NOV 23 2005

Via Facsimile and U.S. Mail

John Barnett, Chairman
Cowlitz Indian Tribe
P.O. Box 2547
Longview, WA 98632-8594

RE: Cowlitz Indian Tribe's Class II Gaming Ordinance

Dear Chairman Barnett:

On August 29, 2005, the National Indian Gaming Commission (NIGC) received Tribal Council Ordinance No. 05-2 (Aug. 22, 2005), the proposed tribal gaming ordinance of the Cowlitz Indian Tribe (the Tribe). Aside from the ordinance's definition of "Tribe's Indian Lands," the tribal gaming ordinance generally follows the NIGC's model tribal gaming ordinance and is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) as well as the NIGC's implementing regulations.

The ordinance's definition of "Tribe's Indian Lands" contains a site-specific legal land description of a nearly 152-acre site in Clark County, Washington, made expressly contingent on the United States first accepting trust title to the site and the Tribe first exercising governmental power over the site. This proposed definition required the NIGC to conduct a legal analysis of the applicability of IGRA's restored lands for a restored tribe provision, 25 U.S.C. § 2719(b)(1)(B)(iii), in order to determine whether the Tribe will be allowed to conduct gaming activities on the site if the Department of the Interior accepts the land into trust for the benefit of the Tribe.

The NIGC's Office of General Counsel has provided me with a legal opinion concluding that the Tribe was "restored to Federal recognition" and that if the Department of the Interior accepts trust title to the 152-acre site, such trust acquisition will be part of the "restoration of lands" for the Tribe, as those terms are used in 25 U.S.C. § 2719(b)(1)(B)(iii). The record supports the Office of General Counsel's opinion, and I therefore adopt the analysis and conclusion provided therein.

Therefore, the tribal gaming ordinance is hereby approved. This approval is not intended to provide any recommendation to the Secretary of the Interior regarding the Tribe's pending fee-to-trust application, or to affect the Secretary's discretion in making the fee-to-trust decision.

Additionally, this approval does not authorize the Tribe to conduct gaming on the subject site. In order to conduct gaming on the subject site, the Department of the Interior must first accept the land into trust, and the Tribe must first exercise government authority over the site.

Sincerely,

Philip N. Hogen
Chairman

MEMORANDUM

TO: Philip N. Hogen, Chairman

FROM: Penny J. Coleman, Acting General Counsel

DATE November 22, 2005

RE: Cowlitz Tribe Restored Lands Opinion

On August 29, 2005, the Cowlitz Indian Tribe ("Cowlitz Tribe" or "Tribe") submitted a site-specific tribal gaming ordinance claiming that a certain parcel in the State of Washington near the Lewis River ("the Lewis River Property") would qualify as Indian lands on which the Tribe could conduct gaming if the lands are acquired into trust by the Department of the Interior.[1]

As detailed below, the Office of General Counsel's opinion is that the Cowlitz Tribe is a restored tribe and that if the United States Department of the Interior accepts the Lewis River Property into trust for the Tribe, such trust acquisition will qualify as the "restoration of lands" within the meaning of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(B)(iii). We note that the Department of the Interior, if it acquires the Lewis River Property into trust, may proclaim the parcel to be the Tribe's initial reservation. An "initial reservation" proclamation would provide a second basis by which the parcel would qualify as Indian lands on which the Tribe could conduct gaming. 25 U.S.C. § 2719(b)(1)(B)(ii).

PROCEDURAL BACKGROUND

On January 4, 2002, the Cowlitz Tribe submitted a fee-to-trust application to the Department of the Interior, requesting the Department of the Interior to accept title to the Lewis River Property in trust for the Cowlitz Tribe pursuant to 25 C.F.R. Part 151. The Tribe later withdrew this application, and on March 12, 2004, the Tribe submitted a revised fee-to-trust application that specifically identified the Tribe's intention to use the site for gaming purposes. The Tribe's fee-to-trust application is still pending at the

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[1] The NIGC's decision whether to approve or disapprove the tribal gaming ordinance is due on November 25, 2005. The scope of this legal opinion is limited to the issue of whether the Lewis River Property, if accepted into trust, will qualify for the restored lands for a restored tribe exception to IGRA's prohibition against gaming on Indian lands acquired into trust after October 17, 1988. 25 U.S.C. § 2719(b)(1)(B)(iii). All other legal issues associated with the Tribe's gaming ordinance have been addressed outside of this opinion. The decision whether to approve the Tribe's gaming ordinance will be based on the entire record, including but not limited to, the contents of this legal opinion.

NATIONAL HEADQUARTERS 1441 L St. NW, Suite 9100, Washington, DC 20005 Tel: 202.632.7003 Fax: 202.632.7066 WWW.NIGC.GOV

REGIONAL OFFICES Portland, OR; Sacramento, CA; Phoenix, AZ; St. Paul, MN; Tulsa, OK

Department of the Interior. This legal opinion is not intended to affect the Secretary of the Interior's discretion under Part 151 or provide any recommendation regarding the merit of the Tribe's pending fee-to-trust application. Furthermore, this opinion does not authorize the Tribe to conduct gaming on the Lewis River Property. In order to conduct gaming on the Lewis River Property under IGRA, the Department of the Interior must accept the land into trust. This memorandum is simply a legal opinion expressing the Office of General Counsel's view that if the Department of the Interior accepts trust title to the Lewis River Property, the site will then qualify as restored lands for a restored tribe, enabling the Tribe to conduct gaming activities thereon.

The Cowlitz Tribe requested this legal opinion in March 2005 ("Request"), in association with a site-specific tribal gaming ordinance that the Tribe also submitted for the NIGC's review. On August 18, 2005, the Tribe withdrew its original tribal gaming ordinance from the NIGC's review in order to give the NIGC more time to consider the restored lands issue, and to incorporate some minor changes to the ordinance language. On August 29, 2005, the Tribe submitted a revised site-specific tribal gaming ordinance to the NIGC. Letter from V. Heather Sibbison, Counsel for the Cowlitz Tribe, to Jeff Nelson, NIGC Staff Attorney (Aug. 29, 2005) (transmitting Cowlitz Tribal Council Ordinance No. 05-2).

The tribal gaming ordinance at issue, if approved by the NIGC, would authorize Class II gaming on the "Tribe's Indian Lands." Cowlitz Tribal Council Ordinance No. 05-2, § 3. The tribal gaming ordinance's definition of the term "Tribe's Indian Lands" contains a site-specific legal land description of the Lewis River Property. *Id.* § 2(O). Specifically, the Tribe's gaming ordinance defines "Tribe's Indian Lands" as:

> (1) All lands within the limits of the Cowlitz Indian reservation;[2] or
>
> (2) Any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual member of the Tribe, or held by the Tribe or individual member of the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power, including but not limited to, certain land for which the Tribe has submitted a fee-to-trust application and which the Tribe intends to use for the development of a gaming facility as allowable under 25 U.S.C. 2719(b)(1)(B), provided that this certain land will not be deemed the 'Tribe's Indian Lands' until such time as the United States has acquired trust title to it and the Tribe exercises governmental power over it. Said land is specifically described as follows:
>
> [See Appendix A of this opinion for the detailed legal land description contained in the Tribe's gaming ordinance.]

