

UNITED STATES GOVERNMENT  
*memorandum*

DATE: APR - 1 1994

APR - 4 1994

REPLY TO: <sup>ACTING</sup> Portland Area Director  
ATTENTION OF: Branch of Real Property Management

02425

SUBJECT: Fee-to-Trust Acquisition -- Coquille Indian Tribe:  
North Bend Waterfront (Warehouse) Property

TO: Assistant Secretary -- Indian Affairs  
THROUGH: Director, Office of Trust and Economic Development

APPLICATION INFORMATION

The Coquille Indian Tribe has requested by Tribal Resolution CY9375 conversion of 941.7 acres located in Coos County, Oregon, from fee to trust status. The property under consideration in this resolution includes three tracts -- 1) two large tracts in Empire and Coos Bay, Oregon, separated only by about 1320 feet, known in combination as the **Watershed Property** and 2) a 12.42 acre parcel consisting of a group of lots in North Bend, Oregon, mostly between Highway 101 and the waterfront, known as the **North Bend Waterfront Property** or Warehouse Property. The purpose of the conversion is to add this land to their reservation under Section 5 of the Coquille Restoration Act, and to use it for cultural, educational and economic development and for tribal administration, health and housing.

Since these two properties are very different in location and nature, they are being separated into two fee-to-trust actions. The North Bend Waterfront (Warehouse) Property is considered in this document. The Watershed Property is considered in a separate document.

The **North Bend Waterfront Property** is described in the application as a series (several pages) of Lots and Blocks from Coos Bay Plat "B" with some metes & bounds descriptions which tie the various tracts together or property not otherwise platted. The property is currently owned by Sun Industries. However, the Coquille Indian Tribe has an option to purchase the property and will exercise that option if this fee-to-trust application is approved.

The entire fee parcel described consists of approximately 12.42 acres. The Coquille Indian Tribe plans to use the property for economic development (described in more detail below).

### STATUTORY AUTHORITY

Section 5 of the Coquille Restoration Act of June 28, 1989 (P.L. 101-42) provides authority for this acquisition. Section 5 of the Restoration Act states, "(a) Lands To Be Taken in Trust.--The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres (emphasis added) for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided*, That, at the time of such acceptance, there is no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984)." The Act adds "(b) Lands To Be Part Of The Reservation.--Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the Tribe and shall be part of its reservation" (emphasis added).

To date, only 5.94 acres (Tupper Rock) have been converted to trust for the Tribe in the City of Bandon in Coos County, Oregon. This leaves approximately 994 acres to be acquired for the Tribe under the authority and directive of the Coquille Restoration Act. Reports from the Select Committee on Indian Affairs to the Senate and House of Representatives both state that "It is the Committee's intent that if the first 1000 acres transferred under this section meet the requirement of this section, such acreage shall be transferred in trust for the benefit of the tribe expeditiously and without undue delays" (emphasis added).

### FACTORS OF TITLE 25 CFR 151.10

Although the only requirement for approval of this action, according to the legislation, is that "...there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed..." -- ie. that the title is clear, we address here the factors of Title 25 CFR 151.10.

**NEED** (151.10 (b)): Congress recognized in the Coquille Restoration Act that the Coquille Indian Tribe needed a minimum of 1000 acres to be able to operate as a Tribe and to meet the needs of its members. In addition, the Restoration Act provided for additional acreage to be taken into trust under authority of the Indian Reorganization Act.

The Act also provided for the preparation of an economic development plan to be submitted to Congress, which would include proposed transfers of property needed to meet the Tribe's goals and needs. The draft Self Sufficiency Plan of the Coquille Indian Tribe submitted to the Secretary of the Interior, dated September 9, 1993, includes the subject tract.

**PURPOSE** (151.10 (c)): The property under consideration was formerly developed and used by the Weyerhaeuser Corporation as a plywood manufacturing plant. The main building, which contains 299,600 square feet, excluding mezzanines and shed extensions, was built in 1963. Sun Industries purchased the plant from Weyerhaeuser and continued to manufacture plywood until 1990. Under the Option Agreement between Sun Plywood, Inc., and the Coquille Indian Tribe, the plant is being dismantled, cleaned of actual or potential contaminants, and the equipment is being dismantled and/or sold. **This will leave the Coquille Tribe with a large, empty warehouse to be developed into various economic enterprises with waterfront, rail, and highway access.**

The Coquille Indian Tribe plans to use the site for economic development. Many possibilities are being analyzed such as aquaculture, light manufacturing or assembly, heavy industry, and gaming. The desire of the Tribe is to obtain the property and then develop within it what is economically and legally feasible.

