



Cowlitz Indian Tribe

AMENDED FEE-TO-TRUST APPLICATION FOR ±151.87-ACRE PARCEL IN CLARK COUNTY, WASHINGTON (REORGANIZED AND SUPPLEMENTED)

JUNE 6, 2006

The Cowlitz Indian Tribe hereby submits its amended fee-to-trust application for ±151.87 acres of land in Clark County, Washington (the "Cowlitz Parcel" or "Parcel"). This application resubmits information that was provided in the Cowlitz Indian Tribe's original fee-to-trust application (submitted January 4, 2002) and amended application (submitted March 2, 2004). Information previously submitted has been reorganized so that it more directly corresponds to the organizational structure of the Bureau's fee-to-trust regulations published at 25 C.F.R. Part 151. This package also provides additional information that was not included in the previous submissions. It is the Tribe's hope that the reorganization of the existing information and the submittal of supplemental information will facilitate the Department of the Interior's review of the application.

Part I below provides a general overview of the Cowlitz Indian Tribe and its intended use for the Cowlitz Parcel.

Part II provides information specifically responsive to the requirements of the individual subparts of the fee-to-trust (25 C.F.R. Part 151) regulations.

Should you have any questions relating to the application, please do not hesitate to contact John Barnett, Tribal Chairman at 360-577-8140 or the Tribe's attorney, V. Heather Sibbison (Patton Boggs LLP) at 202-457-6148.

PART I GENERAL OVERVIEW

A Brief Synopsis of the History of the Cowlitz Indian Tribe.

Information regarding the history of the Tribe is detailed in the Historical Technical Report prepared by the Bureau of Indian Affairs' (BIA's) Branch of Acknowledgement (BAR), now known as the Office of Federal Acknowledgement (OFA), in connection with its review of the Tribe's petition for federal recognition. See copy provided at **Tab 1**. In addition, the history of the Cowlitz Tribe and its historical land base is covered in the Findings of the Indian Claims Commission in Docket No. 218. (Docket No. 218 concerned the Cowlitz Tribe's land claim litigation against the United States.) See relevant documents provided at **Tab 2**. The Tribe's history is also discussed by

the National Indian Gaming Commission in its November 22, 2005 Memorandum from the Acting General Counsel to the Chairman, regarding whether the Tribe's lands qualify as "restored lands" for the purposes of 25 U.S.C. § 2719 (b)(1)(B)(iii). See copy attached at Tab 3. Relevant historical information from these, and from other sources, is summarized below. The Tribe's documented history demonstrates its historical connection to the area in which the Cowlitz Parcel is located. That history also underscores the Tribe's extraordinarily long quest to find lands to replace those taken from it in the nineteenth century.

The first noted contact between Cowlitz Indians and Europeans occurred around 1805. Early contacts were reported along the Columbia River, the Lewis River, and the Cowlitz River, which are located in the same geographic area as the Cowlitz Parcel (the Lewis and Cowlitz Rivers are tributaries of the Columbia). The United States initially acknowledged the Cowlitz Tribe as a sovereign government in 1855 (soon after the Oregon and Washington territories were established) when the United States commenced treaty negotiations with the Tribe. In 1854 the Indian agent working most closely with the Cowlitz (William H. Tappen) had recommended that a reservation be set aside for the Cowlitz in their home territory at a location (the Chalatchie Prairie) about fifteen miles to the east of the Cowlitz Parcel. See more in-depth discussion in Part II below at §151.11(b) and primary source documents referenced therein. Despite Indian agent Tappen's recommendation, however, territorial governor Isaac Stevens tried to convince the Cowlitz to relocate to a reservation quite distant from the Cowlitz territory (far to the northwest on the Olympic Peninsula) on the which the Cowlitz would have to share with the Quinault, a tribe with which the Cowlitz had a long-standing hostile relationship. Not unsurprisingly, the Cowlitz Tribe refused to move from its traditional territory and as a result, no treaty with the Cowlitz providing for cession of its lands was ever executed.

Despite that the United States never obtained a land cession treaty from the Cowlitz, the United States nevertheless opened the Cowlitz lands for non-Indian settlement pursuant to an Executive Order in 1863. Within a short period of time the Cowlitz lands were lost to non-Indians and the Cowlitz people, now landless, became scattered throughout southwestern Washington and northern Oregon. Despite the Tribe's repeated pleas through the end of the nineteenth century that a reservation be provided within the Tribe's traditional territory, no land was ever set aside for the Cowlitz or its members. See *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v United States*, 21 Ind. Cl. Comm. 143, 166 at ¶ 14 (ICC Findings of Fact) (1969) (Tab 2).

In the early 1900s, the Tribe took steps to reorganize and elect its own governing body, largely in response to the death of the last chief appointed by Federal Indian agents in the late 1800s and the Tribe's determination to regain some land. See generally BIA Historical Technical Report (Feb. 14, 2000) (BIA-HTR) at 114 (Tab 1). By 1917, the Cowlitz Tribe of Indians formally organized and elected officials filling the positions of President, Vice-President, Secretary, and Treasurer, in addition to creating an executive committee. *Id.* at 127.

