



The Tribal Self-Governance Act In Grand Portage [Minnesota]

The Grand Portage Band of the Minnesota Chippewa Tribe & Grand Portage National Monument

NPS – Tribal Self-Governance Act agreements (nationally)

- Olympic National Park/Lower Elwha Klallam Tribe
 - Elwha River Ecosystem Restoration, dam removal, restore salmon
- Redwood National Park/Yurok Tribe
 - Watershed restoration, archeological assessment

Grand Portage Indian Self-Governance Agreements

The facts:

12 Years of successive base contracts
Base Agreement: all Maintenance, Design & Construction
14 amendments to base contracts
71 additional projects, for example:
GIS, sewage lift stations, trail work, exhibits, parking lot, landscaping,
signage, mortar work, generator, roof repair, etc
Visitor satisfaction at the Monument: since 2002, average has been
97% or higher (slightly higher than NPS average)

Roughly one quarter of Grand Portage N.M. base funding
\$5,483,873 total agreed upon, transferred, and to complete projects as of 5/10

Clear fit for Title IV: "...DOI programs of special **geographic, historical, or cultural significance** to participating tribes... Section 403©

Select History of the Grand Portage Agreement

- Grand Portage Tribal resolution 45-96, September 25, 1996, move toward a Tribal Self-Governance Act agreement with the NPS
- G.P. Band first approached the NPS in November 15, 1996

- The G.P. Band already had a compact with BIA, very knowledgeable about the process the NPS was not... NPS assembled a team of park, regional, and solicitor's office (4 person).
- G.P. Band received a planning grant in 1997 to assist with negotiations (engage Attorney James Hamilton)....
 - “The [Grand Portage] Band is pursuing an incremental strategy with the ultimate objective of fully assuming all non-Federal operations at the Monument. We believe this step by step approach will enable us to build a track record of successes that will build the Band's necessary capacities over time, while engendering the confidence of the Park Service in our capacity to assume broader responsibilities at the Monument.” Tribal chairman Norman Deschampe
 - Pragmatism. Find out what works first.
- Negotiations.... Almost two years... no precedent. “Operational Agreement” – working alongside, with NPS employees on a day to day basis
- AFA signed August 17, 1998... put into effect in FY99. Continuous since
- Negotiations were *pre-regulation*..... Getting it done: read the law, no regs available for guidance (proposed regulations: February 12, 1998)
 - Once the desire to “make-this-work” was shared by all, we had to collectively find our own way

In the pre-regulations period a number of issues were even more cloudy besides the perennial: “what is an inherently federal function?” Also unclear was how and if it is a compact who has the legal authority in the NPS to sign an AFA?

- Or, are contracting officers involved?
- How exactly does the FAR apply? (we know now it does not)
- Room for creativity.... Find answers working together
 - What to do about federal employees? Intergovernmental Personnel Act sub-agmt for employee
 - 80% initial payment, then 20% final payment near end of year

Contentious Points:

- Early on we had more, few today. After a few thought-to-be impasses we agreed to disagree on a few topics and move forward. Getting it working was more important than one side “getting their way exclusively”

For example, near the conclusion of the original negotiations the 1999 Omnibus Bill “moratorium” on new AFAs became law. We

found a way to move around this and got started.... Answer:
already signed it, not “new.”

- The G.P. Band knew the NPS was not able to provide indirect costs as it would mean reducing time of select employees (some of who were Band members). So they trusted the NPS to find indirect costs. And by the next year, the first full year of the agreement we had these funds identified, available, and made them part of the agreement. This is an example where we began to develop trust between the two of us.