[2] At the present time, the Cowlitz Tribe has no reservation.

Cowlitz Tribal Council Ordinance No. 05-2, § 2(O).

Based on the maps and other information provided to the NIGC by the Cowlitz Tribe, the legal land description in the tribal gaming ordinance refers to an irregularly-shaped, contiguous tract of land approximately 151.87 acres in size. The site is referred to by the Tribe as "the Cowlitz Parcel," but this opinion uses the term "Lewis River Property" to refer to the same tract of real estate. The Lewis River Property is in Clark County, Washington, just to the west of Interstate 5 at Exit 16, approximately one half mile away from Paradise Point State Park and approximately 16 miles north of Portland, Oregon.

In addition to the Tribe's Request and several supplemental submissions received from the Tribe, we also have received and considered opposition comments and analyses provided by the Confederated Tribes of the Grand Ronde Community of Oregon, two non-Indian card room operations in La Center, the City of La Center, State Representative Richard Curtis, the American Land Rights Association, and a number of other groups and private citizens.

APPLICABLE LAW

For tribes to conduct gaming under IGRA, such gaming must be conducted on "Indian lands," defined as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4). *See also* 25 C.F.R. § 502.12 (NIGC's implementing regulation further defining Indian lands).

A determination of whether a tribe is conducting gaming on Indian lands, however, is not necessarily the end of the inquiry. IGRA generally prohibits gaming on lands acquired in trust after October 17, 1988 (IGRA's enactment date), unless one of the statute's exceptions apply. 25 U.S.C. § 2719. Accordingly, for lands taken into trust after October 17, 1988, it is necessary to review the prohibition and its exceptions to determine whether a tribe can conduct gaming on such lands.

In this case, the Tribe has requested a legal opinion regarding whether trust acquisition of the Lewis River Property would qualify for IGRA's restored lands exception. The restored lands exception allows gaming on Indian lands acquired in trust after October 17, 1988, if the lands are taken into trust as part of the "restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii).

ANALYSIS

Application of IGRA's restored lands exception requires a two-part analysis: 1) whether the tribe is an "Indian tribe that is restored to Federal recognition"; and 2) whether trust acquisition of the subject land is part of a "restoration of lands" for the tribe. These terms are not defined in IGRA or the NIGC's implementing regulations, but several judicial decisions and agency opinions offer legal guidance.

I. The Cowlitz Tribe Has Been Restored to Federal Recognition

To be considered an "Indian tribe that is restored to Federal recognition," as that term is used in IGRA, a tribe must demonstrate a history of: 1) governmental recognition; 2) a period of non-recognition; and 3) reinstatement of recognition. *See Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the W. Dist. of Mich.*, 369 F.3d 960, 967 (6th Cir. 2004). As set forth below, the Cowlitz Tribe meets all three of these necessary criteria.

A. The Cowlitz Tribe Was Recognized During the Nineteenth Century

The record in this case shows that during the mid-to-late 1800s, the United States Government recognized the Cowlitz Indian Tribe. The current Cowlitz Tribe evolved from an amalgamation of two treaty-time tribes, now referred to as the Lower Cowlitz Tribe and the Upper Cowlitz Tribe. Reconsidered Final Determination for Federal Acknowledgment of the Cowlitz Indian Tribe, 67 Fed. Reg. 607 (Jan. 4, 2002); Final Determination to Acknowledge the Cowlitz Tribe, 65 Fed. Reg. 8436 (Feb. 18, 2000). In this case, during the Federal Acknowledgment Process, the Bureau of Indian Affairs ("BIA") determined that the Lower Cowlitz Tribe and the Upper Cowlitz Tribe, from which the modern Tribe evolved, both were recognized by the Federal government during the mid-to-late 1800s. 67 Fed. Reg. at 608; 65 Fed. Reg. at 8436. The NIGC's Office of General Counsel accepts those findings as conclusive for the purposes of satisfying this element of the "restored tribe" test. Even so, this memorandum will explain why the Office of General Counsel agrees with the BIA's findings.

Before the modern era of federal Indian law, one method by which the United States Government recognized the governmental status of an Indian tribe was to conduct government-to-government negotiations with the intent to enter into a treaty with the tribe. *See Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675 (1979) ("A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations."); *see also Worcester v. Georgia*, 31 U.S. 515, 559 (1832) ("The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties."); *United States v. Washington*, 898 F. Supp. 1453, 1458 n.7 (W.D. Wash. 1995), *aff'd in part, rev'd in part on other grounds*, 157 F.3d 630 (9th Cir. 1998) (stating that treaty rights were "the result of the negotiation between two sovereigns, the United States and the Tribes."); Letter

from Penny J. Coleman, NIGC Acting General Counsel, to Bradley G. Bledsoe Downes, Esq., at 3 (Oct. 12, 2004) ("NIGC Karuk Opinion") ("Based on the fact that the Tribe negotiated treaties with the United States it can clearly be stated that there existed a government-to-government relationship at one time.").

In 1854, the Federal Government's Acting Commissioner of Indian Affairs instructed Washington's first territorial governor, Isaac Stevens, to commence treaty negotiations with the Washington tribes. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 21 Ind. Cl. Comm. 143, 166 (1969). In February of 1855, Governor Stevens convened treaty negotiations with the "Upper and Lower Chehalis, Cowlitz, Lower Chinook, Quinault and Queets Indians." *Id.* at 167; *see also* Historical Technical Report: Cowlitz Indian Tribe, U.S. Dep't of the Interior, Bureau of Indian Affairs—Branch of Acknowledgment and Research at 36-39 ("HTR"). The "Cowlitz Tribe" that attended this treaty council was the modern Tribe's predecessor now referred to as the "Lower Cowlitz Tribe." 67 Fed. Reg. at 607-608. During the treaty negotiations, the Lower Cowlitz Tribe expressed a willingness to give up its lands and settle on a reservation being requested by the Upper Chehalis. *Plamondon*, 21 Ind. Cl. Comm. at 168-69. Kishkok, the Cowlitz chief, said they were willing to move to the Satsop country. *Id.* at 169. But Governor Stevens would not accede to the requests of the Indians for the reservations they desired, and no treaty was consummated. *Id.*

Because treaty negotiations can only take place between sovereign entities, the Federal Government's effort to sign a land cession treaty with the Cowlitz Tribe is evidence of a government-to-government relationship with the Tribe and constitutes Federal recognition.[3]

Furthermore, the Federal government recognized both the Lower Cowlitz and the Upper Cowlitz during the latter half of the 1800s, as supported by substantial evidence, including several Federal Indian agent censuses. 67 Fed. Reg. at 608; HTR at 67-89. This evidence is more than sufficient to support the opinion that the modern Cowlitz Tribe, through its predecessor tribes, was recognized by the Federal government before it lost such Federal recognition, as described below.

