the benefit of either a tribe or an individual tribal member (Zaferatos, 2004b). The United States holds land in one of two ways. First, the land may have been set aside or reserved pursuant to a treaty between the United States and a tribe. Second, the United States may take the land into trust for a tribe or an individual tribal member pursuant to the Indian Reorganization Act. Trust status entails far more restrictions on use than fee land. If anyone wants to sell, lease, or mortgage trust land, the tribe or tribal member needs to get permission from the United States for the transaction. Similarly, local governments cannot impose taxes against trust land. Having land taken into trust status is a way for tribes and individual

tribal members to ensure that title will never be lost again the way it was lost during the Allotment Act (Merjian, 2011).

*Cooperative, coordinated, and sustainable planning.* In this study, *cooperative planning* refers to tribal and local governments' efforts to communicate when making land use decisions (Saarikoski, Raitio, & Barry, 2013). This definition does not require the establishment of joint planning commissions or formal alliances; rather, it requires mutual respect for each government's interests in having a voice in land use decisions within the shared space. If tribal or local governments are unable to accomplish this, then this study labeled such instances as *uncooperative*. An example of uncooperative planning is litigation over land use.

*Coordinated planning* takes cooperative planning one step further and requires tribal and local governments to consult each other prior to undertaking new development of land (Cullen, McGee, & Gunton, 2010). While this definition still does not require joint planning commissions or formal alliances, it does require active consultation with nearby tribal and local governments when developing the land or when planning for future development. An example of uncoordinated planning is planning or development without consulting with tribal or local governments.

*Sustainable planning* is planning that takes into consideration the social, economic, and environmental impacts of new development (Holden, 2012). Holden takes this well-established definition one significant step forward. According to Holden, sustainable planning also requires both cooperative and coordinated planning in

horizontally (across an organization) and vertically (between organizations) integrated policy making. In integrated policy making “organizations are joining efforts to create policy that is formally owned together by multiple units, which must interact in order to implement and maintain the policy” (p. 2). Applying Holden’s rationale, sustainable planning on the Oneida Reservation would require cooperative and coordinated planning among the Tribe and local governments with formal alliances and/or joint planning commissions.

### **Assumptions**

This study relied on two main assumptions. First, it assumed that tribal and local government staff and officials may have a grasp of the social and historical roots of land use development and planning practice, but have not yet made a systematic inquiry into how this history impacts current planning practices on the Oneida Reservation, and might have a difference in understanding of those historical and social roots. This assumption was not meant to discredit any tribal or local government staff or officials. Rather, if this study did not operate under this assumption, this study would be unnecessary and would add nothing to the knowledge base.

Second, this study assumed that the Tribe and local governments are interested in increasing cooperative relationships and enhancing coordinated land use decision-making processes. This study did not produce an increase in cooperation or coordination. However, the foundational reason behind wanting to gain an increased understanding is to work toward these goals of cooperation and coordination. Increased understanding

facilitates cooperative and coordinated relationships. To the extent this study can increase a mutual understanding of the social and historical roots of planning, it may result in more cooperation and coordination.

### **Scope and Delimitations**

This study aimed to obtain a better understanding of the impacts of overlapping layers of tribal and local government jurisdiction and cooperative land use decision-making processes. I chose this focus because the literature on critical planning theory describes a method for scholars and practitioners to improve planning practices through a critical examination of the social and historical roots of planning in a given community (Friedman, 2008; Stein & Harper, 2012). I conducted this critical examination using the Oneida Reservation as a case study.

The boundaries of this study are limited to the Oneida Tribe and local governments on the Oneida Reservation. Only two of the local governments are confined to the exterior boundaries of the Reservation (the Town of Oneida and the Village of Hobart); the remaining five local governments only have portions of their boundaries overlapping with the Reservation. Because the focus of this study was on the overlapping layers of jurisdiction, I chose to confine the geographic area to those tribal and local governments exercising some level of land use authority on the Oneida Reservation.

## **Limitations**

### **Design Weaknesses**

Qualitative case studies have an inherent design weakness related to the subjective nature of qualitative research (Patton, 2002). Researchers interpreting interview data must interpret the meaning behind the data. Such interpretations are subject to researcher's individual preconceived ideas shaped by both his/her perception of the situation and his/her human experiences in society. In addition, my status as an enrolled Oneida Tribal member and as an attorney working for the Oneida Tribe had the potential to introduce bias into this research.

I controlled for subjectivity and bias at each stage of the research process. When inviting participants to interview, I allowed them the opportunity to invite others to the interview, I allowed them the opportunity to provide written responses instead of participating in an interview, and I sent the interview questions to them along with the invitation. When I analyzed the coded data, I limited the insertion of my personal perceptions by allowing the data to speak for itself.

An additional inherent design weakness in qualitative case studies is the inability to generalize the results (Patton, 2002). A review of the literature reveals that land use planning in indigenous communities is an understudied phenomenon (Hausam, 2013). The literature also reveals that the United States, Canada, New Zealand, and Australia each deal with indigenous governments and indigenous land rights in a different way (Lane & Hibbard, 2005). Even when limiting an analysis to the United States, each

Indian reservation has a unique land history (Hausam, 2013). Until the phenomenon of land use planning on Indian reservations becomes the subject of further research, it will be difficult to make generalizations from one indigenous community to another or even from one Indian reservation to another. Added research may eventually reveal predictable themes and patterns (Creswell, 2007).

A limitation unique to this study relates to the questions left unanswered by the United States Supreme Court: Do tribes or local governments get to control tribal and tribal member fee land on Indian reservations? While this study did not attempt to resolve this question, conflicts related to jurisdiction over tribal and tribal member fee land on the Oneida Reservation became apparent when exploring the historical relationships between the Oneida Tribe and local governments.

### **Methodological Weaknesses**

A significant methodological weakness inherent in qualitative case studies is the extensive investment in time and resources required in the research process (Patton, 2002; Creswell, 2007; Yin, 2014). The process required to collect, code, and analyze qualitative data is time consuming. To address this limitation, I acknowledged the investment required to conduct this research and planned accordingly. In addition, in qualitative research it can be difficult to determine when a researcher has collected enough data to generate findings and when it is necessary to continue to gather data (Yin, 2014). To address this limitation, I gathered enough data to address the research questions presented in this study and acknowledged the need for further research.

### **Significance**

Building upon prior research and obtaining a better understanding of this understudied phenomenon can lead to more coordinated, cooperative, and sustainable development (Booth & Muir, 2011). This study helped to fill the gap in the knowledge base and increase awareness of and appreciation for the complex issues tribes and local governments must deal with when making land use decisions in an environment with overlapping layers of jurisdiction. This study also acknowledged that both tribes and local governments have legitimate voices in shaping the space they share. Using critical planning theory as a theoretical foundation assisted in gaining a deeper understanding of how these social and historical dynamics impact current decision-making processes (Matthews, 2013). This understanding can lead to more cooperative, coordinated, and sustainable land use decision-making processes on the Oneida Reservation.

### **Summary**

The Oneida Reservation has a complex history involving the establishment of local governments within its boundaries and severe changes in land ownership over time. Through official government records and in-depth interviews, this study examined that history and its implications on current planning practices and land use decision-making. Relying on the Oneida Reservation as a qualitative case study added to the knowledge base of planning on Indian reservations and increases awareness of the different issues tribal and local governments face when trying to engage in purposeful and sustainable land use planning. Reviewing what other scholars learned from their studies of planning

in indigenous communities in the United States, Canada, New Zealand, and Australia helped provide a context for this study. The following four chapters provide a review of the literature, a description of the research method, the study results, and a discussion of the implications of the main themes that emerged from this study.

## Chapter 2: Literature Review

### **Introduction**

Comprehensive land use planning can assist communities in planning for future development in a purposeful and sustainable manner (Dierwechter, 2013). On Indian reservations, tribes and local governments may have overlapping land use authority, differing opinions on the limits of that authority, and conflicting visions for development within that same space (Zaferatos, 1998). As a result of the overlapping layers of jurisdiction and potentially competing ideas for the same space, communities on Indian reservations may experience uncoordinated or uncooperative development.

The purpose of this study was to gain a better understanding of the land use decision making on Indian reservations by conducting an instrumental qualitative case study of the Oneida Reservation in Wisconsin. A research design based on critical planning theory (CPT) sought an understanding of current planning practices through a critical examination of the social and historical roots of planning on the Oneida Reservation (Forester, 1980). According to CPT, a better understanding of these planning practices may allow the Oneida Tribe and local governments to form more cooperative land use practices in the future.

After a discussion of the origins, applications, and relevance of CPT, this chapter examines the literature relevant to cooperative land use planning between local governments and tribal authorities on Indian reservations. To begin, the literature review examines why communities engage in comprehensive land use planning (Applegate,

2013). As a precursor to cooperative land use planning, the literature review then describes the different perspectives related to the relationships between states and tribal governments. When discussing state-tribal relations in general, scholars and practitioners generally advocate either for an increase in cooperative relationships (Fletcher, 2006; Fletcher, 2007) or warn tribes against trusting state actors to play fair (Rosser, 2006; Oeser, 2010).

After looking at state-tribal relations, the literature review then describes how planning in indigenous communities takes place in Australia, New Zealand, Canada, and the United States. While each of the authors conducting research in indigenous communities recognizes the understudied nature of this topic (Booth & Muir, 2011), three main themes emerge from this literature. First, indigenous governments participating in state-based planning initiatives expressed concerns that the state-based governments did not adequately consider their rights, perspectives, or interests in the planning process (eg. Morton, Gunton & Day, 2012; Hausam, 2013). Second, literature dedicated to those indigenous governments that took on their own planning initiatives did not consider the potential conflicts in land use with local governments (e.g., Applegate, 2013). Third, very few researchers have written about successful cases, that is, where indigenous governments worked with state-based governments on cooperative land use planning. Only one researcher examined a successful case in the United States of a tribe and local government coming together to discuss joint land use planning efforts outside of the

context of either a tribal forum or a state-based forum (Zaferatos,1998; Zaferatos, 2004a; Zaferatos, 2004b).

### **Literature Search Strategy**

This literature review primarily relied on articles from the following three databases: Political Science Complete, Business Source Premier/Complete, and Political Science Complete: A Sage Full-Text Collection. Google Scholar identified additional articles. Professional subscriptions to Westlaw and Lexis Nexis supplied law review articles, cases, and statutes .

For topics related to tribal planning, the searches included variations of the following terms: *tribal planning*, *Native American planning*, *American Indian planning*, *reservation planning*, *First Nations planning*, and *indigenous planning*. Due to the limited amount of literature dedicated to the study of tribal planning, this literature review explored all available literature from the 1990s forward, with a focus on tribal planning in the United States, and it relied on internal searches of the articles for citations to additional articles and other publications. In addition, the four databases allowed me to find articles that cited a particular article. These internal and external searches of articles particularly relevant to tribal planning revealed additional articles that did not immediately appear using keyword searches.

For topics related to planning and planning theory as used in this dissertation, the searches included variations of the following terms: *comprehensive planning*, *smart growth*, *sustainable development*, *sustainable planning*, *collaborative planning*,

*cooperative planning, critical theory, critical planning theory, and communicative planning theory.* Due to abundant literature produced through these searches, initial articles included only those from peer-reviewed journals published within the past 5 years. Similarly, due to the abundance of literature on these topics, it was not difficult to locate the sources for the foundational principles within these topics.

### **Theoretical Foundation**

#### **Historical Roots of Critical Planning Theory**

John Forester (1980) first introduced an application of critical social theory for use within the planning context. In this new application, Forester borrowed themes from Jurgen Habermas' theory of deliberative democracy and communicative action as a means to unearth political-economic structures otherwise left out of typical planning discussions (as cited in Forester, 1980). The critical social theory aspect emphasizes the need for those with power to recognize the potentially destructive nature that power wielding may cause during the planning process (Forester, 1980). Scholars and practitioners can use critical theory in the planning context to examine problems of exclusion, inequity, discrimination, and private interests, and to learn how these factors have the potential to overshadow the interests of the community as a whole (Sager, 2013). Later coined critical planning theory (CPT; see e.g., Mäntysalo, 2002), this theory aims to rid planning of paternalistic practices that tend to repress and oppress the voices of those not in power in favor of bringing everyone to the table to participate in the discussion (Sager, 2013).

CPT helps researchers gain a more complete understanding of planning practice as a communicative action instead of simply a means to an end (Forester, 1980). Similarly, CPT itself cannot solve the problems of society and politics; it can only help scholars and practitioners evaluate existing planning practices (Mäntysalo, 2002). Through a critical examination of the historical contexts in which planning and development occurs and the social roots of communities, scholars and practitioners can gain a better understanding of the practice of planning (Huxley, 2000; Pezzoli, Hibbard, & Huntoon, 2009; Matthews, 2013). This examination can illuminate aspects of our society that have the potential to perpetuate discrimination along economic, ethnic, and cultural lines (Sager, 2013).

Only after scholars and practitioners fully orient themselves to the problems can they seek to find a solution and enhance inclusiveness within planning practices (Mäntysalo, 2002). The quest to orient themselves and gain this understanding must be done within the context of a particular community and its unique social dynamics (Friedman, 2008; Stein & Harper, 2012). According to Huxley (2000), planners should use this newfound understanding and transform it into action with a renewed sense of communicative action and a more democratic process.

### **Assumptions to Application of Critical Planning Theory**

CPT contains three main assumptions related to communication among the planners and stakeholders, the imperfection of planning as a practice, and the potentially devastating impacts that wielding power can cause. First, CPT assumes that

communication among planners, community members, and government officials is truthful, legitimate, comprehensible, and sincere and that those engaged in the conversation can trust each other (Forester, 1980; Matthews, 2013). CPT also assumes that when those at the table violate these norms of pragmatic communication, communications quickly break down. Sager (2013) explained that if the parties depart from open communications and rely on non-deliberative and coercive means of communications, they are unlikely to reach a fair agreement.

Second, CPT assumes the current practice of planning is imperfect because the practice does not address the unequal distribution of information, imbalanced access for public participation, and prevalence of misaligned political agendas (Forester, 1980). Third, and along similar lines as the first, CPT assumes power can distort communicative rationality (Mäntysalo, 2002). While power in the sense of publically acknowledged authority in the planners can lend to their credibility and authority, other power can be detrimental to the planning process. Some stakeholders can insert their own interests into the process through an unacceptable exertion of power in order to cater to their own needs (Sager, 2006; Sager 2013). This has the potential to violate the rights and integrity of others in the process.

### **Application of Critical Planning Theory**

CPT offsets its pessimistic portrayal of planning practices with an optimistic view of planning's potential. Sager (2006, citing Said, 1983) perceived the use of CPT as a non-coercive means to gather knowledge in the interest of pursuing human freedom. In a

later work, Sager explained: “A critical theory of planning can be deemed effective to the extent that it keeps alive the hope that society can be changed by planned collective action to make it fairer and more compassionate despite the strong structures that favour the interests of the already well off” (Sager, 2013, p. xx).

This optimistic view of planning’s potential also appears in two main variations of Forester’s application of critical social theory and Habermas’ deliberative democracy and communicative action. One variation, called Communicative Planning Theory, stems from Habermas’ focus on consensus building as a means to agree on a plan for the community (Sager, 2006; Matthews, 2013). The other variation, called Collaborative Planning Theory, considers the built environment as the focal point for planning discussions between planners, government officials, and stakeholders (Innes & Booher, 2010). In addition, this variation focuses on the long-term nature of building trust and capacity within governing structures.

### **Criticisms of Critical Planning Theory**

Most criticisms of CPT involve its emphasis on communication and consensus building as the end goals of planning initiatives. Critics point out that planning theories based on Foster’s and Habermas’ work are unrealistic, naïve, and overly optimistic because they assume a community can achieve consensus and overcome power struggles, despite the deep divisions in society concerning class, race, and culture (Mäntysalo, 2002; Healey, 1993; Matthews, 2013). Critics also point out that the desire to reach consensus on a given issue may mean that those engaged in the conversation leave deep

underlying conflicts beneath the surface (Matthews, 2013). Those in power may use their authority and legitimacy to claim those in the conversation reached a consensus without regard to those who may disagree or to those who have been excluded from the conversation. Similarly, CPT's intense focus on seeking a consensus as the end result might not leave any room for a critical examination of how biased power relations can impact the planning process (Sager, 2013).

In order to overcome these potential shortfalls of looking at planning with a focus on consensus as the end result, Matthews suggested a more appropriate method requires scholars and practitioners to keep conflicts rather than consensus goals as a frame of reference (2013). Framing research in this way can still keep the hoped for end product in mind while directing immediate attention to the more problematic aspects of planning such as power struggles. Framing research this way also respects CPT's roots in critical social theory. The nature of this study avoided the main criticisms of CPT because it focused on CPT's initial stages of planning including an examination of the social and historical roots of planning in a given community.

### **Critical Planning Theory in the Current Study**

CPT, along with elements of communicative planning theory and collaborative planning theory, served as the theoretical framework to guide an analysis of the problems identified, emphasizing a critical examination of society and history on the Oneida Reservation. As a general rule, scholars and practitioners have used CPT to understand the relationships and communication between planners and the stakeholders in the

community (Matthews, 2013). Only Porter (2006) and Zaferatos (1998) used CPT in the indigenous planning context. In this regard, Porter used CPT to look at power and oppression when indigenous governments participate in state-based planning initiatives. Zaferatos used CPT to look at historical, and often coercive, relationships between the federal government and tribes to gain a better understanding of development patterns on Indian reservations. This study built upon CPT's existing framework and Zaferatos' early work in order to understand the relationships and communication across government jurisdictions and among planners and government officials. Use of CPT in this manner helped gain an understanding of the current planning practices impacting the shared built environment.