During this same time period, the Department of the Interior gradually ceased to view itself as engaged in a government-to-government relationship with the Tribe, taking the position that because the Tribe had no trust land, no duties were owed to it. As a result, the Tribe *de facto* was administratively terminated.¹ Although the Tribe attempted to reorganize and regain federal

¹ A detailed discussion of BIA's administrative termination of the Cowlitz Tribe is provided in the Cowlitz Indian Tribe's Request for a Restored Lands Opinion (March 15, 2005), at pp. 9-13 (copy provided at Tab 4); and in the

recognition under the Indian Reorganization Act in 1934² and again in 1975³, in both instances Interior rejected the Tribe's efforts because the Tribe was landless. Rejection of the Tribe's second attempt in 1975 precipitated the Tribe's decision to submit to the Federal Acknowledgment Process under 25 CFR Part 83. On February 18, 2000, some twenty-five years after the Tribe filed its acknowledgment petition, the Assistant Secretary – Indian Affairs issued his determination to acknowledge the Cowlitz Indian Tribe. 65 Fed. Reg. 8436 (Feb. 18, 2000). The Quinault Indian Nation requested that the Assistant Secretary reconsider the Cowlitz Indian Tribe's acknowledgment. The Assistant Secretary agreed to reconsider, but ultimately upheld the initial determination and published a Reconsidered Final Determination in favor of the Cowlitz Indian Tribe on January 4, 2002. 67 Fed. Reg. 607.

The Cowlitz Indian Tribe's Century-Old Effort to Reestablish a Tribal Land Base

Throughout the twentieth century, the Cowlitz Tribe sought to reestablish a land base within the general area of southwestern Washington to replace lands taken by the federal government by virtue of the 1863 Executive Order. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v United States*, 25 Ind. Cl. Comm. 442, 443 (1971). The Department of the Interior, through OFA/BAR, has acknowledged the Tribe's efforts from 1908 through the present era to obtain lands to replace Cowlitz aboriginal holdings. *See generally* BIA-HTR (Tab 1). *See also* The Cowlitz Indian Tribe's Request for a Restored Lands Opinion (March 15, 2005) (Tab 4).

Cowlitz tribal members first initiated land claims in 1908 by submitting an affidavit to the Department of the Interior regarding certain lands on Cowlitz Prairie. BIA-HTR at 106–107. The Tribe later expanded its claims to include additional ancestral lands. *Id.* The Cowlitz thereafter continuously pursued federal legislation that would allow a federal court to consider the Tribe's land claims. From 1915 through 1929, bills were introduced in Congress to provide the Court of Claims with jurisdiction over the Cowlitz claim. BIA-HTR at 126. In 1928, Congress passed legislation providing such federal court jurisdiction, only to have it vetoed by President Coolidge. BIA-HTR at 127. It was not until Congress enacted legislation in 1946 establishing the Indian Claims Commission (ICC) that the Cowlitz Tribe was able to pursue its claims against the United States. The Tribe filed suit in 1951, and in 1969 the ICC determined that the Cowlitz had exclusive use and occupation of a particular area of southwest Washington. The ICC also acknowledged that the Tribe had historical connections to the lands immediately south of the Tribe's exclusive use and occupancy area, but because other tribes also had used this area, the ICC could not compensate the Cowlitz for those shared-use lands. In 1973, in a settlement agreement between the Cowlitz and the United States, the ICC awarded the Tribe \$1,500,000 as compensation for the taking of the Tribe's exclusively-used lands. (This amounted to approximately 87 cents per acre.)

From the moment the Cowlitz Tribe agreed to the settlement of its ICC claim, the Tribe insisted that federal legislation authorizing the ICC award include a provision setting aside money for tribal land acquisition so that the Tribe could buy back some of the land it had lost. *See generally*

November 22, 2005 Memorandum from NIGC Acting General Counsel to NIGC Chairman Hogen regarding whether the Cowlitz Parcel would qualify as "restored lands" under 25 U.S.C. § 2719 (b)(1)(B)(iii) (NIGC *Cowlitz* Opinion) at pp. 5-8 (Tab 3).

² BIA-HTR at 131.

³ *Id.* at 157.

BIA-HTR at 152. When in 1975 the House and Senate initially took up legislation to give effect to the ICC settlement the Tribe fervently expressed its desire to use some of the settlement money for land acquisition. Cowlitz Tribal Chairman Roy Wilson, testifying in support of the Senate bill, S. 1334 (94th Congress), stated:

A very important part of this legislation is the allocation of \$10,000 for the purchase of land of which we are desperately in need . . . [as a] tribal entity, and to preserve for our posterity that Indian culture which is peculiarly our own.

Let us be consistent with the very heart of this legislation. This legislation has to do with the distribution of a very small token settlement for very valuable land which the Cowlitz Tribe never ceded to the U.S. Government.

In the Indian War of 1855-56, the Cowlitz Tribe never fought against the U.S. Army, but rather fought for it and with it [Subsequently,] the President and the Congress wanted to group a number of these small tribes on one reservation together. The Cowlitz knew this would be suicide to live on a reservation with neighboring tribes whom they had fought against for the U.S. Army and they therefore refused. The end result was that the tribes who fought against the United States were awarded land and the Cowlitz who fought for this great country were awarded nothing

You, the present-day leaders of our great land, have the opportunity to reveal an element of integrity in justice by allowing us to spend, out of this distribution, a mere pittance of \$10,000 for a few small acres of land which we originally had aboriginal title to nearly 4 million acres

We, the Cowlitz, are only asking for enough out of our distribution to purchase 510 acres for the posterity of our economic and social well-being, for the opportunity to retain and perpetuate our own individual culture.

Distribution of Funds to Cowlitz and Grand River Band of Ottawa Indians: Hearing Before the Subcomm. On Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 94th Cong. 70-71 (1975) ("S. 1334 Hearing Report"). A copy of the S. 1334 Hearing Report is attached at Tab 5.