B. The Cowlitz Tribe Lost Its Federal Recognition During the Twentieth Century

Under the second step of an IGRA restored-tribe analysis, a tribe must demonstrate that during some period in the tribe's history, the tribe lost its prior Federal recognition. *Grand Traverse Band,* 369 F.3d at 968-72; *TOMAC v. Norton,* 193 F. Supp. 2d 182, 193-94 (D.D.C. 2002); *Sault Ste. Marie Tribe of Lake Superior Chippewa Indians v. United States*, 78 F. Supp. 2d 699, 705-07 (W.D. Mich. 1999), *vacated on other grounds*, 288 F.3d 910 (6th Cir. 2002) (holding that plaintiff lacked standing). In this case, as detailed below, the historical evidence establishes that the United States did not recognize the Cowlitz Tribe as a governmental entity from at least the early 1900s until 2002.

[3] The BIA came to the same conclusion, determining that the 1855 treaty negotiations represented "unambiguous Federal acknowledgement." HTR at 11.

Although the Cowlitz Tribe never signed a land cession treaty, President Lincoln opened the Cowlitz lands in southwest Washington to non-Indian settlement through a proclamation signed on March 20, 1863. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 25 Ind. Cl. Comm. 442, 451 (1971). After the Cowlitz Tribe lost its land base, the Federal government stated in numerous records that the Tribe was not recognized as a governmental entity. For instance, during the early 1900s, the Cowlitz Tribe attempted to seek redress from the Federal Government for alienating its lands without payment to the Tribe. From 1915 through 1929, the Department of the Interior opposed a series of bills introduced in Congress that would have given the U.S. Court of Claims jurisdiction to hear the Tribe's claims, based in part on the Department's position that it no longer had a government-to-government relationship with the Tribe. HTR at 126. For example, in a letter to the Chairman of the Senate Committee on Indian Affairs, the Secretary of the Interior wrote:

> The records show that as early as 1893 these Indians [the Cowlitz Indians] were reported as being scattered through the southern part of the State of Washington, most of them living on small farms on their own; that they hardly formed a distinct class, having been so completely absorbed into the settlements; and that fully two-thirds of them were citizens and very generally exercised the right of suffrage. . . . In view of the foregoing it will be seen that the Cowlitz Indians are without any tribal organization, are generally self-supporting, and have been absorbed into the body politic.

Letter from Secretary Hubert Work, Department of the Interior, to the Honorable J.W. Harreld, Chairman, Senate Committee on Indian Affairs (March 28, 1924), *quoted in* HTR at 126.

In 1933, the Bureau of Indian Affairs responded to a person apparently seeking enrollment in the Cowlitz Tribe:

> The receipt is acknowledged of your letter of October 5, making application for enrolment [sic] with the Cowlitz tribe of Indians; and stating that several of your relatives would like to be enrolled therewith.
>
> No enrolments [sic] are now being made with the remnants of the Cowlitz tribe which in fact, *is no longer in existence as a communal entity. There are, of course, a number of Indians of Cowlitz descent in that part of the country, but they live scattered about from place to place, and have no reservation under Governmental control.* Likewise, they have no tribal funds on deposit to their credit in the Treasury of the United States, in which you and your relatives might share if enrolled.
>
> Only Indians who have the status of Federal wards are entitled to free hospitalization at a Government Indian hospital.

Letter from John Collier, Commissioner, Bureau of Indian Affairs, to Lewis Layton (Oct. 25, 1933), *quoted in* HTR at 123-24 (emphasis added).

In 1968, a Bureau of Indian Affairs enrollment officer informed a Cowlitz tribal member that "the Cowlitz . . . are not a reservation group and . . . are not presently recognized as an organized tribe by the United States." Letter from Chester J. Higman, Bureau of Indian Affairs, to Isaac Kinswa (Sept. 27, 1968), *quoted in* HTR at 149.

In 1975, the Department of the Interior informed Congress that "[t]he Cowlitz Tribe of Indians is not a Federally-recognized tribe. Therefore, there is presently no Federally-recognized successor to the aboriginal entity aggrieved in 1863." Letter from Morris Thompson, Commissioner of Indian Affairs, to the Chairman of the Senate Subcommittee on Indian Affiars (Sept. 24, 1975), *reprinted in* 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. 6 (1975).

One month later, the Department of the Interior sent Senator James Abourezk a letter to respond to the Senator's request for information. Letter from Morris Thompson, Commissioner of Indian Affairs, to the Honorable James Abourezk, United States Senate (Oct. 29, 1975), *reprinted in* 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. 6 (1975). The first question to which the Department responded, as presented in the letter, inquired: "Why are neither the Cowlitz tribe nor the Grand River Band of Ottawa Indians 'federally recognized' tribes?" *Id.* With regard to the Cowlitz Tribe, the Department of the Interior responded:

> Throughout the 1850's and 60's the United States made a concerted effort to conclude a treaty with the Cowlitz Indians. Despite these efforts, no treaty was ever executed between the United States government and the Cowlitz Indians. From that time to the present, there has been no continuous official contact between the Federal Government and any tribal entity which it recognizes as the Cowlitz Tribe of Indians.

Id. at 49 (emphasis in original).

Furthermore, before the Cowlitz Tribe completed the Federal Acknowledgment Process in 2000, the Bureau of Indian Affairs did not include the Cowlitz Tribe in its list of Federally-recognized tribes. 63 Fed. Reg. 71941 (Dec. 30, 1998); 62 Fed. Reg. 55270 (Oct. 23, 1997); 61 Fed. Reg. 58211 (Nov. 13, 1996); 60 Fed. Reg. 9250 (Feb. 16, 1995); 58 Fed. Reg. 54364 (Oct. 21, 1993).

This tribal history is very different than the situation presented in the NIGC Karuk Opinion, where the record lacked any evidence that the United States ever considered the Karuk Tribe to be non-recognized or ineligible to maintain a government-to-government relationship. NIGC Karuk Opinion at 3-4. At most, the Karuk Tribe was able to demonstrate that from 1852 to 1979, the United States and the Karuk Tribe had no

official government-to-government dealings. *Id.* However, nothing in the historical record suggested that this period of non-dealing was concomitant with Federal non-recognition. Rather, the record supported the view that the period of non-dealing was the result of the Karuk Tribe's own decisions to refrain from exercising the government-to-government relationship with the Federal government to which the Karuk Tribe was consistently entitled. In contrast here, the United States Government made numerous statements on the record evidencing the Federal Government's position that the Cowlitz Tribe was no longer Federally-recognized.