The main research question for this study involved an analysis of the common themes in land use planning and development relationships between tribal and local governments. Through a critical examination of the social and historical roots of planning practices, CPT helped gain a better understanding of planning practices on the Oneida Reservation. This research recognizes the need for planners and policy makers to engage in meaningful dialogue with each other and with community members in order to find agreement in planning the future of the community. However, as Matthews (2013) pointed out, an appropriate place to start in order to achieve that end goal is to first focus on the problems and issues. Only after orienting oneself in the problems that can negatively impact the planning process, can one attempt to work toward consensus and agreement in the community. I limited this research to that first step.

### **Comprehensive Land Use Planning**

Zoning regulations controlling land use and density allow governments to control the character of a given community (Applegate, 2013). Since the United States Supreme Court's landmark zoning case in 1926, *Euclid v. Amber Realty*, courts have consistently recognized the ability of local governments to impose zoning laws and land use regulations on private landowners (Batchis, 2010). This control allows governments to protect the character of neighborhoods, protect property values, and protect public health and safety (Applegate, 2013). Where these zoning regulations prescribe current permissible uses for land within a community, comprehensive plans allow community members to express their preferences for future development and land use within their community.

Many tribes and local governments engage in this forward looking comprehensive planning process in order to ensure development is purposeful and sustainable and properly takes into account the needs and the future aspirations of the community (Mannell, Palermo, & Smith, 2013). Planning offers a sense of direction and an opportunity for community members to take informed actions for what they want for the future of their community. It is a proactive approach that can enable a community to impart positive social change on their own terms.

### **State-Tribal Relations**

Individuals examining state-tribal relations generally conform to one of two schools of thought. One group believes that entering into cooperative government-to-

government relationships allows for more optimal outcomes because the parties are able to discuss and negotiate favorable terms instead of gambling with the outcomes offered through litigation (Fletcher, 2007). Negotiated agreements between tribes and states legitimize both tribal sovereignty as well as state sovereignty; however, this legitimization of state sovereignty is no longer at the expense of tribal sovereignty because state-tribal relations are no longer plagued with violence or genocidal racism. Rather, state-tribal relations now have the potential to be characterized by cooperation and collaboration. Tribes have the potential to expand their ability to govern themselves while meeting the needs of and reducing the concerns of state-based governments through intergovernmental agreements (Fletcher, 2006).

The other group believes that encouraging any discussions between tribes and state governments could be a mistake because of rampant mistrust and ulterior motives behind the desire to enter into government-to-government agreements (Rosser, 2006; Oeser, 2010). As an advocate of tribal sovereignty and self-governance, Rosser explained that tribes should consider redirecting their energies to creating internal governance policies. He explained that entering into cooperative agreements with state governments could disrupt internal tribal priorities. He also accused Fletcher of dismissing the racism and genocidal violence that proved to have devastating impacts on tribal governments and tribal members. Similarly, Oeser contended that participating in government-to-government negotiations and entering into agreements legitimizes not only state sovereignty, but also the state's ability to regulate tribes and tribal members.

Aside from the mixed views on whether tribes should engage states in negotiating intergovernmental agreements, Jarding (2004) conducted a national survey of tribes and local governments to test their capacity to deal with each other on a government-to-government basis. Jarding's survey included 49 states, Washington, DC, and 77 tribal governments and concluded that the day-to-day relationships between state and tribal employees were cooperative, but that state policies created a conflict between state interests and tribal interests by generally favoring state interests. Ultimately, Jarding concluded that both states and tribes lack sufficient capacity to adequately deal with state-tribal issues. Territorial boundaries and jurisdiction remained two factors that inhibited the ability of states and tribes to effectively deal with each other on a positive government-to-government basis.

### **Planning in Indigenous Communities**

A handful of researchers have conducted research involving land use planning within indigenous communities in New Zealand, Australia, Canada, and the United States. Each of these authors recognizes that the topic is not well studied (eg. Booth & Muir, 2011). The literature dedicated to planning in indigenous communities is largely polarized into two schools of research. On the one side, researchers examine indigenous communities' roles in participating in state-run, nonindigenous planning efforts (eg. Saarikoski, Raitio, & Barry, 2013). On the other side, and along the same school of thought as those distrustful of state governments, researchers abandon the prospects of engaging in meaningful planning efforts with nonindigenous governments and advocated

that tribes develop planning initiatives on their own (eg. Applegate, 2013). These different approaches, depending on the particular circumstances, can help accomplish tribal planning goals (Lane, 2006).

### **Indigenous Participation in State Planning**

Several authors explored indigenous government participation in state-based planning systems in Australia, New Zealand, United States, and Canada (eg. Lane & Hibbard, 2005). Two primary themes running throughout these studies include the focus on state efforts to increase indigenous participation in their planning processes and the desire to implement more collaborative and consensus based land use agreements. While more recent efforts have proven more successful than efforts in the 1980s and 1990s, these recent efforts are still plagued with a lack of enthusiasm on the part of indigenous governments to participate in a state-based, state-controlled planning environment (Mornton, Gunton, & Day, 2012).

In Australia, researchers point to the relatively recent recognition of indigenous land rights when compared to New Zealand, Canada, and the United States (Porter, 2006). Employing a version of CPT, Porter used observations of state-based planning practices to understand the impacts of power and oppression. Along with the recent recognition of indigenous land rights, Australian governments only recently incorporated indigenous groups as a stakeholder in state-based planning initiatives. As a result, she concluded that current CPT research does not adequately explore the colonial and historical impacts on current planning practices. While Porter referenced partnerships and

dialogue between indigenous groups and the state, the need to recognize indigenous land rights, and the desire to protect natural and cultural resources, the premise of her research involved indigenous participation in state-based planning. Ultimately, Porter concluded that more research is needed to understand colonial and historical impacts on current planning practices.

Unlike the indigenous groups in Australia, the indigenous groups in New Zealand have a lengthy history of participation in state-based planning systems (Schoder, 2013). New Zealand law allows for the official recognition of indigenous rights in representation and participation in state planning initiatives. In addition, the law also allows state-based local governments to transfer their powers by entering co-management agreements with indigenous groups. Schoeder concluded that such practices have been an overall success, but she also concluded that there is still room for improvement by incorporating indigenous culture, knowledge, and customs into the planning process. However, like the Australian example, such inclusion is still wholly within the state-based planning system. Further, indigenous inclusion appears to be a delegation of power from the New Zealand government as opposed to recognition of inherent authority of the indigenous groups.

In the Canadian context, several authors focused their research on indigenous participation in the development of state-based plans (Barry, 2012; Cullen, McGee, Gunton, & Day, 2010; Mornton, Gunton, & Day, 2012; Saarikoski, Raitio, & Barry, 2013). While these authors all relied on the principles of Collaborative Planning Theory to explore the dynamics of indigenous participation in the development of those plans,

each study focused on a different aspect of the planning initiatives. Barry (2012) focused her research on the capacity to build relationships and engage in productive negotiations among indigenous groups and state-based governments during the creation and implementation of British Columbia's Central Coast Land and Resource Management Plan, a plan covering 4.6 hectares of state-owned land. She pointed to the negotiation process as a means to develop and foster positive government-to-government relationships between indigenous groups and state-based governments.

Cullen, McGee, Gunton, and Day (2010) focused on the consensus-based planning initiatives geared toward the management of natural resources in the British Columbian Great Bear Rainforest, a protected area spanning 6.4 million hectares. They argued that collaborative planning allowed greater opportunity for the protection of indigenous interests because negotiated agreements can meet the needs of all the parties. They also argued that negotiated agreements had a greater likelihood for buy-in when all the stakeholders were involved.

Also using the Great Bear Rainforest as a study area, Saarikoski, Raitio, & Barry (2013) focused their research on resolving land use conflicts between indigenous governments and state-based governments. The authors looked at the fragile negotiation process that ultimately resulted in a consensus-based agreement. Reflecting on the successes and failures in the negotiation process along the way to reaching a final agreement, the authors stressed the importance of meaningful dialogue and collaboration to implement positive policy changes.

Morton, Gunton & Day (2012) focused on increasing indigenous participation in the land use planning for British Columbia's Morice plan area consisting of 1.5 million hectares. Their research also focused on balancing this increased indigenous participation with an increase in the protection of interests in the nonindigenous groups that did not have a seat at the final negotiating table. Such an increase in the protection of those interests could address other findings related to a lack of respect and understanding of the role indigenous governments had at the negotiating table.

Consistent with Collaborative Planning Theory's emphasis on negotiated agreements, researchers also discussed the evolution of a two-tiered approach to negotiating agreements between state-based and indigenous governments in order to increase indigenous participation in state-based planning initiatives (Cullen et al., 2010; Morton, Gunton, & Day, 2012). Cullen, et al. conducted a case study that included a survey of participants aimed at evaluating the process of the negotiations and the outcomes of those negotiations. The negotiations consisted of a two-tiered approach where the first tier involved all stakeholders and indigenous groups meeting to send recommendations to a second group. This second group consisted of the indigenous groups and the state-based governments. Their study concluded that the two-tiered approach to collaborative planning with indigenous communities was the only successful means of engaging greater participation of indigenous people in that state-based planning system. On the other hand, Morton, Gunton & Day (2012) found a need for improvement in the two-tiered approach because the approach still resulted in disproportionate

representation of indigenous governments and state-based governments in the negotiating process, as well as an overall lack of understanding of the role the indigenous groups were expected to have during the process.

Hausam (2013) conducted a case study of a state-based regional water planning process in northern New Mexico involving a region with two counties, three cities, and four tribes located within its boundaries. The tribes in the region expressed concerns that despite being invited to participate in the planning process, the planning process and the final planning documents did not adequately reflect their perspectives, their jurisdictional authority, or their water rights. The tribes ultimately decided to participate mostly as observers, taking the invitation as an opportunity to educate nontribal members of these issues.

Based on the regional water planning case study, Hausam (2013) pointed out a variety of concerns with tribal participation in state-based planning processes. Primarily, state-based planning organizers often think of tribes as a stakeholder only as an afterthought. Additionally, the planning process meetings likely take place far away from the tribal community and allow only brief comment periods. This environment may not be a coincidence. Hausam explained: “As tribes reacquire lost lands, non-Natives fear losing tax revenue, legal authority over the land, natural resources, and public access, and, in some cases, also becoming subject to additional regulations set by tribal governments” (p. 172). According to Hausam, tribes may be hesitant to participate in these planning processes

Oeser (2010) took a more cautious approach and flatly advocated against tribal participation in any state-based government initiatives. Recognizing that tribal members fought for citizenship and voting rights at the federal and state government levels, he nonetheless suggested that participation erodes tribal sovereignty and has the potential for states to construe such participation as consent for the state to impose its laws against tribes and tribal members. He stated: “If tribal citizens reside on the reservation when they participate--i.e., if they are reservation citizens--they invite state government onto the reservation, validating existing assertions of nontribal authority there and inviting future assertions” (p. 834). What follows then is a potential between state and tribal laws which courts may resolve in a manner unfavorable to tribes. In the planning context, tribal participation in state-based planning initiatives could result in a loss of authority to have a meaningful voice in shaping the landscape of their reservations.

### **Indigenous Planning Outside of State Planning**

In Canada and the United States, researchers conducted studies of tribal planning initiatives outside the state-based planning processes (e.g., McCarthy et al., 2012). A common theme among this research was frustration on the part of indigenous governments at their inability to influence state-based planning initiatives. As a result, some indigenous governments gave up on collaborative initiatives and engaged in planning efforts on their own.

Booth and Muir (2011) pointed to the understudied nature of land use planning in indigenous communities as a rationale to advocate for indigenous planning by indigenous

people instead of indigenous people participating in state-based planning systems.

Focusing mostly on a literature review of indigenous land use planning in Canada, they argued that the only way to address the unfair treatment of indigenous people in state-based planning systems and to secure protection of their natural and cultural resources is to take control of planning. Failure to adequately consider the interests of indigenous people in planning has resulted in measurable losses of culture, identity, health, self-determination, knowledge, and economic stability.

Booth and Muir's (2011) study evaluated several indigenous land use plans. They recognized the importance of these plans as they relate to reclaiming control of the indigenous peoples' future. They concluded that while the plans were well articulated and contained essential components of culture and history, the plans used techniques based on nonindigenous philosophies, tenets and applications. These techniques could not adequately capture complex cultural and social values. A likely rationale for this is a lack of guidance or available alternative approaches for the indigenous people to use. More research on indigenous land use planning may help to provide better guidance in the future.

McCarthy et al. (2012) conducted a study of a remote indigenous community in Ontario. Their study focused on indigenous concerns with state-based planning initiatives, primarily a lack of state recognition of indigenous rights and jurisdiction, insufficient consultation, and a refusal to consider sharing authority to develop and approve final land use plans. The authors concluded that indigenous people must develop

internal capacity and internal collaboration to develop their own land use plans outside the state planning process in order to reclaim the ability to make land use decisions within their community.

In the United States, researchers conducted studies aimed at promoting indigenous control over planning initiatives on one particular indigenous community, the Confederated Tribes of Warm Springs Indian Reservation in Oregon (Hibbard & Lane, 1997; Lane & Hibbard, 2005; and Hibbard, 2006). This reservation, unlike other Indian reservations subject to allotment, remained isolated from nontribal influences and land speculators. Because the Warm Springs Reservation was not subject to allotment, the Confederated Tribes were able to retain ownership of the land on the Reservation. As a result, the Tribe was able to control development of the reservation without significant push-back from nontribal governments. Instead of focusing on potential land use conflicts, the authors who studied this reservation focused on ways for tribes to plan and manage their land bases in order to enhance their sovereignty and respect traditional community values.

Other researchers provided general guidance for tribes in their efforts to regain control of land use on their reservations (Zaferatos, 1998; Zaferatos, 2004a; Applegate, 2013). According to Zaferatos, the first step in regaining control is to recognize the political and legal history of tribes and consider the shifting political climate of the federal government (1998, 2004a). Local land use laws and regulations operating within a tribe's reservation can frustrate a tribe's ability to determine the essential character of the

reservation (2004a). Reclaiming jurisdiction that states and the federal government stripped away over the generations can assist tribes in regaining control of planning the reservation landscape. Overcoming these obstacles requires tribal capacity to exert political pressure at the state and federal level, including possible negotiation or litigation strategies. He described four potential outcomes of tribal intervention in the planning process: (a) confrontation and further conflict, (b) conflict avoidance, (c) recognition of tribal authority, and 4) shared planning authority between tribes and local governments (1998).

Applegate (2013) took a different approach to encourage tribal planning initiatives. Applegate looked to a United States Supreme Court case, *Montana v. United States*, 450 U.S. 544 (1981), as a source for tribal authority over nonmembers residing on tribal reservations. In *Montana*, the Court held that, absent Congressional authorization, a tribe may only exercise jurisdiction over nonmembers on nonmember land if: (a) they consent to the jurisdiction or, (b) if their conduct threatens the health, safety, or welfare of the tribe or tribal members. After a subsequent decision in *Brendale v. Yakima Nation*, 429 U.S. 408 (1989) finding that tribes cannot zone nonmember land if the tribe lost ownership of a significant amount of land on the reservation, Applegate recognized that courts are unlikely to uphold tribal authority based upon the second exception recognized in the *Montana* decision. Her solution then is to encourage tribes to obtain written consent from nonmembers to be bound by the tribe's zoning and land use authority.

While such consent would assist in gaining cooperation from nonmember reservation residents, the tribe would still be left with potential conflicts with local governments.

### **State and Tribal Cooperative Land Use Planning**

Some authors called for increased cooperative relationships between indigenous governments in Canada (Walker & Belanger, 2013) and the literature reveals two examples where this has taken place in Australia (Lane, 2001) and the United States (Zaferatos, 1998; Zaferatos, 2004a; Zaferatos, 2004b). In each instance where cooperative relationships have taken place, indigenous governments and state-based governments formed cooperative relationships for the management of a shared area.

Procter & Chaulk (2013) examined current efforts to implement the Labrador Inuit Land Claims Agreement, an agreement reached thirty years ago between Inuit and Canadian governments. The settlement called for shared governance over the region of Nunatsiavut, a 72,520 square kilometer area in northern Labrador, Canada. The authors explain that the quality of the final plan depends on the extent to which it incorporates Inuit goals and perspectives. However, due to the pressure to come to an agreement on a final plan, the authors expressed doubt that the land use plan would be comprehensive.

Lane (2001) explored an example in Australia where an indigenous group and state government worked together to co-manage Kakadu National Park, a natural area. He explained that this cooperative relationship served to share the burden of responsibility in managing and protecting the natural area. Relying on an analysis with rational planning as a framework, Lane's research contained components of Communicative Planning

Theory. Having both indigenous and state-based planners at the table to discuss management of the protected area can reduce barriers to use of the area and offer ecological knowledge from both indigenous and nonindigenous perspectives (see Lane & Hibbard, 2005).

In the United States, Zaferatos described the experiences on the Swinomish Reservation with cooperative land use planning (1998; 2004a; 2004b). The Swinomish Reservation is home to the Swinomish Tribe and Skagit County, Washington, the county government that shares its boundaries with the Swinomish Tribe. The Swinomish Tribe and Skagit County were able to enter into intergovernmental agreements and develop joint plans for development on the Reservation.

Building on this experience, Zaferatos also relied on a previous survey of tribes and county governments throughout Washington State focusing on obstacles to improved coordination (2004b). He found barriers in the differences between tribal and local government approaches to planning, differences in their cultures, and differences in jurisdictional authority. Zaferatos explained:

One of the most perplexing problems facing regional cooperation in Washington State lies in the relationship between local governments, which derive their authority from the State, and Native American tribal nations, whose authority emerges from their own inherent sovereignty and are therefore not subject to state planning laws” (p. 81).

Zaferatos analyzed the Swinomish experience in light of these obstacles as they relate to the different outcomes that Swinomish and Skagit County could have faced: litigation, County acquiescence, or cooperation (2004b). For the Swinomish and Skagit County, cooperation prevailed and they were able to develop a series of intergovernmental agreements and joint land use plans. Zaferatos concluded that this approach required the tribe and county to not focus on jurisdiction and to instead focus on issues that most mattered to the community as a whole.