Ironically, the Department of the Interior strongly objected to S. 1334's settlement distribution plan, taking the position that because the Cowlitz Tribe was unrecognized, it was ineligible to hold trust lands, and that therefore all funds should be distributed on a per capita basis to individual Cowlitz members. As a result, the legislation, with its land acquisition provision, was not enacted into law.

Several versions of legislation providing for distribution of the Cowlitz settlement were introduced in subsequent sessions of Congress, but Interior consistently opposed all versions of the

settlement legislation, continuously objecting to the use of any settlement funds for land acquisition because the Cowlitz Tribe was not federally recognized. See BIA-HTR at 152. Nevertheless the Tribe remained steadfast in its commitment to having some of its ICC settlement money set aside for land acquisition, and refused to agree to legislation settling its claim that did not contain a land acquisition provision.⁴ As a result, it was not until 2004, two years after the Tribe received federal recognition and twenty-one years after it received its ICC award, that Interior withdrew its objection and the Tribe agreed to a settlement statute with a land acquisition provision intact. President Bush signed the Cowlitz Indian Tribe Distribution of Judgment Funds Act into law on April 30, 2004. Pub. L. 108-222; 118 Stat. 623 (April 30, 2004). A copy is attached at **Tab 6**. Section 4(f)(1) of the Act specifically sets aside 21.5% of the interest received on the settlement moneys to be used for “[p]roperty acquisition for business or other activities which are likely to benefit the tribe economically or provide employment for tribal members.” (emphasis added). The Cowlitz Tribe resolved to use some of the settlement funds provided in the Settlement Act to help pay for the Cowlitz Parcel.⁵ The Tribe feels it is appropriate that it use funds provided as compensation for tribal lands wrongfully taken in the nineteenth century to acquire its first trust land in the twenty-first century.

As the result of the 1863 Executive Order opening up Cowlitz lands to settlement, the Cowlitz Tribe has been landless for more than a century. The consistency and tenacity with which this Tribe has worked over the last hundred years to find some way to reacquire some small portion of land for its people is remarkable. Acquisition of trust status for the Cowlitz Parcel will be the culmination of the Tribe’s century-long struggle to cure its landlessness.

PART II COMPLIANCE WITH 25 C.F.R. PART 151

§ 151.1: Purpose and Scope of Regulation

This section describes the purpose and scope of the regulations and requires no response.

§ 151.2: Definitions

This section provides definitions relevant to the regulations and requires no response.

§ 151.3(a): Limitations on the Land Acquisition Policy for Tribes

Under this section, since the Tribe has no current reservation, the Tribe must either own an interest in the land (section 151.3(a)(2)), or “the acquisition of the land must be necessary to facilitate tribal self-determination, economic development, or Indian housing” (section 151.3(a)(3)). As described below, the Cowlitz Indian Tribe’s request for this Parcel meets both of these criteria.

⁴ See Cowlitz Indian Tribe’s Request for a Restored Lands Opinion (**Tab 4**) for a detailed discussion of the Tribe’s legislative efforts as well as its other internal governmental efforts to acquire tribal lands for, *inter alia*, a reservation, tribal headquarters, cultural and business purposes, and economic development.

⁵ See Tribal Council Resolution No. 05-19, 2005, provided at **Tab 9**.

§ 151.3(a)(2): Tribe's Interest In the Land

Title to the Cowlitz Parcel (which comprises 8 smaller parcels, as shown in the map attached at **Tab 7**) is either held or controlled by Salishan-Mohegan, LLC ("Salishan-Mohegan"), the Tribe's development partner. Salishan-Mohegan has committed to transfer its interest to the Tribe at such time as the United States agrees to accept trust title to the parcel. For further details regarding assignment and purchase obligations relating to the Cowlitz Parcel, *see* Letter from Stephen W. Horenstein, Miller Nash LLP, to Jeffrey Nelson, NIGC (Nov. 11, 2005) and attachments; Development Agreement between Cowlitz Tribe and Salishan-Mohegan (Sept. 21, 2004) at 13; both attached at **Tab 8**.

Since November 11, 2005, Salishan-Mohegan has closed on all of the property south of NW 319th Street, resulting in two changes to the circumstances described in the Letter from Stephen W. Horenstein attached at **Tab 8**. First, new perimeter legal descriptions were recorded for two parcels, causing a change in the Assessor's record (from 12 tax parcels south of NW 319th Street to 6 tax parcels south of NW 319th Street). As a result, there are now eight (8) total tax parcels instead of the fourteen total tax parcels described in the Letter from Stephen W. Horenstein (*see* **Tab 8**). Second, Salishan-Mohegan now has title to all of the parcels south of NW 319th Street (these closings were previously described to occur at a "future date").

§ 151.3(a)(3): Facilitation of Tribal Self-determination, Economic Development or Indian Housing

The acquisition of the Parcel will facilitate all three: tribal self-determination, economic development and Indian housing. As a newly recognized tribe, the Cowlitz Indian Tribe has an urgent need to develop tribally-based economic opportunities which will generate much-needed revenue for the tribal government and will provide tribal employment opportunities for Cowlitz members. Such opportunities currently are nearly non-existent.

The Tribe's proposed use of the parcel for a Class III gaming facility with hotel and entertainment facilities will offer important economic development opportunities that will support the Tribe's pursuit of self-determination. Revenues generated by the operation of the proposed casino-resort facilities on the parcel will finance the provision of fundamental government services and the building of tribal government buildings and tribal housing. The Tribe plans to build approximately sixteen residential housing units for its elder members, as well as tribal governmental offices and a tribal cultural center at the site. For a more detailed discussion of these issues, *see* BIA Administrative Draft Environmental Impact Statement (November 2005).