C. The Cowlitz Tribe's Recognition was Reinstated During the Twenty-First Century

A tribe with a history of governmental recognition, a period of non-recognition, and then reinstatement of recognition has been "restored" under IGRA, whether the reinstatement of recognition was achieved through Congressional action or through the administrative Federal Acknowledgment Process. *Grand Traverse Band,* 369 F.3d at 967, 969-72, *aff'g* 198 F. Supp. 2d 920, 932 (W.D. Mich. 2002); Letter from Kevin Washburn, NIGC General Counsel, to the Honorable Douglas W. Hillman, Senior U.S. District Judge at 12-17 (Aug. 31, 2001) ("NIGC Grand Traverse Opinion").

In this case, the BIA issued a final determination in February 2000 acknowledging that the Tribe exists as an Indian tribe within the meaning of Federal law. 65 Fed. Reg. 8436 (Feb. 18, 2000). In 2002, pursuant to a request for reconsideration, the BIA affirmed its earlier decision to acknowledge the Tribe. 67 Fed. Reg. 607 (Jan. 4, 2002).

As set forth above, the Cowlitz Tribe was recognized, lost its Federal recognition, and finally was reinstated to Federal recognition. Therefore, the Cowlitz Tribe is an "Indian tribe that is restored to Federal recognition" as that term is used in IGRA.

II. Trust Acquisition of the Lewis River Property Would Be a Restoration of Lands

Having determined that the Cowlitz Tribe is "restored," the next issue is whether trust acquisition of the Lewis River Property would be "land taken into trust as part of . . . the restoration of lands for an Indian tribe" under 25 U.S.C. § 2719(b)(1)(B)(iii).

The language of the statute does not require that a "restoration of lands" be accomplished through congressional action or in the very same transaction that restored the tribe to Federal recognition; and therefore, lands may be restored to a tribe through the administrative fee-to-trust process under 25 C.F.R. Part 151. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 198 F. Supp. 2d 920, 935-36 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004) ("*Grand Traverse Band II*"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 161-64 (D.D.C. 2000); *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 46 F. Supp. 2d 689, 699-700 (W.D. Mich. 1999) ("*Grand Traverse Band I*"). As stated by the United States District Court for the Western District of Michigan:

> [A]ccepting the State's position that some limitation is required, nothing in the record supports the requirement of Congressional action. Neither the statute nor the statutory history suggests such a limitation. Given the plain meaning of the language, the term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.

Grand Traverse Band II, at 935. The court then proposed that land acquired after restoration could be limited by one or more factors: "For example, land that could be considered part of such restoration might appropriately be limited by the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration." *Id.*; *see also* NIGC Karuk Opinion, at 5 (adopting the court's suggested three-factor analysis).

Upon review of these three factors, as set forth below, we conclude that trust acquisition of the Lewis River Property would be considered restoration of lands to a restored tribe under 25 U.S.C. § 2719(b)(1)(B)(iii).

A. Factual Circumstances of the Acquisition

On balance, the factual circumstances of the acquisition weigh in the Tribe's favor. First, the Tribe currently has no reservation or other trust land. Congress added the exceptions in 25 U.S.C. § 2719(b)(1)(B) to ensure that tribes lacking reservations or other trust lands when IGRA was enacted would not be disadvantaged relative to more established tribes. *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003), *cert. denied sub nom. Citizens for Safer Cmtys. v. Norton*, 124 S. Ct. 1888 (2004). As a newly-restored tribe seeking to obtain its first trust acquisition, the Cowlitz Tribe is squarely among the class of tribes that Congress intended to assist with these statutory exceptions.

The second factual circumstance that weighs in the Tribe's favor is that the Cowlitz Tribe has a long history of attempts to reacquire land, a history which significantly pre-dates the enactment of IGRA in 1988. Cowlitz tribal members began to seek formal redress for illegal dispossession of lands in 1908, and expanded those claims in 1909. HTR at 106-108. From 1915 through 1929, the Cowlitz Tribe pursued federal legislation that would have allowed it to present its claims before the Federal Court of Claims. HTR at 126. Although this legislation was never enacted, the Tribe was later able to bring a claim before the Indian Claims Commission ("ICC"). HTR at 144. In 1973, the Tribe agreed to settle its litigation with the United States, but insisted that some of the settlement money be set aside for land acquisition. HTR at 152. In 1975, Congress considered legislation to give effect to the settlement agreement, and Cowlitz Tribal Council Chairman Joseph Cloquet testified in favor of including a $10,000 set-aside for tribal land acquisition, stating:

> I submit to you, gentlemen, that this section is the very heart of the legislation to save our tribal entity, tribal ties, our Indianness denied us in

> the past century, and what culture we have left. Many of us, and I for one, would gladly give up the per capita distribution entirely for this provision in S. 1334. I am not willing to give up my Indian heritage for dollars. I will not stand by and see my people disbursed [sic] and become a small footnote to history.

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. 68-69 (1975).

The Department of the Interior objected to provisions in the proposed legislation that provided money for land acquisition by the Cowlitz Tribe because the Tribe was not recognized at that time. HRT at 156-57. The proposed legislation stalled until after the Cowlitz Tribe became recognized. In 2004, two years after the Cowlitz Tribe became Federally recognized, Congress enacted the Cowlitz Indian Tribe Distribution of Judgment Funds Act. Pub. L. 108-222 (Apr. 30, 2004). Section 4(f)(1) of this law sets aside 21.5% of the $1.5 million settlement in order to produce annual interest payments that the Tribe may use for "[p]roperty acquisition for business or other activities which are likely to benefit the tribe economically or provide employment for tribal members." *Id.* § 4(f). On March 6, 2005, the Tribal Council of the Cowlitz Indian Tribe adopted a resolution stating that the Cowlitz Tribe shall use the settlement funds made available to the Tribe pursuant to Public Law 108-222 Section 4(f) towards the purchase of the Lewis River Property. Cowlitz Indian Tribe Tribal Council Resolution No. 05-19 (March 6, 2005).

The record shows that the Cowlitz Tribe has spent nearly 100 years attempting to re-establish a land base, and that the trust acquisition of the Lewis River Property would be the first trust acquisition of this protracted effort. Therefore, the factual circumstances of this acquisition weigh in favor of a restored-lands determination.