### **Summary and Conclusions**

Based on the literature dedicated to land use planning in indigenous communities, three key themes emerge. First, indigenous governments in New Zealand, Australia, Canada, and the United States express a concern with the state-based governments' failure to adequately acknowledge their rights as legitimate governmental entities with authority to control land use decisions within their territories. While state-based governments attempt to find ways to increase indigenous participation in state-based planning systems, and while new methods are emerging to increase collaborative planning initiatives, the state-based governments still control the process and outcome of the planning initiatives. Second, some indigenous governments have given up on attempts to participate in state-based planning initiatives and have embarked on efforts to develop their own plans independent of state or local governments. Third, only a few indigenous governments have been able to develop cooperative arrangements with the state-based governments to jointly manage and govern land use within a shared space.

The review of the literature also revealed vast differences between approaches of indigenous governments. Combined with the recognition that this is an understudied phenomenon, literature dedicated to studies of planning for indigenous communities primarily relies on instrumental case studies with in-depth analyses of the history of the particular areas, the status of intergovernmental relations, and the outcomes of the various planning efforts.

Of the literature identified, Zaferatos' (1998; 2004a; 2004b) research of the Swinomish experience proves to be the most relevant to the study at hand. First, it involves an Indian reservation in the United States. Second, nonmembers own title to land on the reservation. Third, state-based governments exercise certain levels of jurisdiction on the reservation. This study built off Zaferatos' work by adding to the knowledge base of planning on Indian reservations similar to the Swinomish Reservation. It examined the current and historical situation on the Oneida Reservation, a reservation that, unlike the Swinomish Reservation, shares its boundaries with seven different local governments. It also approached the problem from a community perspective, and not with an end goal of increasing tribal sovereignty. The end goal is ultimately to foster increased cooperation and coordination, not to empower one government over another. The following chapter describes the research methods used to carry out this study.

## Chapter 3: Research Method

### **Introduction**

Tribes and local governments may exercise land use authority over different parcels of land within the same geographic space (Zaferatos, 1998). The purpose of this study is to gain a better understanding of the history of land use planning and current land use decision-making processes on Indian reservations, using the Oneida Reservation as an instrumental qualitative case study. This case study primarily relied on official government records, such as comprehensive plans, intergovernmental agreements, litigation related to land use disputes, historical land ownership data, subdivision maps, and tribal and local government zoning laws. I obtained these documents from all eight governments that exercise some level of land use authority on the Oneida Reservation. This case study also relied on interviews with representatives from tribal and local governments to supplement the official government records I collected.

I conducted this research within my workplace setting. This had the potential to introduce bias because I serve the Oneida Tribe as an attorney negotiating intergovernmental agreements and engaging in land use litigation with one of the local governments. I addressed this potential bias through a variety of measures, including early disclosure, carefully crafted interview questions, and maintaining anonymity of the participants. I then presented the data in a straightforward and neutral manner, allowing the data to speak for itself.

### **Research Questions**

RQ: What are the common themes in land use planning and development relationships between tribal and local governments?

SQ1: How do tribal and local comprehensive plans address cooperative land use planning?

SQ2: How do intergovernmental agreements address cooperative land use planning?

SQ3: What are the common themes in land use disputes?

SQ4: What factors might lead to cooperative or uncooperative relationships as it relates to land use planning and development?

### **Study Design**

Researchers conducting studies of land use planning on Indian reservations generally employ qualitative case studies (e.g., Saarikoski, Raitio, & Barry, 2013). The primary reason for using such a methodology relates to the understudied nature of this phenomenon (Creswell, 2007). An additional rationale for using a case study is that the unique political and legal history of each Indian reservation calls for a close examination of that history and its impact on current land use planning practices (Hausam, 2013; Zaferatos, 1998). CPT also pushes researchers to examine the social and historical roots of planning practices within a particular community in order to gain a better understanding of current practices and find solutions to improve those planning practices (Friedman, 2008; Stein & Harper, 2012). While Yin (2009) distinguishes between case

studies and historical studies, he acknowledged that there might be instances where the two methods might coexist and the historical research and contemporary inquiry overlap. In addition, the flexible nature of qualitative research allowed me to tailor my data collection and analysis methods as I progressed through the research process (Creswell, 2007).

The Oneida Reservation served as a suitable case study for two primary reasons. First, the Tribe, tribal members, and nonmembers own noncontiguous parcels of land on the Reservation. This checkerboard pattern of ownership can cause difficulties in the development and implementation of comprehensive planning for the community as a whole (Zaferatos, 1998). Zaferatos (1998, 2004a, 2004b) studied a similar situation when Zaferatos examined a successful example of cooperative land use planning on an Indian reservation using the Swinomish Reservation as a case study. The Swinomish Tribe, tribal members, and nonmembers owned noncontiguous parcels of land on the Swinomish Reservation.

Second, the relatively large number of governments exercising some level of land use authority within the Oneida Reservation boundaries could present a new set of considerations when compared to Zaferatos' (1998, 2004a, 2004b) research of the Swinomish Reservation. Eight different governments exercise some level of land use authority within the boundaries of the Oneida Reservation: one tribal government (the Oneida Tribe) and seven local governments (Town of Oneida, Town of Pittsfield, Village of Hobart, Village of Ashwaubenon, City of Green Bay, Outagamie County and Brown

County). These local governments serve as state-based local governments. The Swinomish Tribe shared the Swinomish Reservation with only one county government. Using the Oneida Reservation with the one tribal government and seven local governments as a case study may help reveal additional factors for tribes and local governments to consider when pursuing land use planning within the same shared space.

Prior to deciding to conduct a case study, I considered conducting an ethnographic study. Such an approach would have guided my research to include any racial and ethnic differences between tribal members and nonmembers as it relates to planning practices (e.g., Hausam, 2013). Such differences might assist in explaining attitudes about land use planning and identifying any unique cultural relationships tribal members might have with the land when compared to nonmembers. This approach would also have aligned with critical planning theory's emphasis on considering ethnic or racial differences that might lead to social inequities (Friedman, 2008). However, while the research may reveal past or present racial and social inequalities, I do not want those issues to be the central focus of this research. I also do not want others to view this research in a way that would help justify either tribal or local government control of land use planning. For example, focusing on a cultural connection to the land may lead others to use this research to argue for exclusive tribal control over land use planning and development. As an additional example, others could use this research to argue for restoring exclusive tribal control as reparation for any past racial injustices tribal

members faced. Instead, I want to focus on the intergovernmental relationships between the Oneida Tribe and the seven local governments that govern on the Oneida Reservation.

### **Researcher's Role**

For this research, I served as an observer-participant. I gathered my data from two primary sources: (a) official government records, and (b) interviews. My role as an attorney for the Oneida Tribe has provided me opportunities to familiarize myself with tribal and local government historical data. I know where to obtain the data and how to ensure I have proper permission to use the data I collect.

For the interview portion of my data collection, I conducted the interview myself. I conducted this research within my work environment. As a result, I had a professional relationship with many of the participants due to my role as an attorney for the Oneida Tribe. Any relationships I had were those of a colleague and not as a supervisor or as anyone with authority over the participants. While I do serve the Oneida Tribe as an attorney, I do not exert power over my colleagues.

An additional consideration in this research is the potential for researcher bias. As an enrolled member of the Oneida Tribe and an attorney for the Tribe, tribal and local governments may initially perceive my role as one that exclusively advocates for tribal sovereignty. This would have the potential to insert substantial bias, especially given the topic of this research involves cooperative land use. However, my role as an attorney does not exclusively focus on advancing tribal sovereignty. My role includes negotiating agreements with local governments to find ways to cooperatively serve the community as

a whole. Also, while I have been involved in land use litigation with one of the local governments, I have also tried to find ways to encourage cooperation as an alternative. In order to address this potential bias in the interview portion of the research, I clearly identified the intent of this research and explained how participation has the potential to help the Tribe and local governments gain a better understanding of our current planning practices.

## **Methodology**

### **Official Government Records**

Unlike typical case studies, documents from the Tribe and local governments served as a primary source of data for this research and help to triangulate the data (Yin, 2009). To keep the standard terminology consistent, I refer to these government documents as official government records.

Due to the relatively small and finite number of governments located on the Oneida Reservation, contacting and obtaining documentation from all eight governments was a manageable task (Patton, 2002). This data included tribal and local government comprehensive plans, intergovernmental agreements, litigation related to land use disputes, historical land ownership data, subdivision maps, and zoning laws. Barry and Porter (2011) explained the importance of reviewing these types of documents in order to understand tensions and conflicts in planning in indigenous communities. They explained that written documents define the parameters in which conflicts arise in indigenous communities.

Collection and analysis of the official government records helped address the first three research subquestions aimed at finding common themes in comprehensive planning, intergovernmental agreements, and land use disputes. The interview data, combined with the data from the official government records helped answer the main research question: What are the common themes in land use planning and development relationships between tribal and local governments?

I relied on public government documents for my data. To obtain these documents, I contacted each of the tribal and local governments. Obtaining these documents from official government sources helped ensure that I am obtaining legitimate documents (Patton, 2002). I did not rely on information from unofficial sources. The primary government source was tribal and local government websites. For those documents I could not readily obtain from government websites, I made contact with tribal and local government staff to obtain the documents to ensure I am including official and legitimate documents.

### **Interviews**

Interviews served as a supplemental source for data for this research. I conducted the interviews after I gathered the government documents. The interview data helped fill in any gaps in the official government records. I do not anticipate having missing government records. Instead, I want to allow individuals from the Tribe and local governments the opportunity to provide their perspectives that may not be reflected in the official record.

**Participants.** The Oneida Tribe and seven local governments occupy various and overlapping portions of the Oneida Reservation. I chose participants from the Oneida Tribe and from the local governments. The participants of this study consisted of elected officials, planners, and staff involved in government relations. Involving participants from each of these three categories ensured I gathered both political and practical viewpoints on planning practices and potential for increased cooperation. To determine which individuals best fit these categories, I visited the official government websites. These websites named the individuals that served in these capacities.

**Site.** For the comfort and convenience of the participants, I offered to conduct the interviews at either the participants' workplace or at a public place, such as a library or community center. I tape recorded the interviews. This allowed me to later transcribe and code the interviews. Considering I only interviewed individuals from the Tribe and local governments, I do not need to worry about making travel arrangements.

I considered collecting data at a different Indian reservation. However, my familiarity with the Oneida Reservation, the Oneida Tribe, and local governments allowed me to make efficient use of my time in being able to efficiently gather the data. In addition, this familiarity helped me understand the data I gathered. Due to the understudied nature of this phenomenon, I chose to begin my research in a familiar environment before attempting to conduct this research in an unfamiliar environment.

**Sampling.** My sample consisted of a single case, the Oneida Reservation. For the interview portion of my research, I sampled participants from the Oneida Tribe and from

all seven local governments located on the Reservation. To select the participants, I relied on stratified purposeful sampling (Patton, 2002). This method drew from a sample within a sample. I sampled people from among those governments exercising authority on the Reservation. To determine whom to sample, I purposefully selected participants from one of three categories: elected officials, planners, and staff involved in government relations from the Tribe and local governments. These three categories served as my three strata. I then sorted the samples into the stratum related to the participant's role.

This sampling strategy required that I assume each stratum was homogenous because each stratum consisted of a relatively homogenous sample (Patton, 2002). With this assumption, I compared the results within each stratum to determine whether any themes emerge either within or among the strata.

To determine how many people to include in the sample, I chose one person from each of the strata. There were eight governments and three strata. This method initially yielded a total of 24 potential participants. However, due to vacant or nonexistent positions within some of the governments, 5 local governments did not have a government relations staff and one local government did not have a planner on staff. This left a participant pool of 18 individuals. Table 2 depicts the individuals I invited as initial interview participants.

I also planned to rely on snowball or chain sampling to identify additional people to include in the sample (Patton, 2002). However, after an initial round of interviews, I determined that I reached saturation of the information because the participants'

responses became repetitive. Keeping an initial sample size of 18 was relatively small and enabled me to plan and budget for the time required to conduct the interviews and analyze the data while still undertaking an in-depth, case-oriented analysis (Onwuegbuzie & Leech, 2007).

Table 2

*Invitations to Participate in Interviews*

Government	Elected officials	planners	gov. relations
Oneida Tribe	1	1	1
Town of Oneida	1	-	-
Town of Pittsfield	1	1	-
Village of Ashwaubenon	1	1	1
Village of Hobart	1	1	1
City of Green Bay	1	1	-
Outagamie County	1	1	-
Brown County	1	1	-

**Protocol.** The interview protocol can help boost credibility and dependability of a qualitative study (Yin, 2014; Patton, 2002; Creswell, 2007). For this study, I provided the interview questions and the interview protocol along with the invitation to participate in the study. This allowed the participants to understand the purpose of the study and the parameters of the research in order to make an educated decision about whether to participate.

The interview protocol also provided the following additional key pieces of information about the study: (a) I conducted this research in my capacity as a student and not as an attorney working for the Tribe, (b) the participant responses to the interview questions will remain anonymous, (c) the participants can stop the interview at any time,

(d) the participants can invite others to the interview, and (e) the participants can choose to submit written responses to the questions as an alternative to participating in an interview. This protocol aims to make the participants comfortable with the interview process. At the end of the interviews, I debriefed the participants to ensure they remained fully informed about their participation in the interview process. I allowed the participants to ask any questions about the research, their role in the research, or any aspect of their participation. I also allowed the participants to express any additional thoughts about the research or the interview process and asked permission to contact them if I determined I needed to ask follow up questions.

**Data collection procedures.** The interviews were semi-structured with a set of pre-determined interview questions delivered to the participants prior to the interview. The interview questions are contained in Appendix A. I occasionally asked related, follow-up questions during the interviews. Based on the research involving planning in indigenous communities, I tailored the interview questions to help provide insight into the last research sub-question: What factors might lead to cooperative or uncooperative relationships as it relates to land use planning and development? I asked questions related to their perceptions of cooperative land use planning and decision making processes within their own government and within their neighboring governments. The interview data supplemented the official government records and assisted in providing insight into the other research sub-questions.

I conducted the interviews myself and audio-recorded the interview discussions. I used high-quality recording equipment to increase the reliability of the data collection procedures (Creswell, 2007). I then transcribed the interview discussions for later analysis. I considered video recording the interviews, but determined that only obtaining an audio recording would make the participants feel more comfortable. I anticipated each interview would take approximately one half-hour, but allowed more time if the participants wanted to share more information.

### **Data Analysis**

After I gathered all the data, I created a list of codes and began to code the data (Miles & Huberman, 1994). As I coded the data, if I came across data that did not fit the current codes, I created new codes to account for that data. I analyzed each type of data independently and then together to see if common themes emerged within each data set and within the data sets combined.

To help organize and manage the government documents and interview data I collect, I initially relied on NVivo Mac Beta, a beta version of qualitative research software originally designed for a PC. However, after coding my first data set in NVivo, I realized the features I wanted to use to display my data were not available in the beta version. I then transferred my coding into Microsoft Excel for later data analysis.

I also examined the interview and government document data to see if there were any outlying or extreme cases. While I did not find any extreme data, I did find some comments made by only a couple of participants. I then decided how and whether that

information fit within the preliminary themes that arose from the data. That data required special attention and provided insight into potential sources of conflict or cooperation between or among the governments.

### **Issues of Trustworthiness**

To ensure credibility and internal validity, I triangulated the data I found in the government documents with the interview data (Creswell, 2007). This measure helped ensure that I provided an accurate description of the viewpoints and perspectives of those in tribal and local governments, and especially of the interview participants.

To ensure transferability and external validity, I chose interview participants from three different roles in tribal and local governments. I also chose participants from all eight governments located on the Oneida Reservation. This ensured a variation in participant selection. I also used rich, thick descriptions of the data collection and analysis process (Patton, 2002). Using these processes helped assure the results of my research could serve as an accurate representation of the viewpoints of those seated in tribal and local governments.

To ensure dependability, I kept a clear record of my research process (Creswell, 2007). This includes a record of when and where I located my sources, how I contacted the participants, and when and where I conducted the interviews. I also kept electronic files of the government documents I found and the audio recordings of the interviews. I periodically backed the files up to a secure off site server. Providing this audit trail ensured that future researchers can replicate this study (Patton, 2002).

To ensure confirmability, I allowed the data to speak for itself as much as possible (Patton, 2002). However, due to the subjective nature of qualitative research and perceptions of land use decision making processes, the introduction of the interview component helped provide further context and a deeper understanding of the phenomenon being studied. This triangulation of data helped ensure that I drew the correct conclusions from the data I gathered.

### **Ethical Procedures**

Before gathering the data for this study, I obtained formal approval from Walden University's Institutional Review Board (IRB Approval 03-26-14-0333236) to ensure: (a) I met all appropriate ethical standards when I collected data for this study, and (b) the benefits of this research outweighed any potential risks to participants. In addition, I obtained formal, written permission from the Tribe to use public documents that I obtained in my capacity as a tribal employee. I did not use any confidential documents in this study. I also obtained a letter of support from the Tribe because American Indian people and tribes are considered vulnerable populations. I gained access to participants through written invitations to participate in one-on-one interviews. These invitations included the interview protocol, the interview questions I intended to ask, and an informed consent form for those individuals willing to participate in the study. I stored the interview data on my password-protected personal computer and backed it up to a secure off-site server. Only I had access to the interview data.

Operating under the assumption that tribal and local governments were interested in exploring ways to increase cooperative land use planning, I did not anticipate any ethical concerns related to recruitment of participants or participants refusing to participate in the study. If individuals did not want to participate in the study, I could have asked other individuals working in similar capacities to participate. In addition, because the interview data was predominately aimed at providing insight into the last research sub-question, and public government documents assisted in providing answers for the other three research sub-questions, this study could have still produced meaningful results and insight into land use planning practices and decision making processes on the Oneida Reservation without any interview data. If I was unable to recruit any participants, I could have still conducted this study and provided answers to all four research sub-questions and base the analysis of those sub-questions on the official government records I collected.