§ 151.3(b): Limitations on the Land Acquisition Policy for Individual Indians

This regulation does not apply because an individual Indian is not requesting that the land be acquired in trust status.

§ 151.4: Acquisitions in trust lands owned in fee by an Indian (individual or Tribe)

This section simply provides that unrestricted land owned in fee may be conveyed into trust status under the regulations; it requires no response.

§ 151.5: Trust Acquisitions in Oklahoma.

Because the Parcel is located in the state of Washington, this section is not applicable.

§ 151.6: Exchanges.

Because the Parcel is not being acquired by exchange, this section is not applicable.

§ 151.7: Acquisition of Fractional Interests

Because a fractional interest in land is not being acquired, this section is not applicable.

§ 151.8: Tribal Consent for Nonmember Acquisitions

Because the Tribe is not acquiring land that is located on the reservation of another tribe, this section is not applicable.

§ 151.9: Requests for Approval of Acquisitions

This section provides that a tribe or individual should submit a written request for approval of the acquisition of land in trust. This entire package is responsive to this subpart.

§ 151.10: On-reservation Acquisitions

Being a Tribe newly acknowledged through the administrative Federal Acknowledgement Process, the Cowlitz Indian Tribe has no reservation, and accordingly, the acquisition of this Parcel technically constitutes an off-reservation acquisition. Therefore, this section (§ 151.10) is only applicable through section 151.11, which is addressed below.

§ 151.11: Off-reservation Acquisitions

Again, because the Tribe does not currently have a reservation, acquisition of the Parcel is considered by Interior to be an off-reservation acquisition. The requirements in each of the pertinent off-reservation subsections are discussed below.

§ 151.11(a): Fulfill criteria listed in 25 C.F.R. § 151.10(a)-(c), (e)-(h). Each of these is individually addressed below.

§ 151.10(a): Statutory authority

The Secretary of Interior may place land into trust pursuant to the general acquisition authority provided in Section 5 of the Indian Reorganization Act, 25

U.S.C. § 465. The Cowlitz Indian Tribe is relying on that authority in requesting that the Cowlitz Parcel be taken into trust.

§ 151.10(b): Need for additional land

As a general matter, the Cowlitz Indian Tribe's need to acquire trust land is acute because the Tribe holds no trust land whatsoever. Placement of this parcel into trust will promote tribal self-determination, provide much-needed opportunities for economic development, and aid in the construction of Indian housing. Moreover, provision of trust status for this parcel is particularly appropriate because the Cowlitz Indian Tribe has strong historical and modern ties to the area in which the Parcel is located (*see* the discussion under § 151.11(b) below).

§ 151.10(c): Planned land use

The Cowlitz Indian Tribe wishes to use this land to develop a Class III gaming facility and related restaurant and retail facilities, convention and entertainment facilities and a hotel. Of equal importance, the Tribe wishes to build tribal governmental offices, a tribal cultural center and approximately sixteen housing units at this site. These governmental facilities and the services dispensed from them will serve the Tribe's widely dispersed population base. For more detailed information on planned land use for the Cowlitz Parcel, please refer to BIA's Administrative Draft Environmental Impact Statement (November 2005).

§ 151.10(e): Impact on state and local taxes

State and County Taxes: The Tribe entered into a Memorandum of Understanding (MOU) with Clark County on February 26, 2004. A copy of the MOU is provided at **Tab 10**. In that MOU the Tribe agreed to compensate the County and local districts on a biannual basis in lieu of property taxes for revenues lost as a result of the removal of the Cowlitz site from the tax rolls, consistent with the customary assessment procedures used by the County Assessor and State Constitution. *See* MOU § 11 ¶ 11.1. Such compensation is to be paid to the extent not otherwise specifically provided for (a) elsewhere in the MOU between the Tribe and the County, or (b) in any Class III Gaming Compact subsequently entered into between the Tribe and the State pursuant to the federal Indian Gaming Regulatory Act (including payments from the local Impact Mitigation Fund). *Id.* *See also* discussion following regarding the Washington State Compacts.

In addition, in the MOU the Tribe agrees to collect sales tax as appropriate on all sales to non-Indians that take place on the Cowlitz Parcel in business enterprises owned and operated by the Tribe. *See* MOU at § 11 ¶ 11.2. The rate of collection shall be in conformance with the applicable State-County blended tax rate as provided by the Washington Department of Revenue and confirmed upon tribal request by the County. *Id.* The Tribe agrees to remit such sales tax to the State of Washington consistent with state law requirements. *Id.*

Furthermore, the Tribe has agreed to make an annual payment that is the equivalent of the transient occupancy tax that it would otherwise be required to collect if it were a private employer pursuant to Clark County Code Chapter 3.16. *Id* at ¶ 11.3.

Local Municipalities

The Cowlitz Parcel is located in an unincorporated portion of Clark County. Accordingly, acquisition of trust title to the property will have no impact on municipal property taxes.

However, because establishment of a Cowlitz gaming facility will have an impact on tax revenue generated by non-Indian cardrooms operating in La Center, Washington (two miles from the site), the Tribe has offered in writing to enter into a Memorandum of Understanding with the City of La Center to mitigate such impacts and to support capital facility projects for the City. Despite the Tribe's repeated offers to negotiate with the City of LaCenter, the City to date only has been willing to discuss the possible provision of sewer services, as the City needs the Tribe's financial support in order to implement the City's independent plans for a more extensive sewer system. The City at present appears unwilling to discuss other issues.