Although much attention has been given to gaming by the local press and government, this is only one option being considered. The Tribe recognizes that any gaming plans would be subject to the Indian Gaming Regulatory Act and would require concurrence by the Governor of Oregon and a compact with the State of Oregon. However, they want the property in trust whether gaming is approved or not, because of the high potential for economic enterprises.

**IMPACT** (151.10 (e)): Notice of the proposed fee to trust conversion was sent to Coos County, the City of Coos Bay and the City of North Bend on July 23, 1993. Notice was also sent to the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians (Coos Tribe) on July 12, 1993, since they were considered to be a local government which could be affected by the Coquille request.

Comments were received from the City of North Bend (with attached comments from the Port of Coos Bay) on August 17, 1993. Neither Coos County nor the City of Coos Bay responded.

The City of North Bend indicated that the annual property taxes for the subject property, which is zoned for heavy industrial use, currently amounted to \$41,387 -- 2.8% of the City's property taxes. They also indicated that when the property was fully utilized by Weyerhaeuser, the property represented 28% of the total assessed value of the entire city. Therefore, they felt the impact of a fee-to-trust conversion would be greater once the property was again being fully utilized.

In addition, they argued that the subject property includes over 1500 feet of industrial water frontage, which amounts to 20% of the total available. Therefore, if the property is not used for heavy industrial purposes requiring water, rail and highway transportation, the City of North Bend, the Coos Bay area and Coos County would be losing an extremely valuable industrial asset. They tie their ability to recover from the current recessionary period to the city's industrial capabilities being restored.

Due to the loss of tax income and the potential loss of valuable industrial property, the City of North Bend objected to the fee-to-trust proposal. This objection was supported by the Port of Coos Bay.

The Coquille Tribe responded to these comments on October 20, 1993, through the Coquille Economic Development Corporation (CEDCO). The letter from CEDCO indicated that the Tribe had been meeting with officials from the City of North Bend and the Port of Coos Bay. It indicated that they were working toward agreements with the City to provide police and fire protection, with a likely figure of over \$100,000 -- well in excess of the current tax payments. It also pointed out that the economic benefits of multi-million dollar businesses within the city limits would more than balance out the tax losses.

We agree with the Tribe that their protection agreements with the City, potential agreements with the Port regarding use of the waterfront, and economic benefits to the community from businesses developed within the large Warehouse complex, will actually be a benefit to the region -- not a detriment. If gaming, light or heavy manufacturing, assembly, aquaculture, or other businesses are located within the complex, there will be a multi-million dollar effect on the community due to new jobs, the need for local services for the businesses, etc. CEDCO officials are already contacting potential clients.

Comments were received from the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians on August 13, 1993, for the general fee-to-trust application. An additional resolution relating specifically to the North Bend property was received on November 1, 1993. The Coos Tribe adamantly opposed the Coquille request. Their resolution 93-029 and attached letter to the Portland Area Director outline their objections. Resolution 93-045 merely quoted portions of the previous resolution which applied more specifically to the North Bend property.

Most of the objections of the Coos Tribe relate to their aboriginal claims for uncompensated lands, unresolved water rights, and unrelinquished subsurface mineral rights. These are all rights and claims the Coos Tribe is trying to establish



since there were never any payments made to them and their treaty with the United States was never ratified. Related to these unresolved aboriginal claims are their objections regarding fractionation of their ancestral homelands, Coos village sites and burials within the proposed Coquille lands, and the Tribal Consolidation Area approved by Portland Area Office on April 6, 1992.

Although they claim that approval of the Tribal Consolidation Area recognizes their aboriginal territory, it is clear that the intent of such consolidation areas is only to provide a tool to expedite obtaining lands within the area for economic development and other purposes. In addition, the Cow Creek's Tribal Consolidation Area already overlaps much of the Coos Consolidation Area. The intent is not to provide exclusive territory for any tribe, but to assist all tribes in their economic development efforts.

The Coos Tribe also states in Resolution 93-045 that the land under consideration is environmentally contaminated. This fact is recognized by the Site Assessment prepared for Sun Industries by Environmental Management Consultants (EMC). However, at the time of the Level I Contaminant Survey by Siletz Agency staff, the contaminants were being removed (see Level I Contaminant Survey, Attachment 13). A Level II report prepared by EMC on February 7, 1994, indicated that all issues reviewed in their Level I Report had been resolved, meeting current federal and state environmental standards (Attachment 13).