B. Location of the Acquisition

The physical location of a trust acquisition is an important factor in determining whether the parcel constitutes restored lands. *In re: Wyandotte Nation Amended Gaming Ordinance*, NIGC Final Decision and Order at 10 (Sept. 10, 2004) ("NIGC Wyandotte Opinion"); NIGC Grand Traverse Opinion at 17-18. In this context, we evaluate the Tribe's historical and modern connections to the land. *Id.*

1. Historical Connections to the Land

In this case, the record supports the opinion that throughout the Tribe's history, the Cowlitz people maintained connections to the area surrounding the Lewis River Property sufficient to weigh in the Tribe's favor in this restored lands analysis. The Cowlitz Tribe acknowledges that it was not the only tribe that used and occupied this area. In fact, the record shows that it probably was not the dominant tribe in the lower Lewis River watershed during treaty times. Commenters expressed significant disagreement with

some of the Tribe's assertions and interpretations of the historical record regarding the level of the Cowlitz Tribe's use, control and settlement of the Lewis River area. We have determined, however, that we need not resolve all of the disputes regarding the historical record in this case, because the unquestionable parts of the historical record establish that the Cowlitz Tribe, throughout its history, used the Lewis River Property area for hunting, fishing, frequent trading expeditions, occasional warfare, and if not permanent settlement, then at least seasonal villages and temporary camps. These historical connections are sufficient to weigh in favor of the Tribe in this restored lands analysis. Additionally, while the documentation does not specifically identify the Lewis River Property as a historically important parcel, this lack of a specific nexus is not determinative in light of the other factors weighing in favor of the Tribe's assertion that these lands are restored lands.

In arriving at this conclusion, we relied on the entire record, as provided by the Tribe and its opposition groups. We relied most heavily on facts appearing in the Tribe's acknowledgement proceeding record, as developed and published by the BIA, and the facts adjudicated by the Indian Claims Commission. The following quotations and notes from the record are select examples that are meant only to be illustrative.

The Tribe's federal acknowledgment proceeding record includes the following description:

> From the earliest descriptions of explorers, the historical Cowlitz Indians lived mainly along the length of the Cowlitz River, from slightly above its mouth, or juncture with the Columbia River, as far upriver as the area of Randle, Washington. This was a distance of some 80 miles. There were also villages and/or hunting camp sites along other rivers such as the Toutle and the Lewis.

Genealogical Technical Report: Cowlitz Indian Tribe, U.S. Dep't of the Interior, Bureau of Indian Affairs—Branch of Acknowledgment and Research at 4-5 (footnote omitted) ("GTR").

> In approximately 1813-1814, Alexander Henry of the North West Company wrote that Cowlitz, to the number of 100 men, had a battle with Casino (a Multnomah Chinookan chief) at the lower entrance of the Willamette.

HTR at 19. The "lower entrance" of the Willamette River refers to what is now known as the Multnomah Channel, which enters the Columbia River at present-day St. Helens,[4] across the Columbia River from the mouth of the Lewis River, only about three (3) miles from the Lewis River Property.

[4] Response to the Request of the Cowlitz Indian Tribe for a Restored Lands Determination, Prepared by Perkins Coie LLP at 23 (Nov. 15, 2005).

In the early 1800s, Governor George Simpson (of the Northern Department of the Hudson's Bay Company) explained that "nearly the whole" of the fur trade:

> pass[es] through the hands of three Chiefs or principal Indians viz. Concomely King or Chief of the Chinooks at Point George, Casseno Chief of a Tribe or band settled nearly opposite to Belle vue Point and *Schannaway the Cowlitch Chief whose track from the borders of Pugets Sound strikes on the Columbia near to Belle vue Point*[.]

Fur Trade and Empire, George Simpson's Journal at 86 (emphasis added). Because Bellevue Point is located at the confluence of the Columbia and Willamette rivers, approximately ten (10) miles south of the Lewis River Property, the Cowlitz "track," as described in this narrative, encompasses that portion of the Columbia River that passes within about three (3) miles from the Lewis River Property.

On May 13, 1836, John K. Townsend observed several large lodges of "Kowalitsk" Indians, "in all probably one hundred persons", near his camp "on a plain below Warrior's point." John Kirk Townsend, *Across the Rockies to the Columbia* 232 (University of Nebraska Press 1978) (1839), *cited in Simon Plamondon*, 21 Ind. Cl. Comm. at 155; HTR at 25 n.14. Warrior's Point is on the Columbia River across from the mouth of the Lewis River, about three (3) miles northwest of the Lewis River Property. Whether this group of "several large lodges" housing approximately 100 Cowlitz Indians is characterized as a "village" or a "summer encampment," it is evidence of a historical Cowlitz presence near the Lewis River Property. Although Townsend did not specifically state how far "below Warrior's Point" these Cowlitz lodges were located, it should be assumed that Townsend would have chosen some other landmark to describe the location if the lodges were more than a short distance from Warrior's Point.

During the 1855-1856 Indian war, a Cowlitz Indian named Zack was hunting near Chelatchie Prairie on the Lewis River when he saw 200 armed Indian warriors. HTR at 99 n.86. Zack hurried downstream to warn the American settlers. *Id.* The Chelatchie Prairie is six (6) miles east of the Lewis River Property, and the Lewis River runs less than one (1) mile north of the Lewis River Property.

At Governor Stevens' 1855 treaty negotiations, Cowlitz tribal delegate Ow-hye stated:

> Formerly the King Georges (English) came. They only paid them [the Cowlitz] a shirt to go from Cowlitz [River] to Vancouver. The Indians were very much ashamed at their treatment. They just now find out what the land was worth by seeing the French sell to the Whites. Several hundred dollars for a small piece with a house on it. It was not their land, but the Indians after all.

HTR at 40. The Cowlitz River is located approximately eighteen (18) miles north of the Lewis River Property, and Vancouver is located approximately twelve (12) miles south of the Lewis River Property, putting the Lewis River Property near the center of this narrative. Ow-hye may have been describing Cowlitz territory that the Tribe purportedly

sold to the English, as Ow-hye describes the French selling real estate in the same narrative, or he may have been describing a type of river toll paid to travel this stretch of the Columbia. Under either interpretation, the narrative is evidence of a historical connection to the area.

A map created under the direction of Governor Stevens in 1857 generally supports the position that Cowlitz territory extended south to the Lewis River. *See* "Map of the Indian nations and tribes of the territory of Washington and of the territory of Nebraska west of the mouth of the Yellowstone. Made under the direction of Isaac I. Stevens, gov. of Wash. terr. & sup't of Ind. affairs, March 1857, drawn by William H. Carlton, surveyor and top eng. (1857)."[5] On this map, the "Howalitsk" Indian territory is marked as extending from the Cowlitz River at least as far south as the Lewis River, which is within one (1) mile of the Lewis River Property. *Id.* "Howalitsk" is an alternative spelling of "Cowlitz."[6] Other maps created during this time period depict Cowlitz territory to the north of the Lewis River watershed, but not by a great distance.

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[5] Image of map available at <http://content.wsulibs.wsu.edu/cgi-bin/pview.exe?CISOROOT=/maps&CISOPTR=153&CISORESTMP=/qbuild/buildplate11.html&CISOVIEWTMP=/qbuild/buildplate12.html&CISOROWS=2&CISOCOLS=5&CISOCLICK=title:subjec:creato:date:type:cover>.