Financial Mitigation Required by the Washington State Compacts

Finally, although the Tribe has not completed negotiations with the State for a Class III compact, all of the other Washington State tribal gaming compacts contain provisions establishing funds for community impacts and charitable contributions. It is unlikely that the Cowlitz compact will differ from the others. By these provisions, the Washington tribes have agreed to set aside two percent of net win from Class III table games to be used to offset the impacts on law enforcement, emergency services, and other service agencies of local jurisdictions materially impacted by Class III gaming. In addition, the Washington tribes have agreed to set aside one percent of the net win from Class III machines for local impact mitigation and charitable contributions to the local community. Copies of relevant pages from typical Washington State compacts showing local payment provisions are provided for reference at **Tab 11**.

§ 151.10(f): Jurisdictional issues

The Cowlitz Parcel is located in an unincorporated portion of Clark County. Accordingly, only Clark County exercises jurisdiction over the Parcel.

Through the February 26, 2004 MOU with Clark County, the Tribe has agreed to mitigate impacts of the development of this Parcel and address all major jurisdictional issues, including, but not limited to: making development consistent with specific county ordinances; paying development and other processing fees; making development consistent with building and design standards set out in County ordinances; and compensating the County law enforcement, prosecuting

attorney's office, courts, schools and fire districts that will provide public services on the Tribe's trust lands. *See* § 1 ¶ 1.5.

The Tribe and the County also have agreed in the MOU to the following regarding law enforcement. The Tribe has consented to the entry of officers onto tribal trust land subject to the MOU and into any structures thereon for the purpose of providing law enforcement services. *See* MOU at § 3 ¶ 3.2.1. To offset the added cost of patrolling and response services by the County Sheriff's Office, the Tribe has committed to enter into an agreement to reimburse the Sheriff's Office for reasonable direct and indirect costs incurred in conjunction with furnishing law enforcement to the Cowlitz Parcel. *Id.* at ¶ 3.2.3.

The Tribe and the County have agreed that the prosecution of individuals for violations of law on the Cowlitz Parcel for which the State of Washington or Clark County has jurisdiction shall be conducted by the Clark County Prosecuting Attorney's Office in state court without regard to whether the charges are filed against Indians (including members of the Tribe) or non-Indians, until such time as the Tribe may develop tribal courts that would have jurisdiction over Indians for violations of law in accord with federal or tribal law. *See* MOU at § 4 ¶ 4.1.

The Tribe has agreed to execute an agreement with the Clark County Prosecuting Attorney's Office regarding payment for prosecution of misdemeanor crimes committed on the Cowlitz Parcel to the extent that payments agreed upon are not otherwise covered by payments received by the County under the MOU or the Impact Mitigation Fund. *Id.* at ¶ 4.3.

The Tribe has agreed that juvenile and felony prosecutions for crimes occurring on the Cowlitz Parcel shall be processed in the same manner as juvenile and felony crimes are currently prosecuted for cities, although felonies committed by Indians on tribal land may be subject to exclusive federal or tribal jurisdiction. *Id.* at § 5 ¶ 5.2. The Tribe, in the MOU, has agreed to pay the costs for jail, court-related or corrections programs and costs for processing cases through Clark County District Court to the extent that payment for such expenses is not otherwise covered by payments received by the County under the MOU or the Impact Mitigation Fund. *Id.* at ¶ 5.1.

With respect to emergency and fire services, the Tribe recognizes that the present Cowlitz Parcel and future economic development of the Cowlitz Parcel will result in increased demands for fire protection and emergency response services. *Id.* at § 6. Accordingly, the Tribe has agreed to compensate the Clark County Fire District 12 for these costs as provided for in a separate agreement between the Tribe and Fire District 12. *Id.*

The Tribe has agreed to comply with all health regulations adopted by the State of Washington and Clark County. *Id.* at § 7. In addition, the Tribe has agreed to obtain all required permits and to allow health inspections to ensure compliance with all state and local health regulations. *Id.*

In the MOU, the Tribe also has agreed that the trust lands subject to the MOU and any structures and uses on the property shall be developed in a manner consistent with County codes attached to the MOU applicable at the time of development of construction. *Id.* at § 10.0.

Finally, the Tribe also agrees in the MOU to establish the Cowlitz Tribe Arts and Education Fund to support charitable activities in Clark County, *id.* at § 12.1, and to contribute not less than \$50,000 per year to a problem gambling program designated by the County. *Id.* at § 12.2.

§ 151.10(g): BIA discharge of responsibilities.

The Bureau of Indian Affairs office closest to the Cowlitz Parcel is the Northwest Regional Office in Portland, Oregon, which is approximately 26 miles from the property. Because the Cowlitz Tribe's population is widely dispersed, the Parcel will be convenient to BIA because it provides a localized central location for Cowlitz tribal members to receive Bureau of Indian Affairs services. Therefore, the Tribe expects that the Bureau will be able to discharge any additional responsibilities that may arise in connection with acquisition of the Parcel in trust.

§ 151.10(h): Environmental information relating to the National Environmental Policy Act and Hazardous Substance Determinations.

A draft Environmental Assessment (EA) was completed in March 2004. Soon thereafter, the Tribe came to believe that the more fully-developed process for ensuring community participation inherent in the Bureau-run EIS process would better serve the Tribe's efforts to forge a positive working relationship with the local community. The Tribe informed the Bureau of its views. The Bureau agreed, and selected an independent firm with extensive environmental expertise to conduct the Bureau's EIS. The outside firm, Analytical Engineering Services (AES), is working with the Northwest Regional Office of the Bureau of Indian Affairs to complete the EIS process pursuant to the requirements of NEPA and Part 516 of the Department of the Interior's Departmental Manual. The Final EIS will become part of the record of this application. As of the date of this submittal, the Bureau of Indian Affairs has released a Draft Environmental Impact Statement (DEIS) for public comment.