Two other ethical considerations warrant attention in this research. First, I faced a similar issue other researchers faced when interviewing tribal and local government officials facing land use conflicts. Other researchers needed to consider whether the interview process would further polarize the governments in their existing conflicts or serve as a step toward improved dialogue (Sandercock & Attili, 2013). I addressed this concern by carefully crafting research questions to prompt participants to provide in-depth responses describing these relationships, while ensuring that the questions did not intentionally provoke a negative response that would further polarize the governments.

A second ethical consideration that I faced involved my role as an attorney for the Tribe and my status as an enrolled member of the Tribe. These roles have the potential for other researchers to question my bias toward the Tribe when considering its relationships with local governments (Creswell, 2007; Patton, 2004). In my role as an attorney for the Tribe, I negotiate intergovernmental agreements with local governments and I litigate matters with local governments as opposing parties. Often, these agreements and litigation deal with land use issues. To address this potential bias, I presented the data I gathered in as fair and objective manner as possible, providing well-defined links between the data and my findings. I also disclosed this potential bias to the interview participants and allowed them to make an educated decision about whether to participate in the study.

### **Summary**

This study examined the history of planning practices and current land use decision-making processes using the Oneida Reservation as an instrumental qualitative case study. In order to gain this understanding, this research primarily relied on official government records from each of the eight governments exercising land use authority on the Oneida Reservation. To supplement these records, I conducted interviews of elected officials, planners, and government relations staff from each of the eight governments. An early recognition of my potential bias as an attorney for the Oneida Tribe and well planned out interview protocol encouraged participation from the tribal and local government representatives. The official government records supplemented by the

interview data helped provide an understanding of historical and current land use decision-making processes on the Oneida Reservation and factors that lead to cooperative versus uncooperative relationships. The following chapter describes the results of this study.

## Chapter 4: Results

### **Introduction**

Planning on Indian reservations poses unique challenges due to the overlapping layers of tribal and local government jurisdiction and the checkerboard patterns of land ownership (Zaferatos, 1998; Jarding, 2004). Critical planning theory can lead to more inclusive, cooperative land use planning through a critical examination of the social and historical roots of planning within a given community (Matthews, 2013; Sager, 2013). This study used critical planning theory to gain a better understanding of the social and historical roots of planning on the Oneida Reservation in Wisconsin. This chapter describes the setting and demographics of the study, and describes the collection, coding and analysis of the data in the study. The data collected and analyzed helped answer the study's research questions:

RQ: What are the common themes in land use planning and development relationships between tribal and local governments?

SQ1: How do tribal and local comprehensive plans address cooperative land use planning?

SQ2: How do intergovernmental agreements address cooperative land use planning?

SQ3: What are the common themes in land use disputes?

SQ4: What factors might lead to cooperative or uncooperative relationships as it relates to land use planning and development?

### **Setting**

During the data collection stage of the study, I noticed two aspects of the setting that could impact the results. First, five of the local governments either had vacant positions for government relations staff or these positions did not exist within their government structure. Also, one of the local government's did not have a planner on staff. This dropped the participant pool from 24 to 18 individuals. Second, the Tribe was involved in two pending land use lawsuits, each with one of the local governments. Of these local governments, one did not have any officials participate in the study, and the other government had one individual participate in the study. The one participating individual could have been hesitant to openly discuss important land use concerns given the pending litigation. Given that the other local government did not have any participating officials, the interview data does not contain any responses from that government, similarly leaving out potentially important land use concerns.

Prior literature on similar land use issues in indigenous communities explains that in order to understand these indigenous and state-based government relationships, researchers should look to the written text for guidance (Barry & Porter, 2011; Hausam, 2013). Written texts can include comprehensive plans, lawsuits, and intergovernmental agreements. Because this study primarily relied on those types of written texts, the limited participation in the interview pool did not adversely impact the results. Rather, the interview data helped triangulate and confirm the themes that emerged from those written texts.

## Demographics

The Oneida Reservation has a complex history (see Chapter 1 for a fuller discussion). The Reservation was established in 1838 with the United States holding title to all the land on the Reservation in trust for the Oneida Tribe (Treaty with the Oneida, 1838). Through various acts of Congress, the Tribe lost title to the vast majority of this land but then began efforts to reacquire that land (Locklear, 1988). This history of land loss and reacquisition left a checkerboard pattern of ownership. Through various acts of the State of Wisconsin and surrounding local governments, including the establishment of towns on the Reservation and annexation, the Reservation now hosts seven local governments (see, e.g., Wisconsin Attorney General Opinion, 1987). Prior research revealed that this checkerboard pattern of ownership combined with various governments exercising varying degrees of land use authority could cause conflicts in land use planning (Zaferatos, 1998). This study confirmed that land use conflicts arose on the Oneida Reservation under similar circumstances.

In addition to obtaining official government records, I conducted interviews of elected officials, planners, and government relations staff from the Tribe and the seven local governments on the Oneida Reservation. As discussed below, half of the individuals invited to participate in this study chose to participate in an in-person interview. The data I gathered from these interviews helped confirm and triangulate the data I obtained from the official government records.

### **Data Collection**

In order to address the research questions, I obtained data from a variety of sources. The various data types and amount of the data along with what research questions this data helped answer are described in Table 3.

Table 3

*Summary of Data Sources, Data gathered, and Research Questions Addressed*

Data Source	Data Gathered	Research Question
Comprehensive Plans	8 plans	SQ1; SQ4
Intergovernmental Agreements	41 agreements	SQ2; SQ4
Land Use Litigation	15 decisions	SQ3; SQ4
Zoning Laws	7 laws	SQ4
Ownership History	2 spreadsheets	SQ4
	11 resolutions	
Subdivision Maps	228 subdivision maps	SQ4
Interviews	9 interviews	SQ4

#### **Comprehensive Plans and Zoning Laws**

The comprehensive plans and zoning laws were all on the government websites in a word searchable format. I downloaded all the comprehensive plans from the eight governments to my personal computer. From seven of the governments' official websites, I downloaded electronic, word searchable versions of a total of thirteen laws concerning zoning, planning, and subdividing property. I downloaded these laws to my personal computer. One government, the Town of Oneida, is an unincorporated town. As a result, Outagamie County zoning laws apply within the Town's boundaries (Wis. Stat.

§59.69(5)). While the Town of Pittsfield is also a town government, it incorporated as a township and adopted village powers, which allowed it to adopt its own general zoning laws (Wis. Stat. § 60.62; see also University of Wisconsin-Stevens Point, 2007).

### **Land Use Litigation**

I used Westlaw and general Boolean searches with Google to conduct searches of past land use litigation using the following search terms: *Indian, reservation, Oneida, Oneida Tribe, and Oneida Nation*. To narrow searches that produced many results, I limited the search results by looking for those that included the following terms: *jurisdiction, land, and land use*. I did not download cases where the focus of the issue was not related to land use or cooperative land use planning, such as cases exclusively dealing with Indian gaming or taxation.

In the searches in Westlaw, I also found opinions of the Wisconsin Attorney General related to land use and cooperative land use planning. While these opinions are not, by definition, litigation, I chose to include them as data because they represent issues and conflicts that tribal and local governments faced with respect to land use and cooperative land use planning. The key difference between these opinions and litigation is that one or more governments approached the Wisconsin Attorney General to resolve an issue or conflict instead of approaching a court to resolve the issue or conflict.

I included only litigation between the Oneida Tribe and other governmental units. I could have included litigation involving other units of local government that did not involve the Tribe. However, because the purpose of this research is to gain a better

understanding of the social and historical roots of planning on an Indian reservation, and because the main difference with potential difficulties with planning on an Indian reservation compared to other communities pertains to the inclusion of a tribal government and its jurisdiction and land ownership, this research assumes that analyzing litigation without the Tribe as a party may not shed light onto the unique issues faced on an Indian reservation. The focus of this study is not on the Tribe; rather, it is on issues where the Tribe is a party.

The litigation search produced a data set consisting of fifteen documents including: six federal court cases, three state court cases, three administrative appeals, and three Wisconsin Attorney General Opinions. For the purposes of this study, I will continue to refer to this data set as land use litigation. I downloaded the land use litigation to my personal computer.

### **Intergovernmental Agreements**

I began to gather the intergovernmental agreements by looking at recent litigation (*Oneida Tribe v. Hobart*, 2013). That litigation included a chart the Oneida Tribe prepared containing all the intergovernmental agreements it entered into with other government agencies. I took this chart and identified those agreements that pertained to land use. I also reviewed the Tribe's meeting minutes available on its government website to find recent intergovernmental agreements it entered into since the recent litigation to include any agreements entered into after the Tribe prepared the chart. I then obtained copies of these agreements from the Tribe pursuant to the Tribe's Letter of

Cooperation for this research. I reviewed the documents to ensure they related to land use matters. I also reviewed sections of the local governments' comprehensive plans related to intergovernmental cooperation. Some of the local governments listed out the intergovernmental agreements it had with neighboring governments. I cross checked these listings with the list I obtained from the Tribe to ensure I had an accurate accounting of the relevant intergovernmental agreements. I downloaded the intergovernmental agreements to my personal computer. The search produced a total of 41 documents.

### **Subdivision Maps**

I gathered subdivision maps from the Oneida Tribe, Brown County, and Outagamie County. The Tribe's Division of Land Management (DOLM), a tribal department responsible for managing land transactions, previously used their government subscription to the Outagamie County Recorder's Office, LandShark, and Brown County Register of Deeds Office, Laredo, to obtain electronic copies of subdivision maps for subdivisions located on the Oneida Reservation. DOLM keeps these records in their electronic filing system. DOLM provided me with 103 subdivision maps recorded with Brown and Outagamie County Register of Deeds. I input the names of the subdivisions into a Microsoft Excel spreadsheet along with the year the local government approved the map and the number of lots in the subdivision.

Recognizing that these subdivision maps did not constitute a comprehensive list of all subdivisions on the Oneida Reservation, I turned to Brown County and Outagamie

County Geographic Information Systems (GIS) websites to find the additional subdivisions, years, and number of lots. Three main pages within county websites proved valuable. First, the main GIS page contained an overlay of named subdivisions, but did not contain years or the boundary lines of the subdivisions, making it difficult to determine the number of lots in the subdivision. I used this page primarily to identify named subdivisions in Brown and Outagamie County. Second, I used the Survey Index & Tie Sheet viewer, another GIS page providing layers for recorded subdivisions, Certified Survey Maps, and Plats. I used this page to identify the boundaries of the subdivisions and the year the subdivision was created. However, this page did not always provide the year the local government approved the subdivision. This site provided document recording numbers of the subdivision maps with the County Register of Deeds. I recorded this information in the event I would need to retrieve a copy of the recorded subdivision map from the County Register of Deeds. Third, I used a page dedicated to searches of recorded subdivisions. This search requires the user to input the name of the subdivision, and produces both the document recording numbers and tax parcel identification numbers of the lots within the subdivisions. The tax parcel identification numbers were useful because the local government assigns each new parcel created with the recorded subdivision a unique, sequential tax parcel identification number. I used this information to determine how many lots were in each subdivision. There were a total of 225 recorded subdivisions and 5,370 subdivided lots.

After I input all the data from DOLM and the county websites, I sorted the Excel spreadsheet by the document recording number column. The counties record documents in sequential order. This sorting enabled me to fill in the years for those subdivisions missing the approval year data. For example, if a subdivision map approved in 2000 had the recording number of 1680221 and another map approved in 2000 had the recording number of 1775030, I determined that the map with the recording number of 1703749 was likely approved in 2000 as well. Using this technique, I was able to complete a Microsoft Excel spreadsheet containing the name of the recorded subdivision, the year the local government approved it, and the number of lots in the subdivision for all the recorded subdivisions in both Brown and Outagamie County.

In addition to the subdivisions recorded with the counties, the Tribe created some subdivisions on tribal trust land and did not record the maps with either county (see Chapter 1 for a discussion on tribal trust land). Instead, the Tribe recorded these subdivision maps with the Oneida Register of Deeds and with the Bureau of Indian Affairs Land Title Record's Office. I downloaded the subdivision maps to my personal computer. There were a total of 20 recorded subdivisions and 411 subdivided lots.

### **Historical Land Ownership**

The DOLM also provided information on the Tribe's history of land ownership. DOLM accessed their database to produce two Microsoft Excel spreadsheets. The first spreadsheet outlined the number of acres the Tribe acquired in trust since the federal government approved the Oneida Tribe's Constitution in 1937 pursuant to the Indian

Reorganization Act of 1934. The second spreadsheet outlined the number of acres the Tribe acquired in fee status in its own name since it began to acquire such land in 1980. I downloaded these spreadsheets to my personal computer.

I also reviewed prior actions of the Oneida Tribe regarding initiatives to repurchase land on the Oneida Reservation. Beginning in 1977 and continuing to 2010, the Tribe's governing body passed a total of eleven government resolutions expressing a commitment to repurchase all available land on the Oneida Reservation. I downloaded these tribal resolutions to my personal computer.

### **Interviews**

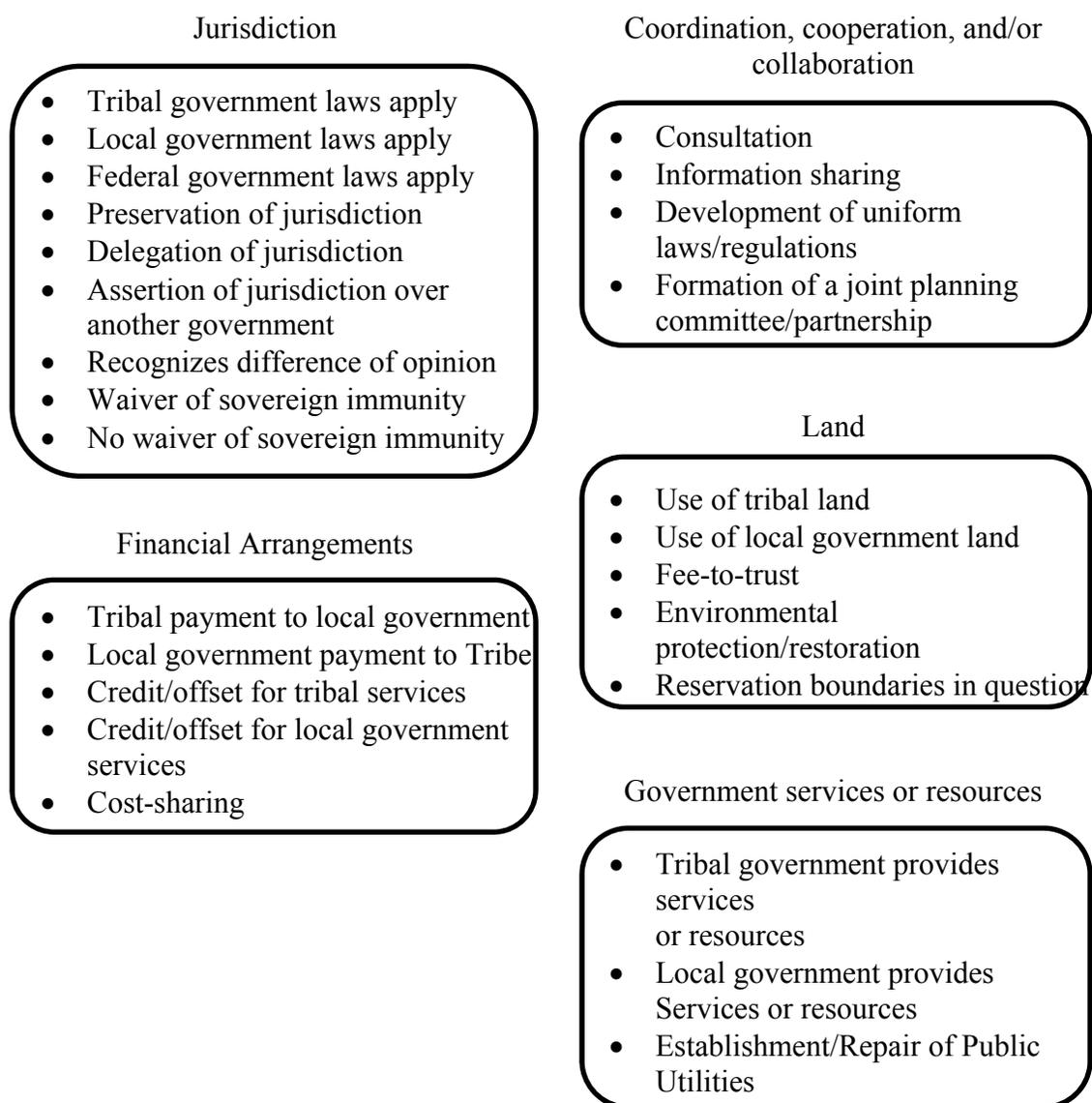
After I collected the above government data, I began inviting elected officials, planners, and government relations staff to either: (a) participate in an in-person interview, or (b) provide written answers to predetermined interview questions. I obtained their contact information from official government websites. Some governments did not have planner positions or government relations positions, and other governments had vacancies in these positions. I sent out a total of eighteen invitations to participate. I received responses from nine of those invited individuals, all of which elected to participate in an in-person interview. I scheduled and conducted in-person interviews with each of those individuals. The responding individuals represented a total of five of the eight governments located on the Oneida Reservation. In addition, the responding individuals consisted of four elected officials, three planners, and two government relations staff. Appendix A contains the interview questions.

## Data Analysis

### Development of a Coding Scheme

**Intergovernmental agreements and land use litigation.** I began coding the intergovernmental agreements because that data set produced the greatest number of documents and I expected that data set to reveal a variety of themes that could reoccur in other data sets. I first read through all the agreements and mentally noted some common themes related to cooperative land use planning that I began to recognize. As I read each agreement a second time, I wrote down these themes in a list format. After I completed reading through the agreement and writing down the themes, I created a new list and began combining similarly worded themes together, working my way through the first list. When I completed the new list, I went back and found common groupings of themes to create codes and subcodes (Yin, 2014). This new list became my initial coding scheme.