[6] Other parts of Governor Stevens' map indicate that "Howalitsk" refers to the Cowlitz Tribe. The upper left portion of the map contains a "Tabular Statement of the Indians west of the Cascade Mountains, showing tribes, population, parties to the several treaties, reservations provided for in the treaties, and temporary encampments." Within that table, "Howalitsk" is not found, but "Cowlitz" and "Tiatinapan" are listed together as located "near Cowlitz landing" and "with whom treaties have not been made." On the map, the closest notation of tribes near Cowlitz Landing is "Tiatinapan" and "Howalitsk." Those notations are perpendicular to each other, with "Tiatinapan" running along the Cowlitz River and "Howalitsk" running from the Cowlitz River south to the Lewis River. Given that Tiatinapan and Cowlitz are listed together in the table, that "Howalitsk" is not listed in the table, that Howalitsk and Tiatinapan are the tribes shown closest to Cowlitz Landing, and that "Cowlitz" is not otherwise depicted near Cowlitz landing (nor anywhere else on the map), the most reasonable explanation is that "Howalitsk" refers to the Cowlitz Tribe.

In addition to the Cowlitz/Howalitsk alternative spellings, the map appears to contain similar alternative spellings for other tribes. For example, the map's table of tribes includes the "Clallams" as party to the 1855 Treaty of Point No Point, yet the map depicts the "Sclallams." Both spellings ignore the spelling of the Tribe's name in the Treaty of Point No Point as "S'Klallams." Similarly, the table of tribes lists the "Lummi" but the map depicts the "Lummie." One possible explanation for the alternative spellings is that the map may have been prepared by a number of different people and/or over a course of time. Given the inability to easily make changes, the alternative spelling of tribal names may not have been viewed as warranting a revision of the map.

Finally, other documents of the era support the conclusion that "Howalitsk" refers to the Cowlitz Tribe. As noted by the ICC, in 1834 John K. Townsend spelled the Tribe's name as "Kowalitsk." *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 21 Ind. Cl. Comm. 143, 155 (1969). Townsend's spelling is almost identical to the spelling on Governor Stevens' 1857 map (compare "Howalitsk" to "Kowalitsk"). The ICC's decision further demonstrates that there was not a standardized spelling of the word "Cowlitz" during this time period. For example, in 1920 Jedidiah Morse reported on the "Cowlitsick." *Id.* at 154. In 1925, Dr. Scouler referred to the Tribe as "Kowlitch" and in 1834 D. Lee and J.H. Frost spelled the Tribe as "Cawalitz." *Id.* at 155. This lack of uniformity in spelling, combined with the textual support in the map itself of the Cowlitz being "near Cowlitz Landing," leads to the conclusion that "Howalitsk" is a reference to the Cowlitz Tribe.

An historical native American village site called Cathlapotle is located on the Carty Unit of the Ridgefield National Wildlife Refuge, about two (2) miles west of the Lewis River Property. In 1999, the U.S. Department of the Interior, Fish and Wildlife Service, published a preliminary report regarding an archaeological investigation conducted by Portland State University's Department of Anthropology. *Archaeological Investigations at 45CL1 Cathlapotle (1991-1996), Ridgefield National Wildlife Refuge, Clark County, Washington, A Preliminary Report,* Prepared by Department of Anthropology, Portland State University (May 1999). The report indicates that Cathlapotle was a very large town site with an occupation spanning about 1000 years (c. AD 1000 to 1840). *Id.* at i. During first contact with Europeans, the village was occupied primarily by the Middle Chinookan Tribe. *Id.* "The Cathlapotle town (also spelled Quathlapotle, Cathlapoodle, etc.) was one of nineteen Chinookan towns recorded by Lewis and Clark (Thwaites 1908) in the Wapato Valley." *Id.* at 12. Citing the work of two prominent academics, the report states that "the [Wapato] Valley's permanent winter population more than doubled every spring by people moving into the area to exploit its abundant seasonal food resources." *Id.* at 13, *citing* Boyd and Hajda (1987). "Towns were linguistically polygot, given the area's marriage practices, so while a town such as Cathlapotle was within Chinookan territory, its occupants would very likely include Cowlitz and people of other regional language families." *Id.* at 14. The report states that beginning in 1830, the Middle Chinookan populations were devastated by disease—likely malaria—and that Cathlapotle was abandoned by 1833. *Id.* at 17. Citing to a historical report of Indian inhabitants in 1835, the authors state: "It is possible that in 1835, the people at or near Cathlapotle were no longer Chinookans." *Id.* As support for this statement, the report discusses John K. Townsend's 1836 journal account, *supra*, of several large lodges of Cowlitz Indians on a plain below Warrior's Point. *Id.* at 18. The authors state: "The area had clearly been reoccupied, but by Cowlitz people." *Id.*

Not only does the historical record demonstrate the Cowlitz Tribe's presence in the Lewis River Property area throughout treaty times, but the Cowlitz Tribe's exclusive use and occupancy area, as adjudicated by the ICC, extended south to the mouth of the Kalama River, approximately fourteen (14) miles away from the Lewis River Property. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 21 Ind. Cl. Comm. 143, 170 (1969). Given that the Tribe never had a reservation, this fourteen (14) mile distance between the Lewis River Property and the Tribe's adjudicated exclusive use and occupancy area also supports a "restored lands" decision. *Cf. City of Roseville,* 348 F.3d at 1023 (finding parcel forty (40) miles from tribe's original reservation qualified as "restored lands"). In this case, it is not necessary to decide whether a 14-mile-away adjudicated exclusive use and occupancy area is sufficient, standing alone, to support the conclusion that trust acquisition would be a "restoration of lands." Here, the Tribe has demonstrated not only that the trust acquisition would be located near its historic exclusive use and occupancy area, but also that the Tribe historically used the local region in which the subject land is located, even though such use was not exclusive, and even though the area was not within the core of the Tribe's historical territory.

2. Modern Connections to the Land

The Tribe also has modern-era and present connections to the land at issue. Modern connections to the land can be established through a variety of factors, such as a geographical nexus between the parcel and the seat of tribal government, the tribe's population center, tribal member service facilities, tribal businesses, tribal housing developments, or the tribe's service area as defined by Federal agencies. NIGC Wyandotte Opinion at 10; NIGC Grand Traverse Opinion at 20-21.

In this case, the Cowlitz Tribe maintains governmental offices in Longview, approximately 24 miles away from the Lewis River Property. Request at 32. Standing alone, this distance does not establish a modern connection to the parcel, but unlike the 175-mile distance in our Wyandotte Opinion, 24 miles at least does not militate against a conclusion that there is a modern connection. *Cf.* NIGC Wyandotte Opinion at 10. Furthermore, the Cowlitz Tribe plans to relocate its tribal headquarters to the Lewis River Property after trust acquisition, along with its casino, tribal elder housing, and a tribal cultural center. Preliminary Draft Environmental Impact Statement, Cowlitz Indian Tribe Trust Acquisition and Casino Project at 1-2, 2-14 (Oct. 2005).