A Level I Contaminant Survey for this parcel was completed on February 20, 2004 to comply with the pre-acquisition environmental site assessment requirement in Part 602 of the Departmental Manual. That survey confirmed that no known contaminants exist on the property. A copy of the Level I Containment Survey is attached at **Tab 12**.

§ 151.11(b): Land location relative to state boundaries and the Tribe's reservation.

The Cowlitz Parcel is located near a site originally recommended for the Tribe's reservation.

The Cowlitz Parcel is located in Clark County, Washington, in the same state and general geographical area in which the Cowlitz Indian Tribe is located. The Tribe does not currently have a reservation, but it should be noted that when in 1854 Indian sub-agent William H. Tappan wrote to Washington Territory Governor and Western Territory Superintendent Isaac I. Stevens about Mr. Tappan's "views relative to the extinguishment of Indian Titles to Lands" in southwestern Washington and Oregon, Agent Tappan recommended that land should be reserved for the Cowlitz on the Chalatchie prairie:

The Cowlitz Indians are but few and could I think be [...] to go with the Tai tin a parrs. that portion however that [have] been for a long time in the employ of the boat-men upon the river would probable protest against leaving that business; but they are few and in two or three years the burial ornaments will have faded over the resting places of them all.

Those upon the Cathlapoodle [Lewis River] (Tai tin a parrs) will I think be willing to go to a reserve in the Chalatchie prairie, retaining however a right to their fisheries, and to winter their horses in the valley they now occupy. Here, I think those of the Cowlitz and about Vancouver could be gathered. The land is unsurpassed by any in the Territory, and in the very heart of the best berry district frequented by all of these tribes. To this prairie they [have] always been particularly attached, often declaring that though they sold all else this they would retain. But one obstacle is in the way. the valley is fast filling with settlers and unless the reserve is made before spring opens it will be too late. Should your Excellency be favorably impressed with the idea of making a reserve at this place [I] should think it would be well to Stake out the necessary amount of land ~~by the~~ [strikethrough in the original] early as the middle of Feb next, even if the treaty should not be made for a long time after. Should this land be lost I know not where a place can be found that will answer their purposes, [and] which they will be willing to make their home. They are willing to cultivate the soil therefore I would recommend that agricultural implements + harness form a part of their first payment.

Transcription of the Dec 15th 1854 Handwritten Report of William H. Tappan, Indian Sub-agent, Southern District, Washington Territory to Isaac I. Stevens, Governor and Superintendent of Indian Affairs, Washington Territory (*emphasis added*; spelling and punctuation errors in the original). A copy of this Report is provided at **Tab 15**.

As is clear from the 1888 Clark County map below, the Chalatchie prairie is located in Clark County approximately fifteen miles to the east of the Cowlitz Parcel. The 1888 Clark county map is too large to reproduce in this document, so a copy is provided with text of the Tappan Report at **Tab 15**.

In addition, the Tribe has both significant historical and modern connections to the area where the Parcel is located.

The Tribe's Historical Connections to the Area in Which the Cowlitz Parcel is Located.

As noted above, detailed information regarding the history of the Cowlitz Tribe and its land base can be found in the BAR technical reports and in the factual findings made by the ICC in the Tribe's land claim litigation. Extensive additional information from non-federal sources (particularly primary source documentation) is also available. For purposes of this document, we include the following brief summary of the Tribe's historical connection to the area in which the Cowlitz parcel is located, most of the factual evidence being drawn directly from the ICC and BAR proceedings (i.e., factual evidence already accepted by the federal government).⁶

In 1969, the Indian Claims Commission judicially determined that the Cowlitz Indian Tribe historically *exclusively* used and occupied an extensive area of southwestern Washington that lies fourteen (14) miles to the north of the Cowlitz Parcel. See *Simon Plamondon*, 21 Ind. Cl. Comm. at 170. The ICC and BIA also found that the Cowlitz directly used and occupied lands near the Cowlitz Parcel, primarily along the Columbia River, Lewis River, and Cowlitz River (the Lewis and Cowlitz are the tributaries running into the Columbia; the Lewis River is about one mile north of the Cowlitz Parcel), although use of this area was shared with other tribes.

During the early 1800s, the Cowlitz lived in close proximity to the Chinookan people in the Lewis River area. The Cowlitz were significant players in the fur trade that was operated by the Hudson's Bay Company out of Ft. Vancouver, located in what is current-day Clark County, about 15 miles south of the Parcel. BIA-HTR at 17-20; BIA Genealogical Technical Report (Feb. 14, 2000) (BIA-GTR) at 5, fn. 2 (**Tab 13**); *Simon Plamondon*, 21 Ind. Cl. Comm. at 155. The continued presence of Cowlitz Indians in the Vancouver area is described in records of the 1855 Chehalis River treaty negotiations, BIA-HTR at 40, and in reports of European disease decimating the Indian population, BIA-GTR at 7. Cowlitz Indians reportedly hunted, gathered and fished in the Lewis River area throughout the mid- to late 1800s, and were "known to be expert canoe men who freely made use of the Columbia River and its tributaries," including the Lewis. BIA-HTR at 71. Cowlitz Indians were included in federal censuses of Clark

⁶ The BAR and ICC findings documenting the Tribe's historical connections to the area are discussed in depth in the Cowlitz Indian Tribe's Request for a Restored Lands Opinion at pp. 22-31 (**Tab 4**), and are referenced in the NIGC *Cowlitz* Opinion at pp. 10-14 (**Tab 3**).

