

**Testimony before the House Committee on Natural Resources
By Thomas Younker, Vice Chairman, Coquille Indian Tribe**

H.R. 2863

July 11, 2007

The Coquille Tribal Council has asked me to provide this testimony in support of H.R. 2863, which once adopted, will authorize the Tribe to lease and convey fee lands.

Ever since the collapse of Oregon's natural resource economy, the Coquille Indian Tribe has focused its efforts on the recovery of a more sustainable South Coast economy and the creation of family wage jobs. H.R. 2863 eliminates a barrier to investment in lands owned by the Tribe or its development corporation. We wish to thank our Representative, Peter DeFazio, for introducing this needed and uncontroversial legislation.

Background

The Coquille Indian Tribe is situated in Coos Bay / North Bend, along the Southern Oregon Coast. In 1954 Congress terminated its federal recognition of the Tribe, beginning a thirty five year period of diaspora, poverty and cultural alienation for my people. In 1989, Tribal members' decade long efforts to regain federal recognition culminated in adoption of the Federal Coquille Restoration Act. The Coquille Restoration Act recognizes the Coquille Indian Tribe as an indigenous nation that occupied Oregon's South Coast since time immemorial.

Coos Bay is within our Tribe's homeland. Because the Tribe has always and will always live here, we focus our economic development efforts on Coos Bay and surrounding areas.

Beginning in the 1980s, changes in timber and natural resources supply and demand ravaged the Coos Bay area economy. Bayfront mills, warehouses and shipping areas went out of business, and left our waterfront in industrial ruins. Many of these sites remain as brownfields and attractive nuisances and prevent public access to our otherwise beautiful waterways.

For these reasons and others, the Coquille Indian Tribe Economic Development Corporation ("CEDCO"), the economic development arm of our Tribe, purchased a vacant 50 acre bayfront parcel that formerly housed the largest industrial mill and shipping facility in our region. CEDCO purchased and holds this land in fee. Shortly after acquiring this property, CEDCO and the Tribe hosted a series of public meetings to solicit the community's input on how to develop this symbol of bygone economic prosperity. Ultimately, CEDCO incorporated several of the community's comments into a feasibility study for the site.

This feasibility study envisions a \$100 million development named Ko-Kwel Wharf. Ko-Kwel Wharf is a retail / commercial development that incorporates expansive greenspaces and waterfront public gathering areas. It will provide our community it's first and only bay front access and represents the largest capital investment in Coos County in many years. One major factor that will lead to the financial viability of this development is the successful recruitment of a large anchor tenant. CEDCO has been lucky enough to negotiate a satisfactory ground lease of ten acres with Home Depot. Unfortunately, that lease will only become effective if CEDCO and the Tribe can obtain legislative relief from a 200 year old statute called the Federal Nonintercourse Act (25 USC Section 177).

Federal Nonintercourse Act: 25 USC §177

During George Washington's first term as president, Congress adopted the Federal Nonintercourse Act to stop unscrupulous traders from taking Indians' lands. Section 177 of that Act ostensibly prohibits Tribes (and possibly Tribal corporations) to lease, encumber or sell lands, without first receiving Congressional consent.

The Tribe and our proposed tenant (Home Depot) have sought legal opinions from reputable law firms regarding the application of Section 177 to a ground lease of fee lands owned by CEDCO. No law firm we have contacted will provide an opinion satisfactory to either CEDCO or Home Depot that Section 177 allows for a non-voidable lease. In addition, the U.S. Interior Solicitor's office has notified the Tribe that it cannot and will not provide an unqualified opinion that Section 177 is inapplicable to the proposed Home Depot lease.

Without the relief provided in H.R. 2863, a potential business partner or purchaser of Tribal lands must deal with the possibility that the Tribal fee land lease or other transaction could be voided after the fact at any time. Moreover, a lender cannot accept a mortgage when the underlying security interest cannot be transferred in the case of a default. This would be the case, arguably, if a tribe were to default on a mortgage secured by tribal fee lands. For businesses otherwise willing to invest millions of dollars in infrastructure improvements, this risk is simply too great to ignore. H.R. 2863 is the only means available to eliminate this risk.

We understand that the Interior Solicitor's office has reviewed the text of H.R. 2863, and that it will support this legislation. The Interior Solicitor is familiar with the challenges facing modern tribes and understands their economic development needs. Daily, many modern tribes lease, encumber and sell fee lands, unaware of a possible conflict with Section 177.

We note that, in recent times, at least two other individual tribes have been granted legislative relief from the Federal Nonintercourse Act. They are the Shakopee Sioux in Section 126 of Public Law 108-204 and the Louisiana Coushatta in Section 301 of Public Law 106-568.

The Coquille Indian Tribe anticipates engaging in a number of transactions involving fee lands over the next two to three years. Since discovering this issue, a second tribal real estate transaction has been ceased until passage of this legislation, and we expect more will follow until relief arrives.

This issue severely impairs the Tribe's ability to pursue economic development for the benefit of its tribal members and its larger community.

In addition to my testimony, in the record you will find testimony in support of this legislation from the City of North Bend and the Coos County Commissioners. We have also provided letters of support from our Oregon legislative representatives in support of H.R. 2863.

I would like to make one final point of clarification: this bill does not amend the Nonintercourse Act. Instead, this legislation simply recognizes in statute that the Coquille Indian Tribe (and its instrumentalities) has clear authority to lease, convey and encumber fee lands. The result of the bill is that the Coquille Indian Tribe can deal with fee lands on the same basis as any other person or business.

Since their restoration, the Coquille charted a path toward self-sufficiency and self-government. H.R. 2863 helps to ensure that we will meet our objectives, while leaving the Federal Nonintercourse Act intact in its current form.

The Coquille Tribe urges the Committee to approve H.R. 2863 as soon as possible and to forward it to the House floor for passage.

Thank you. That concludes my testimony.