Although we find the Coos Tribe's arguments to be strong and appealing, it is clear that the intent of Congress in the Coquille Restoration Act was not to limit the placement of the Coquille Reservation except within Coos and Curry Counties. Although the Coos Tribe had been restored in 1984 by Congress, and although the Reports to the Senate and House of Representatives related to the Coquille Restoration Act recognized the Coquille territory as being mainly the Coquille River area, the Congress did not seek to separate the Coquille and Coos tribes in their legislation, but instead put them in overlapping territories. In fact, all of the five restored tribes in Western Oregon have overlapping service areas with other tribes.

**PROBLEMS/CONFLICTS (151.10 (F)):** If taken into trust, the Coquille Indian Tribe will have regulatory jurisdiction over this land. Section 6 of the Restoration Act says that "the State (of Oregon) shall exercise criminal and civil jurisdiction within the boundaries of the reservation,..." It is anticipated that there will be no potential conflicts of land use between the Tribe and the State of Oregon or its political subdivisions. The Tribe plans to use the property for commercial/industrial purposes which fit well with community goals.

In their comments, the Coos Tribe stated they are part of the review and permitting process for archeological areas and are the responsible party for cultural/archeological preservation in that part of Coos County. They state, therefore, that the Coquille Tribe is not likely to obtain approval for development projects within the proposed reservation area. However, if the proposal is approved and the land taken into trust for the Coquille Tribe, neither the County nor the Coos Tribe will have jurisdiction over the Coquille Reservation.

Since the Coquille Reservation would be very near the Coos Reservation if this action is approved, there may be problems and conflicts between the Tribes. The Coos resolution makes this quite clear when it states that such approval would result in the "creation of a 'Hopi-Navajo' type conflict which would require extensive future mitigation" and that the Bureau would be "thrusting themselves into the issue by committing an unwelcomed act of aggression against the government and people of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians." They also state that "any decision, other than a denial on the Fee-to-Trust request, will give the Confederated Tribes no recourse but to oppose such decision to the fullest extent possible."

However, we do not believe these threats should prevent the Bureau of Indian Affairs from carrying out the intent and letter of the Coquille Restoration Act. Benefits from the Coquille developments would certainly profit the Coos Tribe as well as the general community.

**RESPONSIBILITIES (151.10 (g)):** The addition of this tract of ground to the jurisdiction of Siletz Agency and Portland Area will result in a significant increase in workload. Future plans and projects on the property would undoubtedly result in the need for leases and other realty documents, environmental assessments related to projects, loans, etc. However, Congress has decided that the Coquille Tribe will have a 1000 acre reservation somewhere. The increase in work load would be very similar, regardless of where that reservation lies.

#### **ENVIRONMENTAL COMPLIANCE**

Since the Coquille Tribe has not proceeded far enough in its planning process to determine the exact use of the subject property, there is not enough information to analyze in an Environmental Assessment. As such, the proposed conversion is a land conveyance categorically excluded from National Environmental Policy Act (NEPA) compliance pursuant to Department of the Interior Manual 516, Appendix 4.4.H.

Obviously, actions will take place in the future which will call for NEPA compliance. The Coquille Tribe plans to prepare an Environmental Assessment (EA) for each action which requires Bureau funding or approval, or to prepare a comprehensive EA as part of their Comprehensive Land-Use Plan.

The subject property was inspected on September 30, 1993, and a Level I Contaminant Survey was prepared and forwarded to Portland Area Office on November 10, 1993. The Level I Survey indicated that all contaminants were being removed.

Complete removal has now been certified by Environmental Management Consultants (EMC) in a Level II Report which shows that the property is now within state and federal contaminant guidelines and standards. The Portland Area Environmental Coordinator has agreed that the property no longer has any serious environmental risks.

#### HISTORIC/ENDANGERED SPECIES COMPLIANCE

Letters were <sup>(C)</sup>went by the Agency to the State Historic Preservation Office (SHPO) and the U.S. Fish & Wildlife Service (USF&WS) on September 10, 1993, to determine whether any historic sites or any threatened or endangered species could be affected by the proposed fee-to-trust acquisition. The response received from USF&WS on September 30, 1993, indicated that there are listed, proposed, and candidate species which could be found in the area of the Watershed Property which should be considered in any plans developed for that property. However, since the North Bend property has been fully developed for many years, there are no plant or wildlife species on it.