County from 1870 to 1900, BIA-GTR at 51-52, and were recorded as residents of Clark County in the “Roblin Roll” of Indians living in the Washington/Puget Sound area in 1919. BIA Anthropological Technical Report (BIA-ATR) at 150 (Tab 14).

In short, from the time of first white contact through the twentieth century, the Cowlitz Tribe hunted, fished, gathered, traded, fought, lived, married, and died in the area in which the Cowlitz Parcel is located.

The Tribe’s Modern Connection to the Area

The Cowlitz Tribe’s population of 3,535 members is relatively widely dispersed. The location of the Cowlitz Parcel is helpful to the Tribe because it is located in an area that can serve a significant number of the Tribe’s current membership. The Parcel is also located about 24 miles from the Tribe’s existing government offices, which are located on a small parcel of fee land in Longview. (The Tribe plans to relocate its government offices to a new tribal government office building that will be constructed as part of the planned development for the Cowlitz Parcel, once it is acquired in trust.)

In addition, the Indian Health Service (“IHS”) has designated Clark County (as well as neighboring Cowlitz and Skamania Counties) as the Tribe’s IHS “Service Delivery Area.” The Tribe recently opened a social and health services facility at the Center for Community Health in Vancouver, which marks the first direct tribal health services to be offered in Clark County. The Department of Housing and Urban Development (“HUD”) has designated Clark, Cowlitz and Skamania Counties as part of the Tribe’s “Formula Area” for Indian Housing Block Grants.⁷ The Tribe also provides housing services from its Vancouver Community center. Although BIA has not yet designated a service area for the Tribe, the Tribe is in the process of preparing a formal request for a service area designation that will include Clark County.

The federal government designates “service areas” based on whether a number of tribal members reside in the area and on whether the tribe delivers, or can feasibly deliver, services to its members. For example, the Department of Housing and Urban development defines tribal “formula area” to include reservations, trust lands or the geographic area where the tribe is providing substantial housing services. 24 C.F.R. § 1000.302. Similarly, the Indian Health Service designates “service delivery areas” based on factors such as the number of tribal members

⁷ We note that HUD issues Indian Housing Block Grants pursuant to a formula based on the need of Indian families within the Tribe’s Formula Area. HUD’s FY 2005 Estimate Formula Response Form demonstrates that there is a staggering need for Indian housing and economic opportunities in southwestern Washington, with a large number of Indian households earning far less than the median family income, being overcrowded, and spending more than 50 percent of their income on housing costs. A copy of the Cowlitz Tribe’s completed HUD Response Form is attached at Tab 16.

living in the area. See 42 C.F.R. § 136a.15(b)(1) and (c)⁸. The Bureau of Indian Affairs (BIA) also designates service areas based on variety of factors, including whether the area is “administratively feasible.” 25 C.F.R. § 20.201(b)(1). In adopting its final regulations governing the designation of service areas, BIA indicated that service areas are not administratively feasible just “any place where a tribal member resides.” 65 Fed. Reg. 63150 (Oct. 20, 2000). Rather, such locations presumably must serve a meaningful segment of the tribal population. This notion was underscored in proposed updates to BIA’s service area designation regulations that tied service areas to areas in which “tribal members and their Indian family members residing within the service area are socially, culturally, and economically affiliated with your tribe and service area.” See 64 Fed. Reg. 24300 (May 6, 1999). Although this requirement was not included in the final rule, it evinces the common sense approach that service areas are designated to deliver services to areas in which modern day members of the tribe are located.

A more detailed discussion of the Tribe’s modern connections to this area is provided in the Tribe’s Supplemental Request for a Reservation Proclamation (to be submitted shortly).

In light of the Tribe’s modern and historical connections to the Cowlitz Parcel, as well as the significant economic benefits that the Tribe anticipates will result from its proposed development (*see* Section 151.11(c), below), the Tribe believes that acquisition of the Parcel in trust status is a well-justified and appropriate exercise of the Secretary’s discretion.

§ 151.11(c): Plan specifying economic benefits associated with proposed use.

The anticipated economic benefit of taking this parcel into trust for the Cowlitz Indian Tribe is extremely significant. The planned economic development is crucial to the Tribe’s ability to generate revenue from which it can provide governmental, health, educational and social services to its members.⁹ The Tribe currently holds no trust land, and is currently unable to provide any significant employment opportunities to its members. More detailed information regarding this point will be included in the Cowlitz Indian Tribe’s Business Plan, which will be submitted in the near future (and which then should be inserted at Tab 17 of this submission).

⁸ Indians are eligible for contract health services if “they reside within the contract service delivery area of the tribe to which they belong or with which they maintain close social and economic ties.” F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 1380 (2005 ed.) citing 42 C.F.R. § 136.23(a).

⁹ As an example, the Tribe has received more than 230 requests for housing from tribal members since 2002. Given the HUD figures cited in the previous section, the need for such housing, as well as economic development opportunities for tribal members is painfully obvious. Acquisition of the Cowlitz parcel in trust will allow the Tribe to meet some of these housing needs through the planned construction of elder housing units, will allow the Tribe to generate the revenues needed to build additional tribal housing, and most important, will provide Tribal members with employment opportunities that eventually will help to reduce the need for assistance.

§ 151.11(d): Contact with state and local governments.

This section describes actions to be taken by the Secretary of the Interior. A list of local government contacts to assist the Bureau of Indian Affairs in consulting with state and local officials is provided at **Tab 18**.

§ 151.12: Action on Requests.

This section describes actions taken by the Secretary of the Interior. To the extent that the Secretary requests additional information, the Cowlitz Indian Tribe will be happy to respond to those requests promptly.

