

**Testimony of Chairman Mark Ingersoll
Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
Legislative Hearing on H.R. 3225
House Natural Resources Indian, Insular, and Alaska Native Affairs Subcommittee
November 15, 2017**

Good afternoon Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee. My name is Mark Ingersoll, and I serve as the Chairman of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (“CTCLUSI” or “Tribes”) located on the south-central coast of Oregon.

I am honored to be here today to testify in support of H.R. 3225, the Oregon Tribal Economic Development Act, which would clarify for CTCLUSI and four other tribes located in Oregon (the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians) that the approval of the United States is not needed in order for the Tribes and the other tribes referenced in the legislation to purchase, sell, lease, or otherwise convey lands not held in trust by the federal government. This legislation is critically important to the future of CTCLUSI and our economic development initiatives. Due to overly broad interpretations of the Indian Nonintercourse Acts (INIA) by a title company and a financial institution, the Tribes’ ability to purchase non-trust land has been severely limited as well as potentially the Tribes’ ability to sell or even lease our non-trust lands in the future. We thank Representative DeFazio for introducing H.R. 3225 and thank Representative Walden for co-sponsorship of this bill. We deeply appreciate their efforts on our behalf as well as the efforts of this Committee.

History of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians are made up of three tribes, including two bands of the Coos Tribe (the Hanis who lived in the North Bend area and the Miluk who lived in the South Slough area of the Coos Bay estuary), the Lower Umpqua Tribe who lived along the Umpqua River, and the Siuslaw Tribe who lived along the Siuslaw River. Our historic homelands extended from the richly forested slopes of the Coastal Range in the East to the rocky shoreline of the Pacific Ocean in the West -- a vast region of some 1.6 million acres.

Like many tribes, we suffered terribly from the influx of disease brought by settlers and traders. In 1855, our people agreed to a treaty to allow for the peaceful acquisition and settlement of the Tribes’ ancestral lands in return for food, clothing, employment, education and health benefits. However, Congress never ratified that treaty resulting in the aboriginal lands of the Tribes being stolen by the United States in violation of the Organic Act of 1848 that created the Territory of Oregon. Instead, in 1856 the Coos Indians were rounded up by federal soldiers, sent 20 miles north, and held as prisoners with the Lower Umpqua. In 1860, our ancestors were marched another 60 miles up the coast to a reservation on the Yachats River. Many died of hunger, exposure, mistreatment, and sheer exhaustion. Once there, our ancestors were imprisoned for 17 years and forced

to give up our traditional fishing/hunting/gathering culture. Fifty percent of our tribal members died during this period due to deplorable conditions, including starvation, mistreatment, and disease.

Eventually, tribal members were released to return to our homelands but found that their homes no longer existed and were forced to settle wherever they could. The tribal members who stayed in the area kept their tribal identity alive by meeting monthly and observing special celebrations throughout the year. In 1917, the Tribes established a formal, elected tribal government that we have maintained ever since. In 1941, the Bureau of Indian Affairs (BIA) took a small privately donated parcel (6.12 acres) into trust for the Tribes in the city of Coos Bay. On this small “reservation”, the BIA also erected a Tribal Hall that included an assembly hall, kitchen, offices and medical clinic.

In the late 1940's, the U.S. government commenced actions to terminate recognition of some Indian tribes. The Coos, Lower Umpqua and Siuslaw Indians voted to strongly oppose termination. However, without our knowledge or consent, the Tribes were included in the Western Oregon Termination Act of 1954. Despite the U.S. government's unilateral termination of our government-to-government relationship, we never sold our small reservation or Tribal Hall, and, instead, maintained it, our governing structure, and our community. After a long struggle, the Tribes' federal recognition was restored through the Coos, Lower Umpqua and Siuslaw Restoration Act, which was signed into law on October 17, 1984.

Since then, the Tribes have worked hard to provide services to our people, to restore our ancestral homelands, and to provide economic development for our community.