I then took the coding scheme and read the land use litigation. When it was time to begin developing the codes for that data set, I was expecting to add new codes to the coding scheme. However, I found that all but two of the themes in the land use litigation were already represented in the themes of the coding scheme. I added these two codes and finalized my coding scheme. I then drafted explanations of each of the codes to guide the coding process. Appendix B contains this final coding scheme for the intergovernmental agreements and land use litigation. Figure 3 also contains a visual depiction of how the codes nested within each other.



*Figure 3.* Coding scheme for intergovernmental agreements and land use litigation.

Five main themes emerged from developing the coding scheme. First, the documents addressed governmental authority to make decisions and be bound by legal proceedings. I labeled this code jurisdiction. Within this code, several subcodes emerged

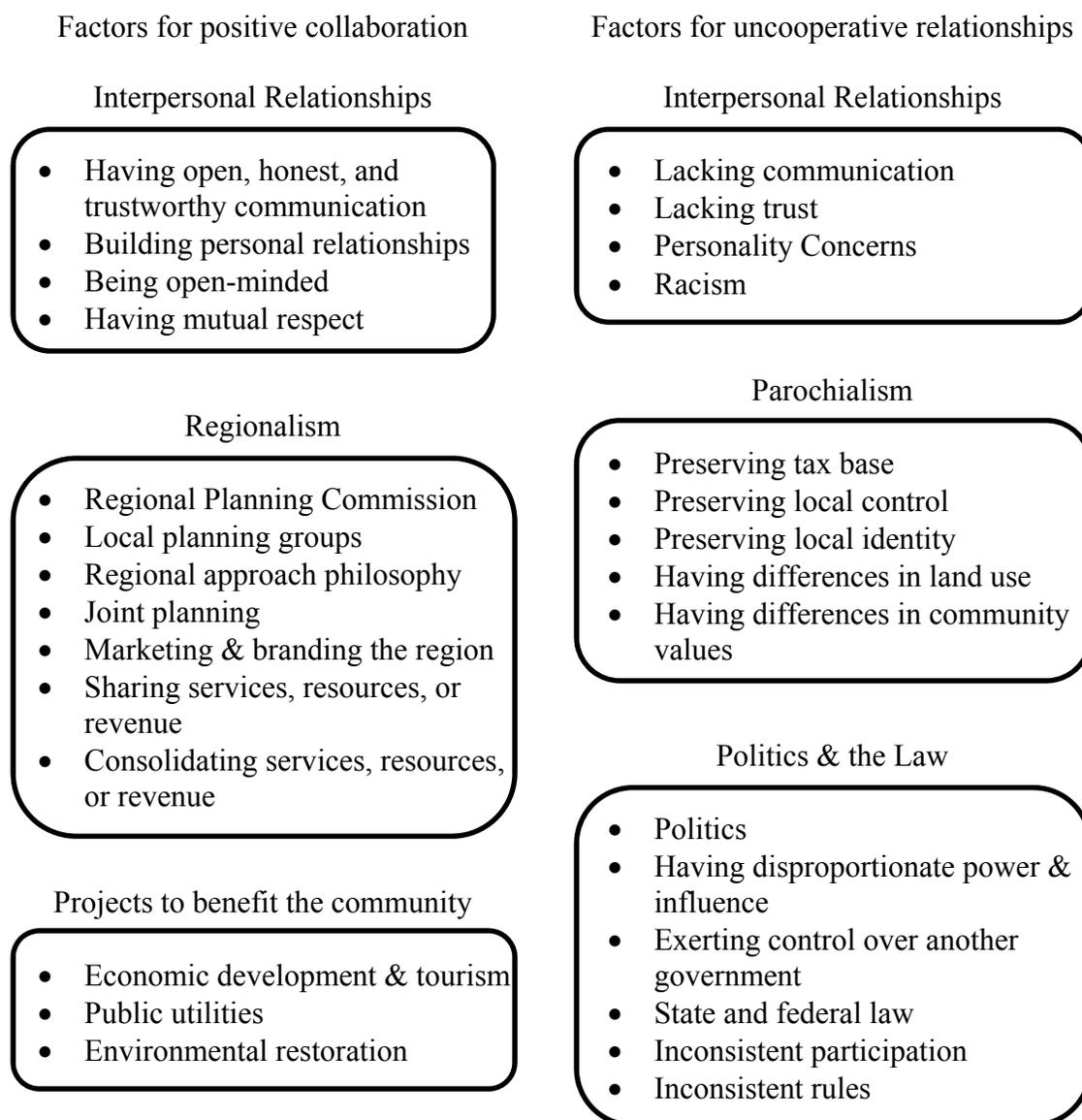
including reference to whose government laws applied, whether a government was preserving jurisdiction or delegating jurisdiction, an assertion of jurisdiction over another government, a recognition that the governments do not agree on who has jurisdiction, and whether the governments agreed to be subject to a lawsuit. Second, the documents addressed coordination, cooperation, and collaboration. Within this code, several subcodes emerged including consultation, information sharing, development of uniform laws or regulations, and the formation of joint planning committees or partnerships. Third, the documents addressed financial arrangements between governments. Within this code, several subcodes emerged including a payment to another government, a credit or offset for government services, and cost-sharing. Fourth, the documents addressed land issues. Within this code, several subcodes emerged including use of a government's land, the fee-to-trust process (see Chapter 1 for a discussion of fee-to-trust), environmental protection and restoration, and questions concerning the reservation boundaries. Fifth, the documents addressed government services and resources. Within this code, several subcodes emerged including identification of one government that provides the services and the establishment or repair of public utilities (including roads, trails, water, sewer, recycling, waste disposal, storm water management).

**Interviews and comprehensive plans.** To begin the coding process for the interviews, I first transcribed the nine interviews using Microsoft Word. This enabled me to later pull specific quotations from the interviews to illustrate some of the themes that

emerged from the data. The recording time of the nine interviews consisted of approximately two and a half hours of audio recordings.

For the comprehensive plans, I was able to locate a section within each plan that specifically addressed cooperative planning. Based on the requirements in Wisconsin law for local government comprehensive plans to contain an intergovernmental cooperation element (W.S.A. § 66.1001(2)(g)), I pulled those sections out of the comprehensive plans I downloaded from official government websites. Even though Wisconsin law does not bind the Oneida Tribe, the Oneida Tribe's comprehensive plan did contain an element addressing cooperation with other governments. I also read through the remainder of the comprehensive plans to ensure I did not miss any other sections relevant to cooperative land use planning.

I developed the codes for the interviews and comprehensive plans using the same process I used to code the intergovernmental agreements and land use litigation. While several similar themes emerged among all four data sets, I developed a second, independent coding scheme for the interviews and comprehensive plans. Appendix C contains this final coding scheme for the comprehensive plans and intergovernmental agreements. Figure 4 also contains a visual depiction of how the codes nested within each other.



*Figure 4.* Coding scheme for interviews and comprehensive plans.

I divided the codes for the interviews and comprehensive plans into two parts: those factors that are related to positive relationships between governments and those factors that are related to negative relationships. Among the factors related to positive

relationships, three main themes emerged from developing the coding scheme. First, the documents addressed interpersonal relationships. Within this code, several subcodes emerged regarding types of communication including having open, honest, and trustworthy communication, building personal relationships, being open-minded, and having mutual respect. Second, the documents addressed a concept of seeing beyond boundaries and jurisdictions to realize benefits to the greater community. I labeled this code regionalism. Within this code, several subcodes emerged regarding types of groups or subjects including use of regional planning commissions and local planning groups, a general regional approach philosophy, joint planning, marketing and branding the region, sharing services, resources, or revenue, and consolidating services, resources, or revenue. Third, the documents addressed types of projects to benefit the community. Within this code, several subcodes emerged regarding types of activities including economic development and tourism, public utilities (including roads, trails, water, sewer, recycling, waste disposal, storm water management).

Among the factors related to uncooperative relationships, three main themes emerged from developing the coding scheme. First, the documents addressed interpersonal relationships. Within this code, several subcodes emerged including lacking communication, lacking trust, personality concerns, and accusations of racism. Second, the documents addressed a focus on small sections of an issue or territory rather than considering the wider context. I labeled this code parochialism. Within this code, several subcodes emerged including preserving the tax base, preserving local control, and

preserving local identity, and having differences in land use and community values.

Third, the documents addressed politics and the law. Within this code, several subcodes emerged including interference from politics, having disproportionate power and influence, exerting control over another government, jurisdictional conflicts created by state and federal law, and inconsistent rules and participation.

**Subdivision maps and historical land ownership.** As previously noted, I created an Excel spreadsheet for the subdivisions with the following information: (a) subdivision name, (b) year, (c) number of lots, and (d) developer (Oneida Tribe or nonmember). For the historical land ownership, I created another Excel spreadsheet with the following information: (a) year of tribal acquisition, (b) type of acquisition (tribal fee or tribal trust), and (c) amount of acres acquired. I added the number of nontribal subdivisions, number of nontribal subdivided lots, number of tribal subdivisions, and number of tribal subdivision lots to this spreadsheet. I then added the number of tribal land acquisition resolutions, intergovernmental agreements and litigation that occurred each year. This chart is included as Appendix D. This chart enabled me to explore relationships among three features: (a) the themes found in the data, (b) data sources (such as intergovernmental agreements and land use litigation), and (c) the year. This allowed me to find patterns over time as well as across and among data sources. Because these data sets consisted entirely of numerical data, I did not develop a coding scheme for them.

**Zoning laws.** Due to the limited relevant data within the zoning laws, I did not develop a coding scheme. Instead, I conducted an analysis of the basic contents of the zoning laws. This analysis did not reveal any insight into cooperative land use planning, and only minimal recognition of issues unique to Indian reservations, such as differences in jurisdictional authorities among tribal and local governments.

In order to determine whether the laws addressed working with neighboring or overlapping governments, I performed a word search of the laws using the following terms: *coordination, coordinate, cooperation, cooperate, collaboration, collaborate, joint, and share*. None of these search terms revealed any provisions in the laws relating to working with other governments. I also read each law to make sure the search terms did not miss any relevant sections. No laws addressed working with other governments on zoning matters.

Recognizing overlapping governments may have varying degrees of authority to apply their zoning laws on Indian reservations (Zaferatos, 1998; Jarding, 2004; Hausam, 2013), I reviewed the laws to see how they addressed those situations. I used the following search terms: *exception, limit, tribe, tribal member, Native American, Oneida, Indian, sovereign, nation, reservation*. I also read each law to make sure the search terms did not miss any relevant sections. Only two laws addressed this issue. First, the Oneida Tribe's zoning law breaks down the land types (fee land and trust land, see Chapter 1), ownership (tribal member or Oneida Tribe), and location (whether the land is on or off the Reservation) to determine whether the Oneida Tribe's zoning law applies (Oneida

Zoning and Shoreland Protection Ordinance, 2011). Second, the Village of Hobart's zoning law created a gambling district overlay and referenced that the purpose of this overlay was to remain "mindful . . . of the rights of Indian Tribes under Wisconsin law to conduct some forms of gaming" (Village of Hobart Zoning Law, §6.040(A)). These two sections of law are the only instances where the law acknowledges there may be extra considerations to land use authority aside from governmental boundaries. None of the other laws addressed the issue of overlapping jurisdictions, whether it was by reference to possible limitations of the laws, or of exceptions to the laws.

### **Applying Codes to the Data**

After I completed the coding schemes described above, I began applying the codes to the segments of data from the various sources I gathered. I considered whether I would apply codes each time I came across a data segment within a single document, or whether I would apply the code only once per document. Two factors led me to decide to apply the code only once per document: (a) I gathered a large amount of data for coding – 41 intergovernmental agreements, 15 land use litigation decisions, 9 interviews, and 8 comprehensive plans; and (b) I was concerned that repetition of a code within a longer document or longer interview would not necessarily be more significant than a single occurrence within a shorter document or shorter interview.

I initially attempted to apply the codes with NVivo Mac Beta, but the feature to generate charts and other displays for frequencies of the codes was not available in the Beta version. After coding the intergovernmental agreements in NVivo Mac Beta, I

transferred the data into a Microsoft Excel spreadsheet. I then coded the land use litigation directly into the Microsoft Excel spreadsheet. After inputting both data sets, I created a new Microsoft Excel spreadsheet summarizing the frequencies of the codes. I also coded the interviews and comprehensive plans directly into a Microsoft Excel spreadsheet. After inputting both data sets, I created a new Microsoft Excel spreadsheet summarizing the frequencies of the codes.

### **Evidence of Trustworthiness**

To ensure credibility and internal validity, I triangulated the data I found in the government documents with the interview data (Creswell, 2007). The government documents served as my primary source of data and the data I gathered from the interviews confirmed and triangulated the results that emerged from the government documents. I did not make any adjustments to my initial credibility strategies during the data collection or analysis stages of the research process.

To ensure transferability and external validity, I chose interview participants from three different roles in tribal and local governments and I choose participants from all eight governments located on the Oneida Reservation. This ensured a variation in participant selection and a representative voice from of all eight governments (Patton, 2002). I did not make any adjustments to my initial transferability or external validity strategies during the data collection or analysis stages of the research process.

To ensure dependability, I kept a clear record of my research process (Creswell, 2007). This included a record of when and where I located my sources, how I contacted

the participants, and when and where I conducted the interviews. I also kept electronic files of the government documents I gathered, the audio recordings of the interviews, the electronic transcriptions of the interviews, and the Microsoft Excel spreadsheets containing the coded data. I periodically backed up the files to a secure off site server. Providing this audit trail ensures that future researchers can replicate this study (Patton, 2002). I did not make any adjustments to my initial dependability strategies during the data collection or analysis stages of the research process.

To ensure confirmability, I allowed the data to speak for itself as much as possible (Patton, 2002). However, due to the subjective nature of qualitative research and perceptions of land use decision-making processes, the introduction of the interview component helped to provide further context and a deeper understanding of the phenomenon being studied. This triangulation of data helped ensure that I drew the correct conclusions from the data I gathered. I did not make any adjustments to my initial confirmability strategies during the data collection or analysis stages of the research process.

## **Results**

A review of the data reveals several common themes in land use planning and development on the Oneida Reservation. Such themes include agreements and disagreements over which government controls an area, efforts to cooperate and share information, the exchange of payment for providing governmental services, the positive results possible with regional approaches, the negative results likely with parochial

approaches, and trends in subdivision and acquisition of land. The remainder of this section will first address the results within the data sets, paying particular attention to answering the research sub-questions, and then this section will discuss results that emerged from a comparison of themes across data sets, revealing answers to the main research question in this study.

### **Comprehensive Plans and Interviews**

The first research subquestion seeks to understand how comprehensive plans address cooperative land use planning. All the local government comprehensive plans mentioned that state law required the local governments to include an intergovernmental cooperation element in their comprehensive plan. As noted previously, state law does not bind the Tribe. Even though the Tribe has no formal requirements of its own to include a similar element within its own plan, the Tribe's comprehensive plan nonetheless included an intergovernmental cooperation element.

Overall, the comprehensive plans remained positive when discussing past and future opportunities for cooperation. The plans placed an emphasis on regional approaches to planning, such as sharing services, resources and revenue. The plans also emphasized projects that could benefit the community including trails and recreation areas. On the other hand, the plans did not leave room for much discussion of factors that may lead to uncooperative relationships other than reference to parochial concerns such as a government's desire to preserve its tax base.

During the analysis stage of this study, it became apparent that the comprehensive plans and interviews produced similar themes, primarily factors that lead to positive cooperation and factors that lead to uncooperative relationships, although the interviews placed a greater emphasis on factors that lead to uncooperative relationships than the comprehensive plans. Tables 4 and 5 contain a comparison of the themes that emerged from the data.

Table 4

*Coding Frequencies for Interviews of Elected Officials, Planners, and Government Relations Staff, and Comprehensive Plans: Factors for Positive Cooperation*

Codes and subcodes	Interviews				C. P.
	E. O.	Pl.	G. R.	Total	
<b>Interpersonal relationships</b>					
Having open, honest, and trustworthy communications	2	2	1	5	3
Building personal relationships	2	1	2	5	1
Being open-minded	1	0	1	2	0
Having mutual respect	2	0	0	2	1
Total	7	3	4	14	5
<b>Regionalism</b>					
Regional planning commission	2	1	0	3	4
Local planning groups	0	1	0	1	4
Regional approach philosophy	3	2	2	7	4
Joint planning	1	0	0	1	4
Marketing and branding the region	2	0	0	2	1
Sharing services, resources, or revenue	3	3	2	8	6
Consolidating services, resources, or revenue	2	0	0	2	1
Total	13	7	4	24	24
<b>Projects to benefit the community</b>					
Economic development & tourism	2	1	1	4	2
Public utilities	2	1	0	3	2
Environmental restoration	0	1	1	2	3
Total	4	3	2	9	7

Table 5

*Coding Frequencies for Interviews of Elected Officials, Planners, and Government Relations Staff, and Comprehensive Plans: Factors for Uncooperative Relationships*

Codes and subcodes	Interviews				C. P.
	E. O.	Pl.	G. R.	Total	
<b>Interpersonal relationships</b>					
Lacking communication	1	0	2	3	1
Lacking trust	0	1	1	2	0
Personality concerns	2	1	1	4	0
Racism	2	0	0	2	0
Total	5	2	4	11	1
<b>Parochialism</b>					
Preserving tax base	1	2	1	4	5
Preserving local control	2	3	0	5	3
Preserving local identity	2	2	0	4	3
Total	5	7	1	13	11
<b>Politics and the law</b>					
Politics	0	3	1	4	0
Having differences in land use	2	2	0	4	5
Having differences in community values	0	1	0	1	0
Having disproportionate power & influence	1	0	0	1	1
Exerting control over another government	1	2	1	4	1
State and federal law	2	0	1	3	2
Inconsistent participation	0	0	1	1	0
Inconsistent rules	0	1	1	2	1
Total	6	9	5	20	10

*Note.* Abbreviations are as follows: elected officials (E. O.), planners (Pl.), government relations staff (G. R.), and comprehensive plans (C.P.).