Other Questions (at that time):

- Davis Bacon construction rules do not apply if work is done by the tribe. Sub-contractors must be paid Davis Bacon wages
- Construction project, funds can be retained by the NPS to insure safety, monitoring, and verifying work

Question about public consultation/or NEPA prior to agreement ? No NEPA, but plenty of public notification (area newspapers, Indian Country Today, regional office press release, Congressman & two Senators, widely known in the NPS)

On the Ground realities at Grand Portage:

- ✓ Inherent tension in the law... intends to reduce federal bureaucracy vs. running it through two bureaucracies (NPS and the Grand Portage Band)
Law at odds with current NPS tendency to do more process, more web reporting
- ✓ Inherent tension between NPS mandate to provide quality visitor services to all Americans vs. law enacted primarily for Indians because of their special status as Indians.
- ✓ Operational AFA vs. Special Project AFAs
Much more integration/coordination/ and reciprocation of actions on the grounds at Grand Portage. Tribe part of every day activity at G.P.
- ✓ “Reassumption” is untested politically. AFAs have not been renewed. Reassumption because of “imminent jeopardy” to an important asset does not explicitly extend to cultural resources. (Safety? Yes. Natural Resources? Yes.)
- ✓ Relative ease in getting an AFA done. Relatively quick. DOI solicitor approval as a customary business practice. Tribal Chairman and Superintendent only sign

- ✓ Indirect costs negotiated in Compact/DOI auditors, not with the NPS. Relatively low indirect costs, currently 13.2%
- ✓ Advantages of having a progressive tribe/tribal council as partners
- ✓ NPS and tribal differences of opinion in what “inherently federal function” means. In G.P. we politely disagree, not worth shipwrecking the entire agmt to resolve.

Why Indian Self Governance Agreements Work at Grand Portage:

- The park is, in part, about Grand Portage Ojibwe history. Interest, care, and concern about Ojibwe heritage and history. Self-identity. Ancestors dealt with fur traders, descendants want to be part of telling that story.
 - Sense of ownership of the park. Not just a place of employment
- Trust. Example: in the beginning years with federal continuing resolutions we had to work to bridge the time between fiscal years. Band carried through with unexpended funds.
 - ❖ Now we work together on many projects in support of one another. Example: NPS support for the Band’s language revitalization program or the Band’s tribal council exhibits.
- Commitment to full communications and development of an ethic of two is sometimes better than one to get things done. Work our own angles. Frequent conversations between NPS & tribal council. Looking out for each other’s interest.
 - Pre-Agreement time, Band was frustrated and displeased with lack of communications, lack of involvement at GRPO prior to AFA. Park-Band relationship was strained.
 - NPS committed to transparent operations – open books. Take away any mystery or sense of estrangement from management
 - Agreement is perhaps great example of working together, but others as well. Multi-project relationship
- Hierarchy of the NPS and tribal council committed to making it work. Finding solutions to thorny problems AND compromising if necessary (and if both parties are willing to do this).
 - Small park, innovation is okay
- Proximity. The lakeshore unit of Grand Portage is in middle of Grand Portage village. We are essentially in their “livingroom.” Can’t walk away.

- Capitalizing on mutual interests. Developing mutual interests. For example:
 - Pedestrian, vehicular circulation. Gateway concept together
 - Oral history project
 - Planning efforts: GMP, heritage center, interpretative plan, etc.
 - Protect fish populations, VHSv plan with 4 Lake Superior parks
 - Charter school, GRPO as satellite campus

Consequences of the Implementation of the Indian Self-Governance Act at Grand Portage

Band and park regularly work together, help each other. [Congressman and Senators have taken note of this, positive story]

Band and park have stopped being hung up on a few disagreements... continue to work together on projects that have mutual benefits.

HUGE infrastructure gains:

- Heritage Center... G.P. related exhibits... lots of community pride
- NPS-Band leases (housing) then land to build housing
- Park housing... LEED Platinum rating
- Maintenance Shop... in planning... Band's patience

Growth in project funding thru time

- 11 year average of overall funding:
 - 52% project funding (internal NPS competition)
(in effect, doubling the budget because of collaboration)
 - 48% "base" funding
 - Regularly pass on cost of living: 37% since start-up

FINAL COMMENT: Bring two committed government entities together to get things done. In some cases, getting significant things done may be more important than how. Indian Self-Governance Act as one means of creatively problem solving, working together. Both governments are proud of this engagement.

For more information:

Mary Ann King, "Co-Management or Contracting?: Agreements Between Native American Tribes and the U.S. National Park Service Pursuant to the 1994 Tribal Self-Governance Act," The Harvard Environmental Law Review 31:2 (2007): 475-530.