The Tribe's enrollment officer reported that 86 tribal members lived in Clark County as of January 2005. Letter from Nancy Osborne, Cowlitz Indian Tribe Enrollment Officer, to Philip Hogen, NIGC Chairman (March 9, 2005), *cited in, and appended to,* Request at 33. The Tribe's Clark County population figure does not amount to a large percentage of the Tribe's total enrollment of nearly 3,500 members. But the Tribe is widely dispersed across the State and the nation. Cowlitz County, for instance, which includes the Cowlitz River and is within the Tribe's historical exclusive use and occupancy area, is home to only 219 Cowlitz members. *Id.* In cases of high tribal dispersion, a relatively low percentage of tribal members who live in the subject county should not weigh against a tribe if, as in this case, the actual number of tribal members living in the county is not insignificant.

Importantly, although the Tribe does not have a high percentage of tribal members living there, Clark County has been included within the Tribe's "service delivery area" as defined by the Indian Health Service ("IHS") and the Tribe's Indian Housing Block Grant "formula area" as defined by the United States Department of Housing and Urban Development ("HUD"). Memorandum from Charles W. Grim, IHS Assistant Surgeon General, to IHS Director, Portland Area (Aug. 27, 2002); Letter from Deborah Lalancette, Director, HUD Office of Grants Management, to Larry Coyle, Executive Director, Cowlitz Indian Tribal Housing (Nov. 1, 2003), *cited in, and appended to,* Request at 33. Furthermore, the Tribe is in the process of submitting a formal request to the BIA to designate a BIA service area that will include Clark County. Request at 34. These designations are important evidence of a tribe's modern connection to the area.

In total, the historical and modern connections in the record lend some weight in favor of a finding that trust acquisition of the Lewis River Property would be a restoration of lands for the Cowlitz Tribe.

C. Temporal Relationship of the Acquisition to Tribal Restoration

Another factor to be considered is whether there is a reasonable temporal connection between the restoration of Federal recognition and the trust acquisition of the land at issue. *Grand Traverse Band II*, 198 F. Supp. 2d at 936 ("the land may be considered part of a restoration of lands on the basis of timing alone."); Memorandum from NIGC Acting General Counsel to NIGC Chairman at 11 (March 14, 2003) ("NIGC Mechoopda Opinion") ("the heart of this inquiry is the question of whether the timing of the acquisition supports a conclusion that the land is restored").

In this case, the Tribe has submitted a fee-to-trust application to the Department of the Interior, but the subject land has not yet been taken into trust. Therefore, even assuming that the Department of the Interior will place the land into trust status, it is not possible to determine the length of time that will elapse between the Tribe's restoration of Federal recognition and trust acquisition of the land.

The Tribe points out that by the time it received Federal recognition in 2002, it had already identified the Lewis River Property as its first desired trust acquisition. Request at 35-36. In fact, the Tribe submitted its original fee-to-trust application to the Department of the Interior on the very same day that the Department of the Interior published its reconsidered final determination for Federal acknowledgement. 67 Fed. Reg. 607 (Jan. 4, 2002); Request at 36. By these actions, the Tribe has attempted to minimize the time period between its Federal recognition and trust acquisition of the Lewis River Property. Therefore, in this case, it is not necessary to know exactly how long the applicable time period between Federal recognition and trust acquisition will be. Even if the Department of the Interior does not act on the fee-to-trust application for several more years, the temporal circumstances in this case would still weigh in favor of the Tribe. *See* Memorandum from Penny Coleman, NIGC Acting General Counsel, to NIGC Chairman Deer at 13-14 (Aug. 5, 2002) ("NIGC Rohnerville Opinion") (accepting 10 years between tribal recognition and trust acquisition as reasonable under particular circumstances); Memorandum from Phil Hogen, Associate Solicitor, Dep't of the Interior Division of Indian Affairs, to Assistant Secretary – Indian Affairs at 13-14 (Dec. 5, 2001) ("Interior Coos Opinion") (accepting 14 years between tribal recognition and trust acquisition as reasonable under particular circumstances).

Because this acquisition would be the first trust acquisition made for the Cowlitz Tribe, and because the Tribe has attempted to minimize the time period between recognition and trust acquisition, the temporal relationship factor weighs strongly in the Tribe's favor.

In this case, all three factors in the restored lands analysis weigh in the Tribe's favor. We note that the temporal relationship factor is particularly strong. In other cases where the temporal relationship factor did not support a finding of restored lands, we would require a stronger showing of historical and modern connections to the area. In consideration of all of the factors discussed above, however, a trust acquisition of the Lewis River Property will be part of the "restoration of lands" for the Tribe as that term is used in IGRA.

CONCLUSION

We conclude that the Cowlitz Tribe was "restored to Federal recognition" and that if the Department of the Interior accepts trust title to the Lewis River Property, such trust acquisition will be part of the "restoration of lands" for the Tribe as those terms are used in 25 U.S.C. § 2719(b)(1)(B)(iii). This opinion is not intended to affect the Secretary of the Interior's discretion in deciding whether to accept the Lewis River Property into trust under 25 C.F.R. Part 151, or provide any recommendation regarding the merit of the Tribe's fee-to-trust application. However, if the Secretary of the Interior decides to accept the Lewis River Property into trust, then it is the opinion of the Office of General Counsel that the Lewis River Property would qualify for IGRA's restored lands exception.

If you have any questions, Staff Attorney Jeffrey Nelson is assigned to this matter.

Penny J. Coleman
Acting General Counsel

Appendix A: Legal Land Description of the Lewis River Property
Source: Cowlitz Tribal Council Ordinance No. 05-02, § 2(O)

PARCEL I

BEGINNING at the intersection of the West line of Primary State Highway No. 1 and the East line of the Southeast quarter of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence Northerly along said West line of Primary State Highway No. 1 a distance of 1307.5 feet to the Point of Beginning of this description; thence West 108.5 feet to an angle point thereon; thence Northerly along the fence 880.5 feet to the center line of a creek; thence Northerly along said creek 443 feet to the West line of Primary State Highway No. 1; thence Southerly along said West line of Highway to the Point of Beginning.

EXCEPT that portion conveyed to the State of Washington by Auditor's File Nos. G 450664 and G 147358.

PARCEL II

That portion of the following described land lying West of the Westerly line of Interstate 5, formerly known as Pacific Highway, in Section 9, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

The North half of the Southwest quarter of the Northwest quarter and the South half of the Northwest quarter of the Northwest quarter of Section 9, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT any portion lying within NW 31st Avenue.

ALSO EXCEPT that portion thereof acquired by the State of Washington by deed recorded under Auditor's File Nos. G 140380 and D 95767.

PARCEL III

BEGINNING at the Northwest corner of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; and running thence East 390 feet to the Point of Beginning; thence East 206 feet; thence South 206 feet; thence West 206 feet; and thence North to the Point of Beginning.