### **Regionalism and parochialism.**

An examination of the themes emerging from these two data sets can also help answer the fourth research sub-question concerning factors that might lead to cooperative or uncooperative relationships. The interviews and comprehensive plans contained a

general consensus that a regional approach to planning is more productive and more likely to lead to positive, cooperative relationships than a parochial approach. When discussing the concept of parochialism, several participants made similar comments. One participant, P2, explained: “If we only think about ourselves, we wouldn’t be as efficient or effective with our own resources, so we need to think broader in terms of our planning, but still find a way to keep our own identity.” Another participant, P5, stated: “Unless we can get into a situation where we are sharing revenue, we are sharing expense, we are sharing the tax benefits I think we are always going to have a certain level of parochialism that’s going to stop us from being truly cooperative.” P5 then explained: “I think one where we both have something at stake, where it’s not one group trying to tell another group how to do something - where we both have something to gain out of it - some mutual acceptance that we both have money in the pool, and we can work together to make this work.”

**Interpersonal relationships.** One notable difference between the interviews and comprehensive plans was that the interview participants placed an emphasis on interpersonal relationships as both causes for cooperative and uncooperative relationships. The interview participants mentioned interpersonal relationships as a cause for cooperative relationships fourteen times and as a cause for uncooperative relationships eleven times. When discussing causes of uncooperative land use relationships, one participant, P5, explained: “If you don’t trust each other, you don’t have communication, if you don’t communicate, then there’s no cooperation possible.”

Another participant, P7, made a similar comment: “Fear leads to mistrust. If I’m afraid of you or you’re afraid of me, then how the hell can we compromise together?” The comprehensive plans only mentioned interpersonal relationships as a cause for cooperative relationships five times and as a cause for uncooperative relationships once.

**Projects to benefit the community.** Both the interviews and comprehensive plans referenced projects that benefit the community as factors that may lead to increased cooperative relationships. They referenced such factors at a relatively uniform rate with the highest responses coming from the interview participants and their reference to economic development initiatives as opportunities for cooperation. Looking back at the data sources, all of the respondents referenced such opportunities in the context of not only benefiting the community within the shared space, but also benefiting the larger regional community.

**Politics and the law.** The comprehensive plans only mention politics and the law as potential factors leading to uncooperative relationships with respect to differences in land use. Five of the comprehensive plans pointed to differences in land use as potential sources of conflict. The interviews mentioned this as a factor leading to uncooperative relationships along with political influences and instances where one government tries to exert control over another government. This second theme also appeared in the litigation and is discussed later in this chapter.

### **Intergovernmental Agreements and Litigation**

The second research question seeks to understand how intergovernmental agreements address land use planning. The third research question seeks to understand what the common themes are in land use disputes. During the analysis stage of this study, it became apparent that the agreements and litigation produced similar themes. Table 6 contains a comparison of these themes.

Table 6

*Coding Frequencies for Intergovernmental Agreements and Land Use Litigation*

Codes and Subcodes	Agreements	Litigation
<b>Jurisdiction</b>		
Tribal government laws apply	16	7
Local government laws apply	16	4
Federal government laws apply	8	6
Preservation of jurisdiction	18	0
Delegation of jurisdiction	4	0
Assertion of jurisdiction over another government	0	12
Recognizes difference of opinion	2	0
Waiver of sovereign immunity	26	3
No waiver of sovereign immunity	2	1
Total	92	33
<b>Coordination, cooperation, and/or collaboration</b>		
Consultation	10	0
Information sharing	16	0
Development of uniform laws/regulations	8	2
Formation of a joint planning committee/partnership	7	2
Total	41	4
<b>Financial arrangements</b>		
Tribal payment to local government	26	0
Local government payment to Tribe	5	0
Credit/offset for tribal services	7	0
Credit/offset for local government services	0	0
Cost-sharing	4	0
Total	42	0
<b>Land</b>		
Use of tribal land	4	7
Use of local government land	3	1
Fee-to-trust	10	2
Environmental protection/restoration	6	4
Reservation boundaries in question	0	4
Total	23	18
<b>Government services or resources</b>		
Tribal government provides services or resources	22	5
Local government provides services or resources	26	3
Establishment/Repair of Public Utilities	28	4
Total	76	12

**Preservation or delegation of jurisdiction.** Twenty-two of the intergovernmental agreements addressed whether a government preserved its jurisdiction or delegated its jurisdiction. In eighteen of the agreements, the governments recognized that by entering into the agreement, none of the governments delegated or transferred its governmental authority to another government. Only four of the agreements contained such a delegation. This indicates that the governments prefer not to delegate their authority and prefer to preserve their own authority. Such a commitment to preserving jurisdiction could also indicate potential obstacles in instances where one or more of the governments wanted to pursue shared jurisdiction because sharing jurisdiction would require governments to give up control and authority. On the other hand, these provisions could simply indicate the governments' desires to clarify that the intent of the agreements was not to delegate authority, but rather to articulate their respective jurisdictional limitations.

**Waivers of sovereign immunity.** Twenty-eight of the intergovernmental agreements expressly mentioned sovereign immunity. Tribes and local governments are generally immune from lawsuits unless they expressly waive that immunity. A waiver of sovereign immunity makes an agreement enforceable in court; if one party violates the agreement, another party can bring the violator to court to enforce the agreement. Agreements without a waiver may be intended to be more symbolic and an effort to commit to writing governments' understandings of given situations. In two of these

agreements, the governments recognized that entering into the agreement did not waive either government's sovereign immunity. One agreement was a cooperative agreement to repair a road and the other was a memorandum of understanding for the management of environmental resources. Twenty-six of the intergovernmental agreements contained an express waiver of sovereign immunity. In these cases, the agreements outlined how and where the governments would agree to be brought to court in the event one of the governments violated the agreement. These waivers demonstrate a solid commitment among the governments to follow through with the terms of the agreements.

**Assertion of jurisdiction and reservation boundaries.** An examination of the themes emerging from these two data sets can also help answer the fourth research subquestion concerning factors that might lead to cooperative or uncooperative relationships. Two subcodes present in the litigation, but notably absent in the intergovernmental agreements are: "assertion of jurisdiction over another government" and "reservation boundaries in question." In four of the litigation documents, one or more of the local governments were challenging the existence of the Oneida reservation boundaries, arguing the boundaries have either been diminished or disestablished. The existence of territorial boundaries is directly related to the ability of a government to exercise control within those boundaries. One litigation document, a 1984 Wisconsin Attorney General Opinion, stated:

The underlying issue is whether tribal civil regulatory laws apply on fee patented land located within the exterior boundaries of the Wisconsin Oneida Indian

Reservation as established by the Treaty of February 3, 1838 (7 Stat. 566).

Because large areas of [taxable] fee land within the original boundaries of the reservation may be subject to federal and tribal jurisdiction, the current boundaries of the Oneida Reservation are in dispute.” (Wisconsin Attorney General Opinion, 1984).

The challenges to the reservation boundaries were an attempt to replace one government’s jurisdiction with another government’s jurisdiction.

Along similar lines, in twelve of the litigation documents, one government was attempting to assert its governmental authority over another government. One interview participant, P2, explained how this could be problematic:

I think it comes down to control. When other communities want to exert control, or sole control, they are the sole authority, and they decide what is in the best interest of everybody rather than try to find ways to collaborate and work together. That really causes resentment from other communities and they don’t really want to find a way to work together. I think any time someone is trying to be authoritative, rather than working collectively, it leads to uncooperative relationships.

One possible explanation for this could be a government’s fear of losing its identity in situations with joint-planning or regional planning commissions. Five of the interview participants explained that efforts to preserve local control or preserve local

identity lead to uncooperative relationships. In this regard, one participant stated, “once you turn over the keys, you lose that control and identity.”

**Financial arrangements, government services, and fee-to-trust.** When viewed together, a few particular subcodes could potentially raise additional questions not anticipated in this study. In 26 of the agreements, the Tribe made a payment to the local government. In 5 of the agreements, the local government made a payment to the Tribe. However in 22 of the agreements, the agreement recognized that the tribal government provides services and in 26 of the agreements, the agreement recognized that the local government provides services or resources. At first, it can seem confusing when the agreements recognize that the Tribe and local government both provide services at similar frequencies but the Tribe makes a payment to the local government five times more often than the local government makes a payment to the Tribe.

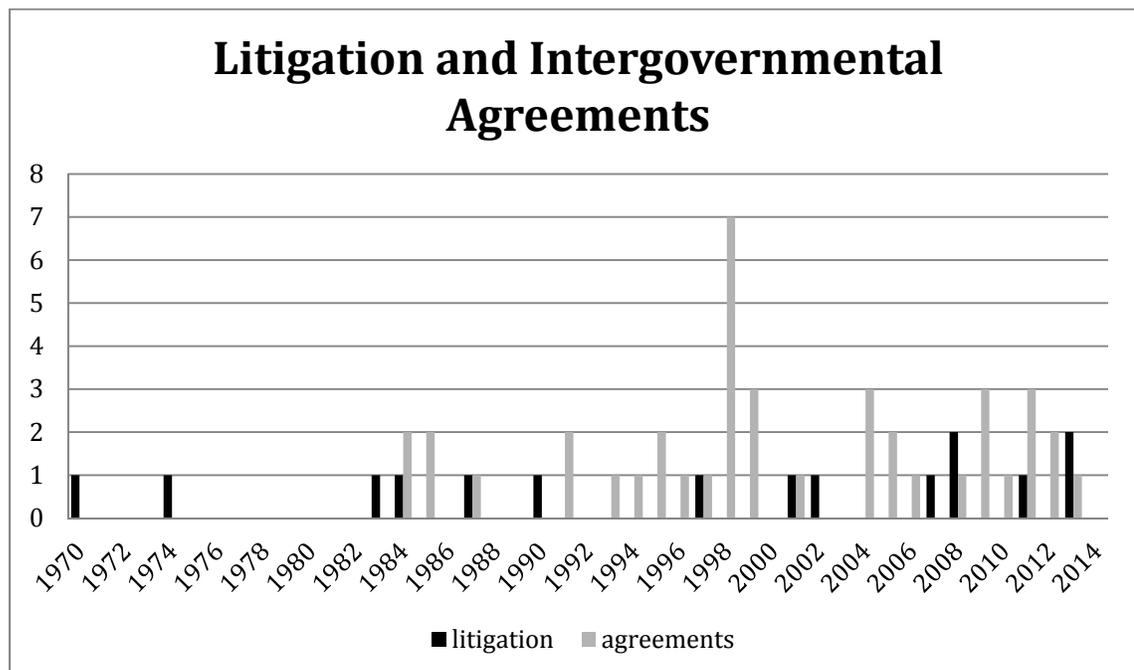
One likely explanation for this is that local governments derive their revenue from the taxation of land (Hausam, 2013). A group of the more recent intergovernmental agreements, Service Agreements, serve as a mechanism for the Tribe to compensate the local governments for services they provide to trust land because trust land is exempt from taxation. These agreements also recognize that the Tribe also provides governmental services and the Tribe receives a credit for those services against their payment to the local government. As one respondent from a local government explained: “In [our local government] we obviously have the Oneida Tribe as part of our community and it has the ability to put land in trust – which then if it does that, we lose revenue.

That's why we have our Service Agreement." Within the Service Agreements, in exchange for the Tribe's payment to the local government, the local governments agree to not prevent the Tribe from applying to have more land taken into trust. This provision appears in ten of the intergovernmental agreements. Considering that four of the interview participants stated that preserving the tax base can lead to uncooperative relationships, these Service Agreements appear to be an equitable way for all the governments to reach an agreement and understanding on a variety of topics.

**Agreements and litigation over time.** In an additional effort to examine possible answers to the fourth research sub-question concerning factors that might lead to cooperative or uncooperative relationships, Figure 5 depicts the numbers of intergovernmental agreements addressing land use and the numbers of land use litigation over time. The first litigation document is dated 1970. The first intergovernmental agreement is dated 1984. Both the agreements and litigation documents appear to be relatively spread out over time with a spike in the number of intergovernmental agreements in 1998. From the data gathered in this study, it is not clear what prompted the governments to enter into so many agreements in 1998.

Another interesting theme that emerged from the intergovernmental agreements and litigation was that even in times of conflict, the governments were still finding ways to enter into cooperative agreements. Further analysis of the agreements and litigation documents could reveal additional patterns in the data over time, such as identifying

which governments are entering into the agreements and which governments are engaged in litigation.



*Figure 5.* Litigation and intergovernmental agreements.

### **Subdivision Maps and Historical Land Ownership**

According to critical planning theory, in order to improve planning practices, it is important to take a critical examination of the social and historical roots of planning within a given community (Matthews, 2013; Sager, 2013). In addition to the other sources of data used in this study, maps of subdivisions over time and historical land ownership patterns can help provide insight into some of the social and historical roots of planning on the Oneida Reservation. Figures 6 and 7 depict comparisons between tribal and nontribal subdivisions with Figure 6 depicting at the total amount of each type of

subdivision over time and Figure 7 depicting the total amount of subdivided lots over time.

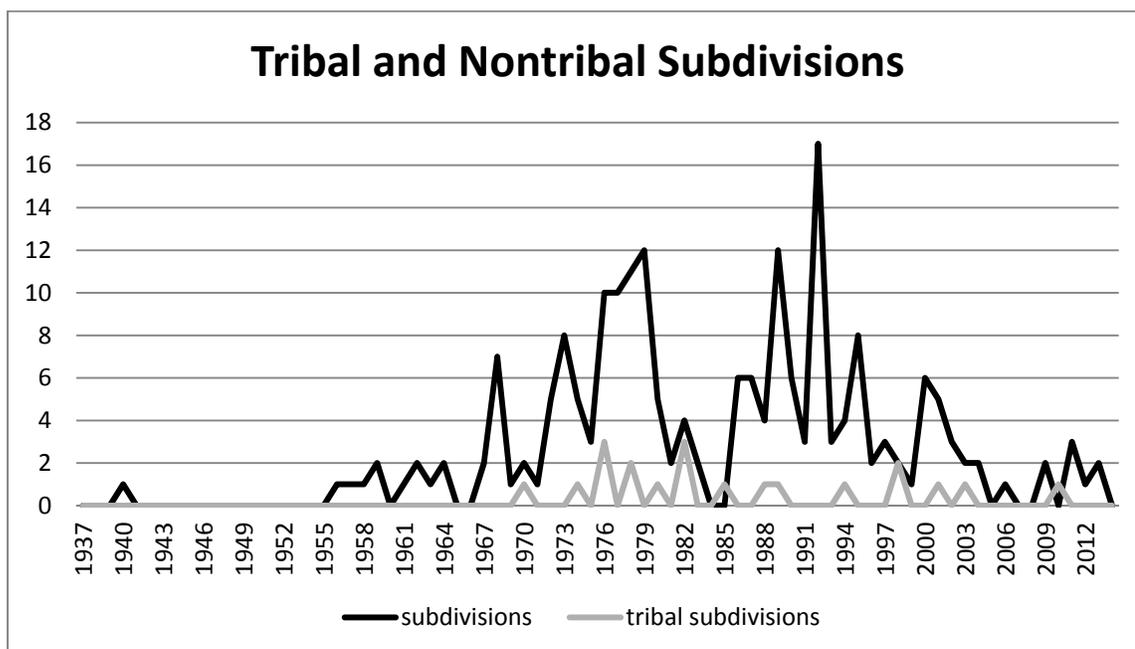
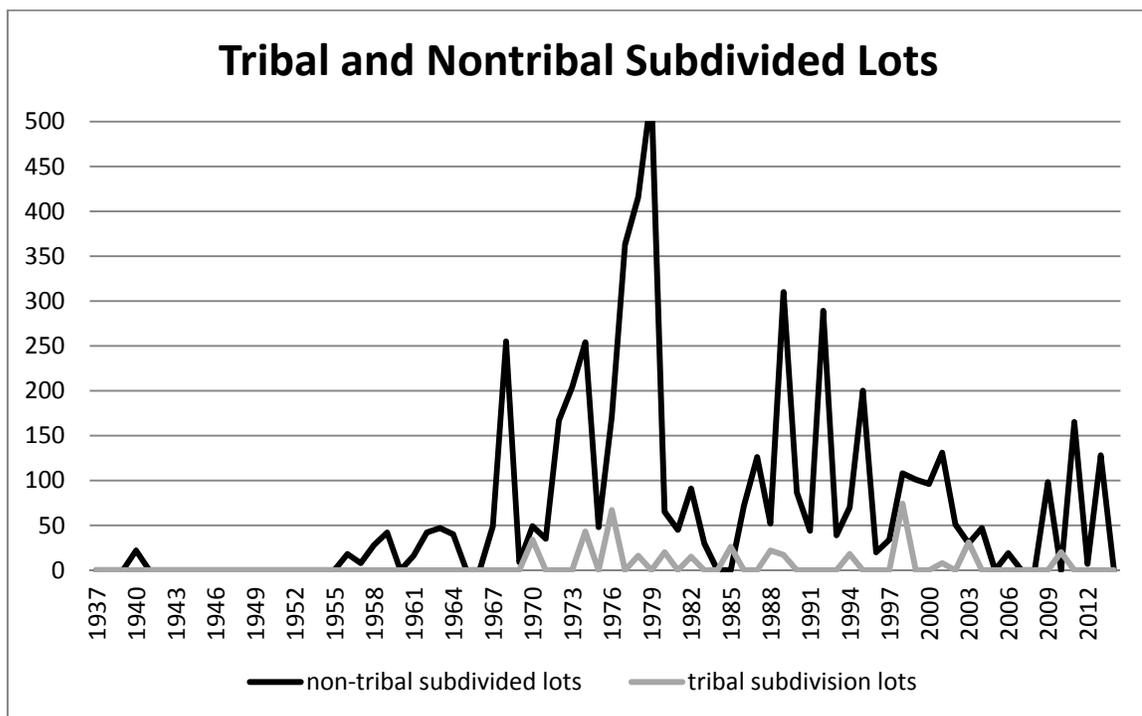


Figure 6. Number of tribal and nontribal subdivisions between 1937 and 2014.