Background on the Indian Nonintercourse Acts

The Indian Nonintercourse Acts are a series of acts passed from 1790 to 1834 that were intended to establish the federal government as the sole arbiter over Indian affairs in order to maintain relative peace and stable relations with Indian tribes and to prevent the loss of Indian lands from colonial encroachment. The Acts prevent the sale, lease, transfer, or other conveyance of Indian land without federal approval. The 1834 Act is codified at 25 U.S.C. §177 and states in part:

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

Over the past nearly two centuries, application of the INIA has varied, depending upon the time period and the location of the tribe and has produced a confusing set of judicial, legislative and administrative decisions. Typically, the INIA has not prevented a tribe from being able to buy, sell, lease, transfer, or otherwise convey its land held in fee. However, some title companies and financial institutions are interpreting the INIA to require federal approval for tribes to purchase, sell, or lease fee lands owned by federally recognized Indian tribes. The Department of the Interior does not make such

determinations for fee land transactions for Indian tribes, and seeking congressional approval for every fee land transaction by a tribe is clearly impractical. This overly broad interpretation of the INIA causes significant problems for tribal economic development.

As such, tribes that have been prevented from buying, selling, or leasing lands through an interpretation by a title company or financial institution have sought legislation clarifying that the tribe does not need the approval of the federal government to buy, sell, lease, or otherwise convey lands not held in trust by the federal government.

Recently, Congress passed clarifying legislation for the Miami Tribe of Oklahoma in 2016 (P.L. 114-127) (the Senate approved the Miami Tribe's bill by unanimous consent and the House passed the bill under suspension of the rules by voice vote), the Fond du Lac Band of Lake Superior Chippewa in 2014 (P.L. 113-88), the Coquille Indian Tribe in 2007 (P.L. 110-75), the Saginaw Chippewa Tribe of Indians in 2007 (P.L. 110-76), and the Lower Sioux Indian Community in Minnesota (P.L. 106-217).

Need for H.R. 3225 for CTCLUSI

Historically, the INIA had not impacted the Tribes' ability to purchase, sell, or lease lands not held in trust by the federal government. Since 1984 when the Tribes' federal recognition was restored, CTCLUSI has been able to acquire, manage, and develop 381 acres of non-trust fee-owned land without hindrance from the INIA.

However, in 2014, the Tribes were unable to obtain a commercial mortgage due to this overly broad interpretation of the INIA. Seeking to further develop and diversify our economy, the Tribes sought to purchase a self-storage facility in Coos Bay, Oregon, using a commercial mortgage. During the course of the transaction, the title company's underwriter determined that the INIA required that the transaction be approved by the BIA and refused to issue title insurance. Presumably, this is because the INIA might prevent the repossession of the land if the Tribes were unable to meet the terms of the mortgage.

As noted previously, the BIA does not have a process to approve of nor is it involved in fee land transactions involving tribes. Despite this fact and out of an over-abundance of caution, the financial institution underwriting the title insurance for our self-storage facility would not issue title insurance without this approval. Thus, the Tribes were unable to obtain a commercial mortgage to purchase the facility and had to use cash to acquire the facility. Although the Tribes were able to complete the transaction, it is not practical for the Tribes to limit itself to cash purchase transactions for property/land projects.

Given there is essentially no other option to this title company and their financial underwriter in the area in which the Tribes are located, the Tribes are likely going to continue to be unable to obtain a commercial mortgage and likely going to continue to experience great difficulties in selling or potentially leasing our non-trust fee-owned property. This inability to obtain a mortgage as well as sell or lease our existing land has significant negative consequences for the Tribes and our ability to engage in economic

development projects and to reacquire our ancestral lands. **Thus, the Tribes' only recourse at this point is to seek legislation clarifying that federal approval is not needed for the Tribes to sell, lease, or otherwise transfer land not held in trust to obviate any underlying concerns to obtaining a mortgage for the purchase of land not held in trust.**

Provisions of H.R. 3225

Section 2(a) of the bill clarifies that the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians have the authority to lease, sell, convey, warrant, or otherwise transfer their interests in property not held in trust by the federal government without approval from the federal government.

Section 2(b) of the bill clarifies that this authority to lease, sell, convey, warrant, or otherwise transfer non-trust land does not apply to any land held in trust for the benefit of the tribes referenced in Section 2(a).

Conclusion

H.R. 3225 provides a simple common-sense clarification that will enable our Tribes (and four other Oregon tribes referenced in this bill) to buy, sell, or lease our non-trust owned land without approval from the federal government. This clarification is critical to our ongoing economic development efforts and our efforts to reacquire some of our ancestral lands. While the INIA may have been originally enacted to protect tribes, overly paternalistic and/or bureaucratic interpretations of the law are negatively impacting CTCLUSI's ability to enhance our economic self-sufficiency and self-determination. On behalf of CTCLUSI, I respectfully request the Subcommittee's support for this important legislation.

Thank you again for this opportunity and for your consideration of this request. I am happy to answer any questions you may have.