EXCEPT that portion lying within the right of way of NW 319th Street.

PARCEL IV

All that part of the Southeast quarter of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, lying West of Primary State Road No. 1 (Pacific Highway).

EXCEPT the Henry Ungemach tract recorded in Volume 76 of Deeds, page 33, records of Clark County, Washington, described as follows:

BEGINNING at a point 19.91 chains North of the Southwest corner of said Southeast quarter; thence East 13.48 chains to creek; thence Northerly along creek to North line of said Southeast quarter at a point 6.66 chains West of the Northeast corner thereof; thence West to Northwest corner of said Southeast quarter; thence South 19.91 chains to the Point of Beginning.

ALSO EXCEPT the John F. Anderson tract as conveyed by deed recorded under Auditor's File No. F 38759, records of Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Southwest quarter of the Southeast quarter of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; and running thence East 514 feet; thence Southerly 340 feet; thence Northwesterly 487 feet to a point 196 feet due South of the Point of Beginning; thence North to the Point of Beginning.

ALSO EXCEPT that tract described as follows:

BEGINNING at a point 26 rods and 9 feet West of the Southeast corner of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; and running thence West 20 rods to County Road; thence North 182 feet; thence East 20 rods; thence South 182 feet to the Point of Beginning.

ALSO EXCEPT a certain reserved tract described as follows:

BEGINNING at the intersection of the West line of Primary State Highway No. 1 (Pacific Highway) and the East line of the Southeast quarter of said Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence Northerly along said West line of Primary State Highway No. 1, a distance of 1307.5 feet to the True Point of Beginning of this description; thence West 108.5 feet to an angle point therein; thence Northerly along fence 880.5 feet to center line of creek; thence Northeasterly along said creek 443 feet, more or less, to the West line of Primary State Highway No. 1; thence Southerly along said West line of highway to the True Point of Beginning.

ALSO EXCEPT that portion thereof lying within Primary State Highway No. 1 (SR-5) as conveyed to the State of Washington by deed recorded under Auditor's File Nos. G 458085, G 143553 and D 94522.

ALSO EXCEPT any portion lying within NW 319th Street and Primary State Highway No. 1.

PARCEL V

A portion of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Northeast quarter of Section 8; thence South along the West line of the Northeast quarter of said Section 8, 1320 feet, more or less, to the Southwest corner of the Northwest quarter of said Northeast quarter; thence East along the South line to a point 830 feet West of the Southeast corner of the Northwest quarter of said Northeast quarter; thence North parallel with the East line of said Northeast quarter to a point 600 feet South of the North line of said Northeast quarter; thence East parallel with the North line of said Northeast quarter 370 feet; thence North parallel with the East line of said Northeast quarter 600 feet to the North line of said Section 8; thence West along the North line of said Section 8 to the Point of Beginning.

EXCEPT that portion lying within NW 319th Street.

ALSO EXCEPT the following described tract:

A portion of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Northeast quarter of said Section 8; thence South along the West line of the Northeast quarter of said Section 8, 1320 feet, more or less, to the Southwest corner of the Northwest quarter of said Northeast quarter; thence East along the South line to a point 830 feet West of the Southeast corner of the Northwest quarter of said Northeast quarter; thence North, parallel with the East line of said Northeast quarter to a point 600 feet South of the North line of said Northeast quarter; thence East, parallel with the North line of said Northeast quarter, 370 feet, said point being the True Point of Beginning of the tract herein described; thence West parallel with the North line of said Northeast quarter, a distance of 457 feet; thence North parallel with the West line of said Northeast quarter, a distance of 240 feet; thence East parallel with the North line of said Northeast quarter, a distance of 157.0 feet; thence North, parallel with the West line of said Northeast quarter, a distance of 360 feet, more or less, to the North line of said Northeast quarter; thence East, along said North line, a distance of 300 feet; thence South, parallel with the West line of said Northeast quarter, a distance of 600 feet, more or less, to the True Point of Beginning.

PARCEL VI

A portion of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Northeast quarter of said Section 8; thence South along the West line of the Northeast quarter of said Section 8, 1320 feet, more or less, to the Southwest corner of the Northwest quarter of said Northeast quarter; thence East along the South line to a point 830 feet West of the Southeast corner of the Northwest quarter of said Northeast quarter; thence North, parallel with the East line of said Northeast quarter to a point 600 feet South of the North line of said Northeast quarter; thence East, parallel with the North line of said Northeast quarter 370 feet to a point, said point being the True Point of Beginning of the tract herein described; thence West, parallel with the North line of said Northeast quarter, a distance of 457 feet; thence North, parallel with the West line of said Northeast quarter, a distance of 240 feet; thence East, parallel with the North line of said Northeast quarter, a distance of 157.0 feet; thence North, parallel with the West line of said Northeast quarter, a distance of 360 feet, more or less, to the North line of said Northeast quarter; thence East, along said North line, a distance of 300 feet; thence South, parallel with the West line of said Northeast quarter, a distance of 600 feet, more or less, to the True Point of Beginning.

PARCEL VII

The East 830 feet of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT the West 370 feet to the North 600 feet thereof.

ALSO EXCEPT that portion of the remainder thereof, lying within NW 319th Street.

PARCEL VIII

The Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT that portion of said premises, described as follows:

BEGINNING at a point 612 feet East of the Northwest corner of said Northeast quarter of the Northeast quarter of said Section 8; thence South 191.0 feet; thence East 228.0 feet; thence North 191.0 feet; thence West 228.0 feet to the Point of Beginning.

EXCEPT that portion of said premises, described as follows:

BEGINNING at a point 390.0 feet East of the Northwest corner of said Northeast quarter of the Northeast quarter of said Section 8; thence East 206.00 feet; thence South 206.0 feet; thence West 206.0 feet; thence North 206.0 feet to the Point of Beginning.

EXCEPT that portion of said premises lying within Pekin Ferry County Road, and

EXCEPT that portion of said premises lying within County Road No. 25;

EXCEPT that portion conveyed to the State of Washington by deed recorded under Auditor's File Nos. G 143551 and G 499101.

EXCEPT that portion conveyed to the State of Washington for Interstate 5.

EXCEPT that portion conveyed to James Fisher and wife, by instrument recorded under Auditor's File No. G 699690, described as follows:

BEGINNING at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence North 200 feet; thence West 435 feet; thence South 200 feet to a point on the South line of the Northeast quarter of the Northeast quarter of said Section; thence East 435 feet to the Point of Beginning.

PARCEL IX

That portion of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at a point 612 feet East of the Northwest corner of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence South 191 feet; thence East 228 feet; thence North 191 feet; thence West 228 feet to the Point of Beginning.

EXCEPT County Roads.

ALSO EXCEPT that portion thereof conveyed to the State of Washington by deed recorded under Auditor's File Nos. G 500929 and G 143551.