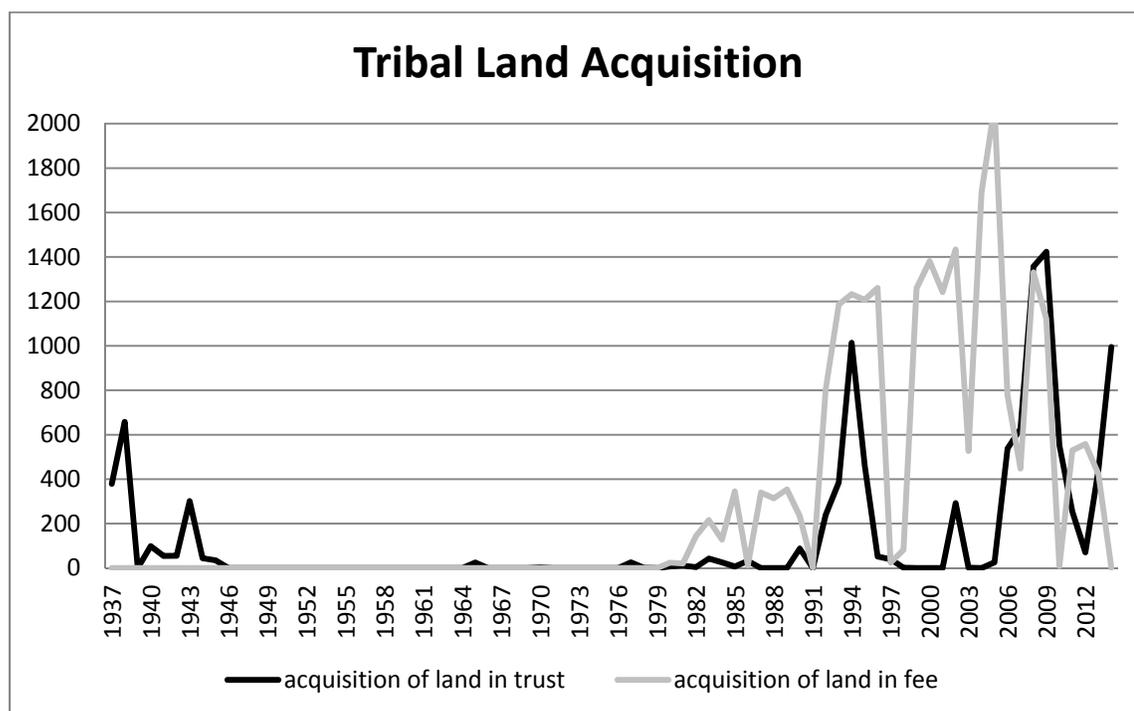


*Figure 7.* Number of tribal and nontribal subdivided lots between 1937 and 2014.

Although the subdivided lots derived from within a single geographical space, the Oneida Reservation, these figures clearly show that subdivisions on nontribal land occur more frequently and result in more subdivided lots than subdivisions of tribal property. The first subdivision of nontribal land occurred in 1940 and the next subdivision did not occur again until 1956. These subdivisions and subdivided lots peaked in years between the late 1960 and late 1970s and in the late 1980s and the mid-1990s, with a smaller peak between 2009 and the present. From the data gathered in this study, it is not clear what prompted the spike in the number of subdivisions for those years. The first subdivision of tribal land occurred in 1970. Tribal subdivisions and subdivided lots do not appear to

have any peaks; rather, their numbers remained relatively steady from 1970 to the present.

As previously discussed, the passage of the Indian Reorganization Act in 1934 signaled an opportunity for tribes to reacquire the land they lost through the General Allotment Act of 1887 (see Chapter 1 for a discussion of these two Acts). The Indian Reorganization Act created a mechanism for tribes to reacquire land in trust status. In Oneida, this occurred in two ways. Until the year 1980, the Tribe worked with the federal government to acquire title from a seller directly in trust status for the Tribe. This meant that a landowner sold land directly to the United States to be held in trust for the Tribe. Beginning in the year 1980, this practice changed. The Tribe began acquiring fee title to land in its own name and later applied to have the United States take title and hold it in trust for the Tribe. Figure 8 provides a comparison of the amount of land taken into trust for the Tribe (either directly in trust or after the Tribe held fee title) and the amount of land the Tribe acquired in fee status (see Chapter 1 for a discussion on the distinction between fee land and trust land).



*Figure 8.* Tribal land acquisition measured in acres.

This chart demonstrates an early commitment on the part of the federal government and the Tribe to acquire title to land. Between the year 1937 and 1945, the federal government took title to 1,625 acres of land in trust for the Tribe. The next acquisition of trust land did not occur until 1965, and then not again until 1970. The acquisition of land into trust did not pick up again until 1977. Beginning in 1980, the acquisition of fee land quickly outpaced the acquisition of land into trust status. During the period of relatively steady acquisition of fee land, the chart reveals three peaks in the acquisition of land in trust status. The first peak occurred between 1992 and 1995. The second peak occurred between 2006 and 2010. The third peak occurred in 2013.

I compared the data from the years 1980 to 2014 to see if tribal land acquisition resolutions might have impacted these trends. Figures 9 and 10 contain the data sets for these years.

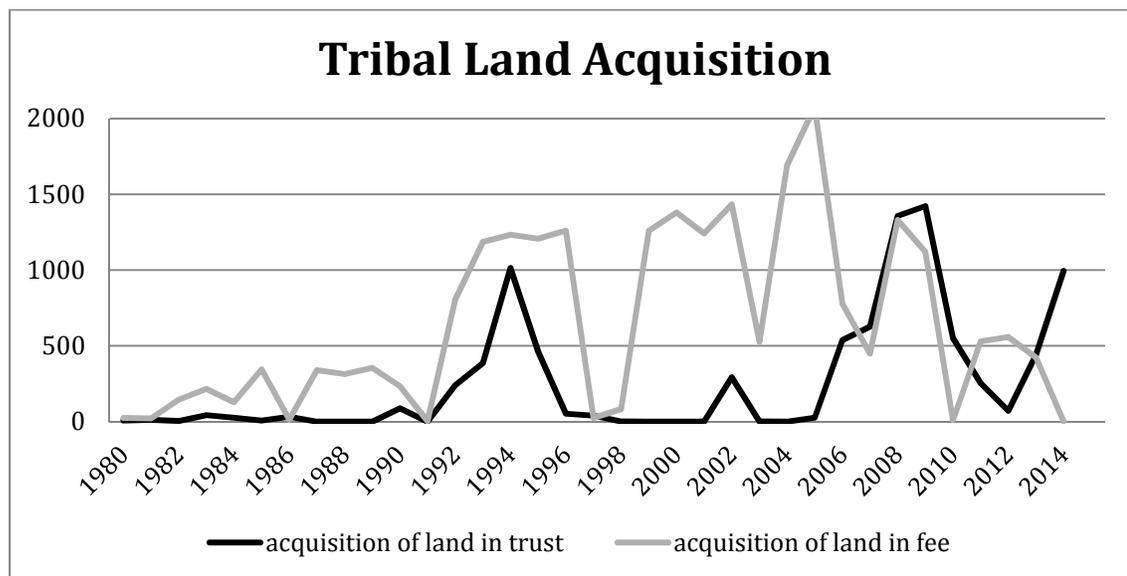


Figure 9. Tribal land acquisition measured in acres for the years 1980-2014.

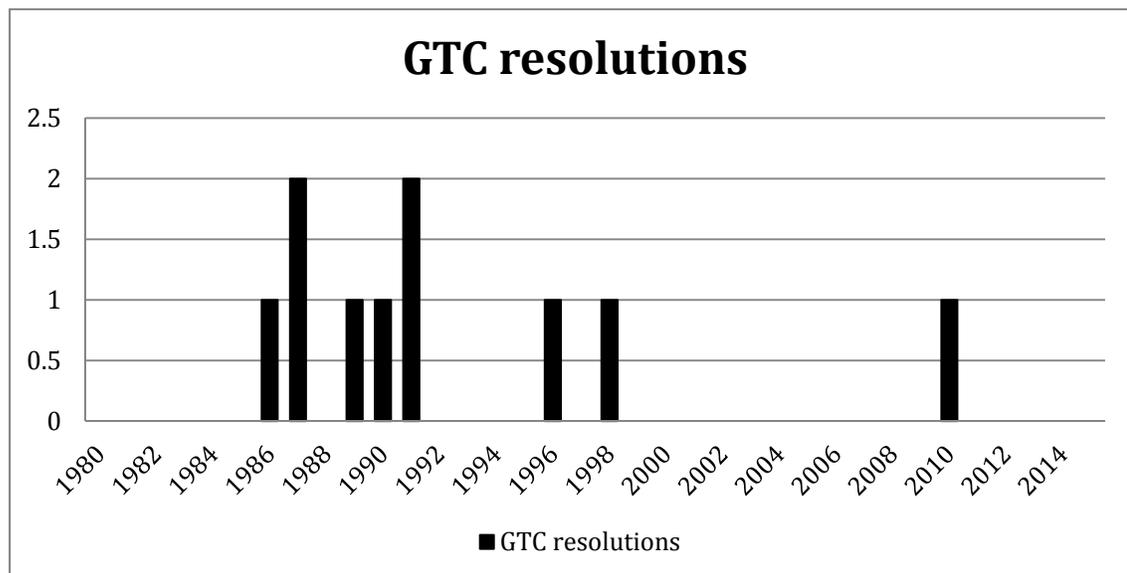


Figure 10. General Tribal Council land acquisition resolutions.

From the data gathered in this study, it seems as though the early resolutions may have expressed an early commitment on the part of the tribal members to reacquire the land on the Reservation and restore its trust status because in the following six years, tribal trust and tribal fee acquisition peaked. The 1996 and 1998 resolutions are likewise followed by a peak in fee acquisition and later, trust acquisition. Similarly, the resolution in 2010 is followed by an increase in fee acquisition and shortly thereafter an increase in trust acquisition as well. However, with only acres of land acquired and tribal resolutions to rely on, it is difficult to determine with certainty that the resolutions caused increases in land acquisition. The increases could be caused from factors not considered in this study.

### **Summary**

The coding process for the data gathered in this study revealed the answer to the main research question concerning common themes in land use planning and development between tribal and local governments. The common themes included: jurisdiction; coordination, cooperation and collaboration; financial arrangements; land; government services; interpersonal relationships; regionalism; parochialism; projects to benefit the community; and politics and the law. An analysis of each data set helped to provide context for these themes and answer the study's four research sub-questions.

First, the tribal and local government comprehensive plans focused on regionalism as a means to increase cooperation with neighboring governments. The plans discussed the use of regional planning commissions and local planning groups as well as

future joint planning efforts. The comprehensive plans also recognized that efforts to preserve a government's tax base and having differences in land use can lead to conflicts.

Second, intergovernmental agreements placed a focus on jurisdictional issues, primarily a specification of which government's laws applied, an emphasis that one government is not ceding jurisdiction to another government, and numerous occasions where the governments agreed to suit in the event a dispute arose over the terms of the agreement. The agreements also discussed information sharing and consultation. While the agreements contain similar references to the Tribe and local governments providing government services, the Tribe ended up making a payment to the local governments in 26 of the agreements compared to local government payments to the Tribe in five of the agreements.

Third, for the land use litigation, one theme emerged above all others: the assertion of jurisdiction over another government. This theme occurred in 12 of the litigation documents. The next highest code frequency was seven. In other words, the vast majority (12 out of 15) of the litigation documents involved one government attempting to control another government. Instead of being able to work through these differences through a mutual agreement, the Tribe and local governments turned either to the courts or the Attorney General to resolve their differences.

Fourth, for the research sub-question concerning factors that might lead to cooperative or uncooperative relationships, the interview data helped triangulate possible answers. The interviews placed an emphasis on interpersonal relationships as a cause for

either cooperative or uncooperative relationships. When discussing how everyone may begin to cooperate more in the future, one participant explained: “I think it’s going to end when people get to know one another – not as a tribe or as a community or as an ethnic group, but as people. That’s when it changes.” This is in line with the comprehensive plan’s emphasis on regionalism compared to parochialism, and on the intergovernmental agreement’s frequent references to consultation, information sharing, and providing government services to the community.

Chapter 5 compares these findings to the literature on land use planning on Indian reservations, provides recommendations for future study, and explains how this study can help trigger positive social change.

## Chapter 5: Discussion, Conclusions, and Recommendations

### **Introduction**

The purpose of this qualitative case study was to gain a better understanding of the social and historical roots of planning on an Indian Reservation in order to find ways to improve planning practices in the future. Planning on Indian reservations is unique due to the checkerboard, noncontiguous patterns of tribal and nontribal land ownership, and due to tribal and local governments asserting land use authority within the shared space and over tribal and nontribal land. Conflicts can arise when governments have a different understanding of who has the final authority to make land use decisions. As noted in Chapter 1, the law may be clear on which governments get to decide how nontribal land or tribal trust land is developed, but there is ambiguity in the law regarding which government has the jurisdiction to decide how tribal fee land is developed. This study revealed that in the case of tribal fee land and trust land, both tribal and local governments have attempted to assert their own exclusive authority to make land use decisions, thus causing conflicts. This study also revealed that, regardless of the status of the land, conflicts arise when one government attempts to regulate the activities of another government.

The key findings of this study revealed several themes that could prove useful to increase cooperative land use planning on the Oneida Reservation in the future. The findings include: (a) approaching planning with a regional philosophy in mind, considering ideas such as sharing services and revenue, and working on public projects

together; (b) strengthening interpersonal relationships; (c) finding ways to fairly compensate each other for government services; (d) continuing to acknowledge each government's ability to govern within this shared space; and (e) refraining from asserting authority over a neighboring government. While these themes may not be entirely unique to planning on Indian reservations, the field of planning can benefit from a better understanding of how to achieve these goals.

### **Interpretation of the Findings**

Land planning on Indian reservations is an understudied phenomenon (Zaferatos, 1998; Jarding, 2004). Of this limited research, one author made several contributions to the field with studies of the Swinomish Indian Reservation (Zaferatos, 1998, 2004a, 2004b; see Chapter 2 for a discussion of the Swinomish Indian Reservation). When studying land use planning on the Swinomish Indian Reservation, Zaferatos considered the history of the Tribe and local government and examined their past land use planning relationships. Zaferatos summarized his findings as follows:

Six important lessons emerge from the Skagit Valley experience. First, regional cooperation in land use between tribes and counties becomes possible when they employ a multiparty, government-to-government approach, cognizant of the historic circumstances that first created conflicts. Second, the process requires a capacity to address emerging issues through continuous consultation and should include a forum for dispute resolution. Third, the longstanding barriers to institutional communication must be continuously diminished, although they may

never disappear entirely. Fourth, successful cooperation cannot be forced or artificially accelerated; the commitment to regional cooperation requires personal and professional commitments by elected officials and, especially, by planning staff tasked with resolving complex and often contentious issues. Fifth, time and resources must be dedicated to education, orientation, and the development of skills among both policy makers and staff involved in the relationship. Finally, unforeseen events and problems that arise require constant monitoring in order to protect the relationship. (Zaferatos, 2004b, p. 93)

The findings of this study confirm some of the findings in Zaferatos' study, primarily those centering on a regional approach to planning and working toward building interpersonal relationships with open lines of communication. Zaferatos' first conclusion is in line with critical planning theory's emphasis on history; however, it is difficult to assess from the data gathered in this study whether and to what extent the governments understand the social and historical roots of planning on the Oneida Reservation. Hopefully, this study will aid in that endeavor and the local governments can work toward more cooperative land use planning relationships.

In addition to Zaferatos' (2004b) findings, this study extended the knowledge base of planning on Indian reservations by revealing the importance of finding ways to fairly compensate each other for government services, continuing to acknowledge each government's ability to govern within this shared space, and refraining from asserting authority over a neighboring government. It may be that these last three findings are

unique to the Oneida Reservation. Further study involving other Indian reservations could lead to a greater understanding of this issue.

### **Limitations of the Study**

Three primary limitations arose during execution of this study. First, my status as an enrolled Oneida Tribal member and as an attorney working for the Oneida Tribe had the potential to introduce bias into this research. The most important methods I used to address this at each stage in the data collection and analysis process were to systematically document the research process and then allow the data to speak for itself (Yin, 2014; Patton, 2002).

Second, the data I collected occasionally led to new questions that the existing data could not answer. For example, the data revealed spikes in nontribal subdivisions or tribal land acquisition over time, but did not reveal clear causes for these spikes. To fully understand these factors, critical planning theory might call for further research. However, a key element of qualitative research is being able to determine when it is appropriate to conclude your research and acknowledge there is always opportunity for further research (Yin, 2014).

Third, the data I collected provided a wealth of information that could provide additional insight into planning on the Oneida Reservation. Some of that insight could be beyond the information sought by answering the research questions presented in this study. For example, I did not distinguish among the seven local governments located on the Oneida Reservation. I was concerned that drawing attention to particular governments

had the potential to make it appear as though this study sought to place blame for uncooperative relationships on one or more of the local governments. An optimistic outlook for moving forward toward cooperative planning could be thwarted if this study focused on blame instead of themes in land use planning.

### **Recommendations**

Recognizing each Indian reservation has a unique history, replicating a similar study would add to the limited knowledge base of planning in such communities (Hausam, 2013; Jarding, 2004). In addition, further research into the physical development, subdivision of land, and land ownership patterns on the Oneida Reservation could help address some of the unanswered questions the current research in this study raised such as what caused spikes in subdivisions of nontribal property or spikes in land acquisition. If the goals of critical planning theory are to gain a better understanding of the social and historical roots of planning within a given community to improve planning practices (Matthews, 2013; Sager, 2013), then assembling more information on a given community could help create a more accurate picture and potentially more refined recommendations on how to improve past planning practices.