§ 151.13: Title Examination.

The Cowlitz Parcel may be generally described as follows: ±151.87 acres in SE/4 Sec. 5, NE/4 Sec. 8, and NW/4 Sec. 9 T. 4 N., R. 1 E., W.M., Washington, Clark County. The Cowlitz Parcel actually comprises eight (8) Assessor's parcels. Salishan-Mohegan, the Tribe's development partner, controls and/or owns these parcels. Salishan-Mohegan will assign and/or transfer its interest to the Cowlitz Indian Tribe at the time the land is transferred into trust. The eight parcels are described in greater detail in vesting documents, title exception documents, and a survey, which are included in **Tab 19**.¹⁰ See also documents attached at **Tab 8**. (Letter from Stephen W. Horenstein, Miller Nash LLP, to Jeffrey Nelson, NIGC (Nov. 11, 2005) and attachments; Development Agreement between Cowlitz Tribe and Salishan-Mohegan (Sept. 21, 2004) at 13).

There is an Amended Commitment for Title Insurance ("Update No. 3"), and two subsequent updates (Supplemental No. 1 and Supplemental No. 2) included in **Tab 19** that meet the Department of Justice Title Standards (2001). The Amended Commitment for Title Insurance, Supplemental No. 1 and Supplemental No. 2 were prepared by Clark County Title, which is authorized by law to prepare title insurance policies in the State of Washington. Please note that this title insurance documentation has been significantly revised since it was previously submitted to BIA, to reflect the status of title as of May 1, 2006.

§ 151.14: Formalization of Acceptance.

This section describes actions taken by the Secretary of the Interior and requires no response.

§ 151.15: Information Collection.

This section provides the information collection process and requires no response.

¹⁰ We note that the preferred alternative in the Draft Environmental Impact Statement includes the relocation of NW 319th Street to a more southerly location on the Cowlitz Parcel, which would require use of the Clark County road vacation process. This process would involve dedicating a new alignment of this road south of the existing alignment, which we anticipate may result in an exception of title being added prior to the United States' acceptance of the parcel in trust. We will keep BIA informed regarding any changes or exceptions to title that may become necessary.

CONCLUSION

The Cowlitz Tribe has worked diligently to identify a parcel of land that can meet the Tribe's self-governance needs while being located within the Tribe's service area and within an area to which the Tribe has historical and modern connections. Acquisition of trust title to the Cowlitz Parcel will enable the Tribe to provide vital services to its community and a federally-protected homeland for its members. Perhaps more importantly, acquisition of trust title to the Cowlitz Parcel will help correct the historical injustices that left this tribe unrecognized and landless for nearly a century and a half. The Tribe respectfully requests that the Assistant Secretary cause this land to be acquired in trust as soon as is practicable.

THE COWLITZ INDIAN TRIBE
TABLE OF ATTACHMENTS FOR FEE-TO-TRUST APPLICATION:
COWLITZ –CLARK COUNTY, WASHINGTON (151.87 ACRES)

Tab	Description of Attachment	Relevant Regulations
1	Department of the Interior, Branch of Acknowledgment and Research, Historical Technical Report	151.11(a) [fulfilling section 151.10(b)], 151.11(b)
2	Indian Claims Commission Dkt. 218 <i>Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v United States</i> , 21 Ind. Cl. Comm. 143 (1969)	151.11(a) [fulfilling section 151.10(b)], 151.11(b)
3	Cowlitz Restored Lands Opinion Issued by the National Indian Gaming Commission	151.11(a) [fulfilling section 151.10(b)], 151.11(b)
4	Cowlitz Tribe's Request for a Restored Lands Determination Submitted to the National Indian Gaming Commission	151.11(a) [fulfilling section 151.10(b)], 151.11(b)
5	S. 1334 Hearing Report (Cowlitz ICC Judgment)	151.11(a) [fulfilling section 151.10(b)]
6	Cowlitz Indian Tribe Distribution of Judgment Funds Act - Pub. L. No. 108-22, 188 Stat. 623 (2004)	151.11(a) [fulfilling section 151.10(b)]
7	Map of proposed acquisition	151.3(a)(2)
8	Transfer of Title Agreements/Redacted Development Agreement between the Cowlitz Indian Tribe and Salishan-Mohegan, LLC	151.3(a)(2), 151.13
9	Tribal Council Resolution No. 05-19 (2005) – Approving use of Judgment Fund to purchase land.	151.11(a) [fulfilling section 151.10(b)]
10	Memorandum of Understanding with Clark County and Local Authorities to Provide Local Services and Expressing Intent To Enter Into Service Agreements	151.11(a) [fulfilling section 151.10(e) and (f)]
11	Impact on State and Local Taxes: Relevant sections of other Washington State Compacts – local impact payment provisions	151.11(a) [fulfilling section 151.10(e)]
12	Level I Contaminant Survey for Hazardous Substance Determination	151.11(a) [fulfilling section 151.10(h)]

13	Department of the Interior, Branch of Acknowledgment and Research, Genealogical Technical Report	151.11(a) [fulfilling section 151.10(b)]
14	Department of the Interior, Branch of Acknowledgment and Research, Anthropological Technical Report	151.11(a) [fulfilling section 151.10(b)]
15	1854 Report from Indian Agent William Tappan and 1888 Clark County map	151.11(b)
16	Department of Housing and Urban Development letter and materials regarding Formula Area	151.11(b)
17	Business Plan (to be submitted at a later date)	151.11(c)
18	Local Government Contacts for BIA	151.11(d)
19	Title Information/Survey of Property/Commitment for Title Insurance	151.13