The response received from SHPO on November 1, 1993, indicated the presence of an open shell midden at or near the most western point of the Watershed Property. This Tar Heel Midden (the location of the Tar Hee'l Indian Village) has already been disturbed by highway and commercial construction. Once again, it does not affect the North Bend property.

#### REQUIREMENTS OF THE INDIAN GAMING REGULATORY ACT

The Coquille Indian Tribe has indicated that the proposed site could be used for gaming, along with other potential uses. Certainly this is the best location for such a development, if the Tribe decides to proceed with it. Should this become a possibility in the future, the Tribe is aware they will need to meet all requirements of the Indian Gaming Regulatory Act. However, it is clear that the Tribe wants this tract for economic development, even if gaming is never approved.

The Tribe is seeking approval of this fee-to-trust action under the authority of the Coquille Restoration Act -- not the Indian Gaming Regulatory Act (IGRA). Therefore, we do not believe any compliance with IGRA is necessary at this point. Obviously, IGRA must be complied with if the Tribe moves forward with that possible use of the property, including concurrence of the Governor of the State of Oregon that such a use would be in the best interest of the Tribe and would not be detrimental to the surrounding community. A compact approved by the Governor would also be necessary for Class III gaming.

#### **SUMMARY AND RECOMMENDATIONS**

In accordance with 25 CFR 151.10 and Departmental and Area directives, the following items are attached for your review:

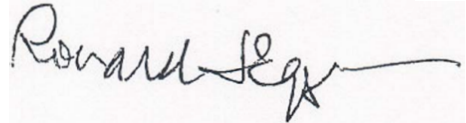
1. Coquille Restoration Act.
2. Tribal Resolution CY9375.
3. Letters to Coos County Commissioners, Cities of Coos Bay and North Bend, and the Coos Tribe.
4. Comments from Coos Tribe received August 13, 1993 and November 1, 1993.
5. Comments from the City of North Bend and Port of Coos Bay received August 17, 1993.
6. Coquille response to comments.
7. Newspaper Articles.
8. Title Report showing Sun Industries as Owner.
9. Option Agreement and Agreement of Purchase and Sale.
10. Portions of Draft Coquille Self Sufficiency Plan.
11. Site Maps.
12. Exception Review Checklist.
13. Level I and Level II Contaminant Surveys.
14. Letter to State Historic Preservation Office.
15. Response from SHPO (applies to Watershed property).
16. Letter to U.S. Fish & Wildlife Service.
17. Response from USF&WS (applies to Watershed property).

It is likely that approval of this fee-to-trust application will result in conflict with the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians. However, it seems quite clear that Congress' intent and mandate would be followed by such approval. Nothing the Coos Tribe has presented affects clear title on the property in question. It only reflects their continued attempts to establish jurisdiction over their aboriginal lands. Although we understand their frustration over past injustices and support their desire to establish their ties to the land, the Coquille Restoration Act is clear in its intent, and did not physically separate the Coquille Tribe from the Coos Tribe.



Therefore, we recommend that the decision be made to take this particular parcel into trust for the Coquille Indian Tribe. Congress has recognized the need of the Tribe for a reservation to meet the needs of the Coquille people. This proposed tract has great potential to meet many of the needs and goals of the Tribe related to economic development. The potential for great economic benefit exists on this property due to its access to a major State highway, the railroad, and the deep-water port. The existing warehouse could easily contain multiple businesses owned by others with space leased from the Coquille Tribe, or owned and operated by the Tribe itself. In either case, many new jobs would be created for Tribal members and the community at large, which would include Coos Tribal members. The community would also benefit from purchases of local goods and services by the businesses and their employees.

If you have any questions regarding this transaction, please call Ron Kortlever at (503) 444-2597.

A handwritten signature in black ink, appearing to read "Ronald Segal", followed by a long horizontal flourish line.

I attest that I have reviewed this transaction and the case file is documented and in compliance with all of the above stated regulations and facts. I further state that I will not approve this transaction until I have received satisfactory title evidence in accordance with Title 25, CFR Part 151.12.

ATTEST:

  
\_\_\_\_\_  
Portland Area Director

4-1-94  
Date

CONCURRENCE:

Director, Office of Trust & Economic Development \_\_\_\_\_  
Date

APPROVED:

Assistant Secretary - Indian Affairs \_\_\_\_\_  
Date