### **Implications**

Comprehensive planning can help ensure development occurs in a purposeful and sustainable manner (Mannell, Palermo, & Smith, 2013). Communities located on Indian reservations face unique challenges with respect to planning the physical environment around them (Hausam, 2013; Jarding, 2004; Zaferatos, 1998). By obtaining a greater

understanding of those historical and social factors that make Indian reservations unique, researchers can help planners and community leaders improve planning practices (Matthews, 2013; Sager, 2013).

In the pursuit of gaining that understanding of the social and historical roots of planning on the Oneida Reservation, this study revealed several notable patterns and themes within the data related to factors leading to cooperative and uncooperative land use planning relationships. In turn, these patterns and themes can help provide a recommended framework for moving forward. Recommendations include approaching planning with a regional philosophy, building interpersonal relationships, fairly negotiating intergovernmental matters, respecting each other's governmental authorities, and refraining from asserting authority over neighboring governments. These practices may allow for more cooperative planning relationships in the future.

### **Conclusion**

The Oneida Reservation has a unique history with complex land ownership patterns and 8 governments exercising some level of land use authority within its boundaries. This study examined a variety of official government records including comprehensive plans, intergovernmental agreements, litigation related to land use disputes, historical land ownership data, subdivision maps, and tribal and local government zoning laws. I triangulated themes coming from that data with interviews of elected officials, planners, and government relations staff from the Tribe and local governments.

The goal of collecting this data was to gain a better understanding of the social and historical roots of planning on the Oneida Reservation (Matthews, 2013; Sager, 2013). This understanding can then lead to ways to improve planning practices within this shared space. An analysis of the data revealed that cooperative efforts fail when one government tries to oppress and control another government, when we neglect to develop interpersonal relationships, when we question the authority of neighboring governments, when we concentrate on our own identity and success to the detriment of others, and when we push our own land use vision without regard to the vision of those we share that space with. Critical planning theory provides an optimistic outlook for the future by taking some of these negative lessons to turn them into positive action (Matthews, 2013; Sager, 2013). Elected leaders, planners, and government relation staff from the Tribe and local governments can take these themes and work on improving land use relationships in the future.

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### Appendix A: Interview Questions

1. How do you contact or reach out to other government officials or leaders when planning for land use and development within your governmental boundaries? How do other governments reach out to your government?
2. What opportunities do you see for increased cooperative planning with other governments? What barriers do you see?
3. In general, when discussing land use issues with the other governments, what topics tend to lead to positive collaboration? What topics tend to lead to a breakdown in communication?
4. What do you believe causes cooperative government relationships with respect to land use planning? What causes uncooperative relationships?

## Appendix B: Coding Scheme for Intergovernmental Agreements and Litigation

- Jurisdiction – the authority to make decisions and be bound by legal proceedings
  - Tribal government laws apply – a recognition or finding that the laws of the Oneida Tribe apply in a given instance
  - Local government laws apply – a recognition or finding that the laws of a local government apply in a given instance
  - Federal government laws apply – a recognition or finding that the laws of the federal government apply in a given instance
  - Preservation of jurisdiction – a recognition that a government is not giving up any of its authority to make decisions
  - Delegation of jurisdiction – granting authority over certain matters from one government to another government
  - Assertion of jurisdiction over another government – where one government attempts to assert its jurisdiction over another government and require that government to be bound by its rules and regulations
  - Recognizes difference of opinion – instances where governments agree they have a disagreement over which government has jurisdiction
  - Waiver of sovereign immunity – instances where a government consents to a potential lawsuit
  - No waiver of sovereign immunity – instances where a government does not consent to a potential lawsuit-this may be done by affirmatively maintaining sovereign immunity or by not mentioning sovereign immunity-waivers of sovereign immunity must be explicit to be valid
- Coordination, cooperation, and/or collaboration
  - Consultation – consulting on issues, topics, or projects
  - Information sharing – sharing certain information with each other
  - Development of uniform laws/regulations – development of laws or regulations that are similar to another government
  - Formation of a joint planning committee/partnership – formation of a joint planning committee or formation of a partnership
- Financial Arrangements
  - Tribal payment to local government – instances where the Tribe makes a payment to a local government
  - Local government payment to Tribe – instances where a local government makes a payment to the Tribe
  - Credit/offset for tribal services – instances where a local government grants the Tribe a credit or offset for services the Tribe provides
  - Credit/offset for local government services – instances where the Tribe grants the local government a credit or offset for services the local government provides

- Cost-sharing – instances where the governments agree to share the costs of a project or expenditure
- Land
  - Use of tribal land – instances where use of tribal land is at issue
  - Use of local government land – instances where use of local government land is at issue
  - Fee-to-trust – a process under the Indian Reorganization Act (see Chapter 1) where the United States takes title to the land and the land is removed from the local government tax base
  - Environmental protection/restoration – initiatives to protect the environment or restore the environment
  - Reservation boundaries in question – instances where the status of the Oneida Reservation is in question; typically involved in claims that the reservation has been either disestablished or diminished
- Government services or resources
  - Tribal government provides services or resources – the Tribe provides services or resources
  - Local government provides services or resources – local government provides services or resources
  - Establishment/Repair of Public Utilities – roads, trails, water, sewer, recycling, waste disposal, storm water management

## Appendix C: Coding Scheme for Interviews and Comprehensive Plans

- Factors for positive collaboration
  - Interpersonal Relationships
    - Having open, honest, and trustworthy communication
    - Building personal relationships
    - Being open-minded
    - Having mutual respect
  - Regionalism – seeing beyond boundaries and jurisdictions to realize benefits for the greater community
    - Regional Planning Commission – using the RPC to accomplish goals for the region
    - Local planning groups – using informal local groups to accomplish goals for the region
    - Regional approach philosophy
    - Joint planning
    - Marketing & branding the region – attracting people to the area
    - Sharing services, resources, or revenue – all parties have something to contribute, including facilities
    - Consolidating services, resources, or revenue
  - Projects to benefit the community
    - Economic development & tourism
    - Public utilities – roads, trails, water, sewer, recycling, waste disposal, storm water management
    - Environmental restoration – initiatives to protect the environment or restore the environment
- Factors for uncooperative relationships
  - Interpersonal Relationships
    - Lacking communication
    - Lacking trust
    - Personality Concerns - having an attitude/ego, holding grudges
    - Racism
  - Parochialism – focusing on small sections of an issue or territory rather than considering the wider context
    - Preserving tax base – related to tribal trust land, other tax exempt land, or preventing annexation of land to a neighboring government
    - Preserving local control
    - Preserving local identity
    - Having differences in land use
    - Having differences in community values
  - Politics & the Law

- Politics – political agendas interfering with efforts to cooperate
- Having disproportionate power & influence – one government may feel taken advantage of, preventing cooperation
- Exerting control over another government – one government trying to dictate to another government
- State and federal law – where the laws create jurisdictional conflicts
- Inconsistent participation
- Inconsistent rules

Appendix D: Trust and Fee Land Acquisition, GTC Land Acquisition Resolutions,  
Subdivisions, Subdivision Lots, Tribal Subdivision, Tribal Subdivision Lots, Land Use  
Litigation, and Intergovernmental Agreements over Time

Year	Trust	Fee	Res.	Subs.	Lots.	T. S.	T.L.	Lit.	Agr.
1937	379	0	0	0	0	0	0	0	0
1938	658	0	0	0	0	0	0	0	0
1939	0	0	0	0	0	0	0	0	0
1940	99	0	0	1	22	0	0	0	0
1941	54	0	0	0	0	0	0	0	0
1942	55	0	0	0	0	0	0	0	0
1943	301	0	0	0	0	0	0	0	0
1944	44	0	0	0	0	0	0	0	0
1945	35	0	0	0	0	0	0	0	0
1946	0	0	0	0	0	0	0	0	0
1947	0	0	0	0	0	0	0	0	0
1948	0	0	0	0	0	0	0	0	0
1949	0	0	0	0	0	0	0	0	0
1950	0	0	0	0	0	0	0	0	0
1951	0	0	0	0	0	0	0	0	0
1952	0	0	0	0	0	0	0	0	0
1953	0	0	0	0	0	0	0	0	0
1954	0	0	0	0	0	0	0	0	0
1955	0	0	0	0	0	0	0	0	0
1956	0	0	0	1	18	0	0	0	0
1957	0	0	0	1	8	0	0	0	0
1958	0	0	0	1	28	0	0	0	0
1959	0	0	0	2	42	0	0	0	0
1960	0	0	0	0	0	0	0	0	0
1961	0	0	0	1	16	0	0	0	0
1962	0	0	0	2	42	0	0	0	0
1963	0	0	0	1	47	0	0	0	0
1964	0	0	0	2	40	0	0	0	0
1965	25	0	0	0	0	0	0	0	0
1966	0	0	0	0	0	0	0	0	0
1967	0	0	0	2	49	0	0	0	0
1968	0	0	0	7	255	0	0	0	0
1969	0	0	0	1	9	0	0	0	0

*(table continues)*

## Appendix D Cont.

1970	3	0	0	2	49	1	34	1	0
1971	0	0	0	1	35	0	0	0	0
1972	0	0	0	5	167	0	0	0	0
1973	0	0	0	8	204	0	0	0	0
1974	0	0	0	5	254	1	43	1	0
1975	0	0	0	3	48	0	0	0	0
1976	0	0	0	10	171	3	67	0	0
1977	26	0	1	10	363	0	0	0	0
1978	1	0	0	11	416	2	16	0	0
1979	0	0	0	12	532	0	0	0	0
1980	7	24	0	5	65	1	20	0	0
1981	11	21	0	2	45	0	0	0	0
1982	4	144	0	4	91	3	15	0	0
1983	43	216	0	2	30	0	0	1	0
1984	26	128	0	0	0	0	0	1	2
1985	7	345	0	0	0	1	26	0	2
1986	32	12	1	6	72	0	0	0	0
1987	0	340	2	6	126	0	0	1	1
1988	0	314	0	4	52	1	22	0	0
1989	0	354	1	12	310	1	17	0	0
1990	88	234	1	6	87	0	0	1	0
1991	0	3	2	3	44	0	0	0	2
1992	240	805	0	17	289	0	0	0	0
1993	386	1186	0	3	39	0	0	0	1
1994	1014	1233	0	4	70	1	18	0	1
1995	462	1207	0	8	200	0	0	0	2
1996	52	1261	1	2	20	0	0	0	1
1997	39	25	0	3	34	0	0	1	1
1998	1	82	1	2	108	2	74	0	7
1999	0	1260	0	1	101	0	0	0	3

*(table continues)*

## Appendix D cont.

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2000	0	1381	0	6	96	0	0	0	0
2001	0	1242	0	5	131	1	8	1	1
2002	292	1434	0	3	51	0	0	1	0
2003	1	527	0	2	30	1	31	0	0
2004	0	1691	0	2	47	0	0	0	3
2005	26	2078	0	0	0	0	0	0	2
2006	538	778	0	1	19	0	0	0	1
2007	626	448	0	0	0	0	0	1	0
2008	1357	1331	0	0	0	0	0	2	1
2009	1423	1120	0	2	98	0	0	0	3
2010	552	9	1	0	0	1	20	0	1
2011	254	530	0	3	165	0	0	1	3
2012	71	558	0	1	7	0	0	0	2
2013	442	423	0	2	128	0	0	2	1
2014	995	2	0	0	0	0	0	0	0

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## Curriculum Vitae

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- School of Public Policy and Administration
- Specialization – Local Government Management for Sustainable Communities
- Dissertation Title – Common Boundaries: Moving Toward Coordinated and Sustainable Planning on the Oneida Reservation
- Member, Pi Alpha Alpha National Honor Society for Public Affairs and Administration

**UNIVERSITY OF WISCONSIN LAW SCHOOL, J.D. 2003**

- Member, *Wisconsin Law Review* (2001-2003)
- Vice President, Indian Law Students Association (2001-2002, member 2000-2003)
- Participant, National Native American Law Student Association Moot Court (2003)
- Chapter President, ΑΠΩ, first historically Native American Sorority in the Nation (2003, Sister 2002 to present)
- Recipient, 2002-2003 Phillip Owen Memorial Scholarship (for academic achievement and community service)
- Recipient, 2000-2003 Advanced Opportunity Fellowship

**UNIVERSITY OF WISCONSIN, ROBERT M. LA FOLLETTE SCHOOL OF PUBLIC AFFAIRS, M.P.A. 2003**

- Public Management Track
- Area of Concentration – Issues Impacting Native American Communities

**UNIVERSITY OF WISCONSIN-MADISON, B.A. 2000**

- Major in Political Science
- Certificate in American Indian Studies
- Co-president, Wunk Sheek (Native American student group) (1999-2000, member 1996-2003)
- Member, Multicultural Council (1996-1999)
- Recipient, 2000 Louise Troxell Award (for women's leadership)
- Winner, National Collegiate Minority Leadership Award (2000)

**SEMINARS**

**ANNUAL CONVENTION – Wisconsin State Bar**

June 27, 2014 – So You Want To Do Business With An Indian Tribe?

**ANNUAL TRIBAL LAND STAFF CONFERENCE – Indian Land Tenure Foundation**

April 1-3, 2014 – Rebuilding our Land Base: Fee-to-Trust

**ANNUAL LISTENING SESSION – Wisconsin Department of Transportation**

October 24, 2013 – Environmental Laws/Policies/Codes Panel

**INDIAN LAW CLE – Wisconsin State Bar - Indian Law Section**

September 20, 2013 – Fee-To-Trust 101

**LAWYERING SKILLS PROGRAM – University of Wisconsin Law School**

April 19 & 20, 2013 – Faculty for Skills Intensive Training for Law Students

**TREATY TO TRUST TO *CARCIERI*: THE ECONOMIC FUTURE FOR INDIAN LANDS – Sandra**

Day O’Connor College of Law, Arizona State University

April 28 & 29, 2011 – Panel: Costs and Benefits of Land Into Trust

**2010 COMING TOGETHER OF PEOPLES CONFERENCE - Univ. Wis. Law School**

Indigenous Law Student Association

March 20, 2010 - Panel: Protecting Cultural Property: 20 Years of Progress and

Challenges Under the IACA and the NAGPRA

**ONEIDA LAW CONFERENCE - Oneida Tribe of Indians of Wisconsin**

September 22, 2009 - Panel: Enforcement of Oneida Regulatory Laws

**2009 STATE BAR ANNUAL CONVENTION - Wisconsin State Bar - Indian Law Section**

May 7, 2009 - Land Use on the Oneida Reservation

**2009 COMING TOGETHER OF PEOPLES CONFERENCE - Univ. Wis. Law School**

Indigenous Law Student Association

March 28, 2009 - Panel: Intergovernmental Agreements Between Local Governments

and Tribes

**LAND USE REGULATION AND TAXATION: PAST, PRESENT, AND FUTURE - Wisconsin State Bar**

February 18, 2009 - Panel: Intergovernmental Agreements with Native American Tribes Regarding Commercial Development, Environmental Issues, and Zoning

**PROFESSIONAL EXPERIENCE**

**SENIOR STAFF ATTORNEY, ONEIDA TRIBE OF INDIANS OF WISCONSIN** – May 2009 to present

**STAFF ATTORNEY, ONEIDA TRIBE OF INDIANS OF WISCONSIN** – May 2003 to May 2009

- Provide legal representation for the Tribe including the Division of Land Management, Development Division, Oneida Housing Authority, Environmental Health and Safety Division, and Government Services Division.
- Develop curriculum and provide education and training to tribal employees, elected officials and community members regarding government relations, jurisdiction concerns, enforcing tribal regulations, and a wide variety of tribal land issues including planning and land use, zoning, taxation, acquisition, fee-to-trust, environmental concerns, leasing and mortgaging
- Negotiate and draft intergovernmental agreements between the Tribe and local governments on issues pertaining to payment in lieu of taxes, service agreements, jurisdictional agreements, road transfers, and cooperative police and emergency services
- Monitor and comment on tribal, state and federal draft regulations, proposed legislation and upcoming litigation pertaining matters impacting tribal governments
- Litigate before the Oneida Tribal Judicial System, Brown County Circuit Court, Wisconsin Court of Appeals, the Eastern District of Wisconsin, Seventh Circuit Court of Appeals, and the United States Bankruptcy Court

**ADJUNCT INSTRUCTOR, NORTHEAST WISCONSIN TECHNICAL COLLEGE** – February 2014 to present

- Teach courses in the General Studies Department including Introduction to Ethics, American Government, and Cultural Diversity; currently teaching Introduction to Ethics
- Maintain curriculum rigor in alignment with state requirements and prepare course materials
- Obtain and maintain certification to teach under the Administrative Code of the Wisconsin Technical College System

## **CERTIFICATION**

### **STATE OF WISCONSIN TECHNICAL COLLEGE SYSTEM BOARD, 2014**

- Part-Time Provisional Certification as an Instructor of Social Science

## **ACTIVITIES & AWARDS**

### **INDIAN LAW SECTION BOARD OF DIRECTORS – Wisconsin State Bar**

Board Member 2009-2012, Chairperson-Elect 2012-2013, Chairperson 2013-2014

### **WOODLAND INDIAN ART, INC. – nonprofit organization promoting woodland Indian art**

Board Member 2013-present

Co-Lead Judge of Woodland Indian Art Show & Market 2011-present

### **BOARD OF GOVERNORS – Wisconsin State Bar**

Challenges to the Profession Committee Member 2010-2011

### **BOARD OF GOVERNORS – Wisconsin State Bar**

Minority Bar Liaison 2010-2011

### **INDIAN ARTS AND CRAFTS BOARD – United States Department of the Interior**

Vice-Chairperson 2008-09, Commissioner 2007-2010

### **YOU MAGAZINE'S 20 WOMEN TO KNOW – Green Bay Press Gazette**

Named as one of 20 women in the Green Bay area for contributions to the community,  
2009