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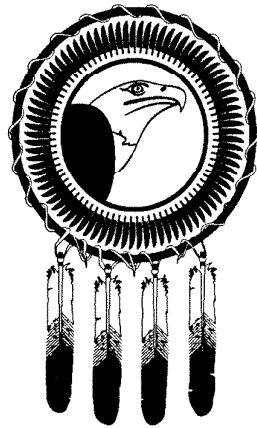
*A Single Acre, A Sovereign Effort: A Model for Muckleshoot Land-Use and
Economic Development*

by

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EXECUTIVE SUMMARY

The Tribal Council has obtained consultants to identify and examine several alternatives in search of the "highest and best use" for the Tribe's shoreline property at the mouth of the Duwamish River in Seattle. We have identified and analyzed the following options:

1. Develop a marina and fish processing facility;
2. Develop a small-scale fish production hatchery¹;
3. Build a terminal for transport of visitors to the Reservation;
4. Build a terminal for operating boat tours of the industrial/Port area;
5. Establish a communication and scheduling system in collaboration with the Port of Seattle;
6. Purchase the adjacent parcel to expand land base;
7. Lease the property;
8. Exchange the property for cash or another parcel from the City of Seattle;
9. Restore the property, along with the adjacent public boat ramp, with the assistance of the City and Port.

Recommendations

¹A small-scale hatchery produces fewer than 100,000 lbs. of fish annually. Source: Sahay, Puchka, "Making Choices About Development: A Feasibility Analysis of Aquaculture", PAE, 1994, p.i.

Given the Tribe's desire to regain its land base, prepare for its future, and be successful, we recommend the Tribe:

1. Restore the shoreline property to stem further erosion. This includes, but is not limited to, building a retaining wall, grading and resurfacing the land, repairing/replacing the ruptured septic tank, and restoring the boat ramp;
2. Collaborate with the Port and City of Seattle to improve the utility of the public boat ramp adjacent to the property. This would benefit three major stakeholders -- the Tribe, the Port, and the City of Seattle;
3. Develop protocols for interacting with external jurisdictions, e.g. the Ports of Seattle and Tacoma, the City of Seattle. The property can be used as a means for creating a consistent dialog;
4. Increase communication between the Tribal Council, the Office of Economic Development, all Commissions, and Tribal members. This minimizes duplication of effort, encourages accountability, and keeps all relevant decision makers informed.

Each of these four actions meets the Tribe's economic development goals. They build upon the Tribe's strengths and minimize the risks of failure.

Rationale

The Tribe currently lacks the managerial experience and specialized skills to develop a successful business on the Duwamish property. The site is too small, off the "beaten path", and not near the majority of the Tribe's other activities. The

Tribe's track record of success has historically been higher when it does not have to contend with these disadvantages. But, this does not mean the property is useless or that the Tribe cannot gain from taking a closer look at the property's other attributes and comparing them with their own strengths. It does mean the Tribe's definitions of economic development and "highest and best use" need to be expanded.

Although the Property cannot be expected to generate large increases in Tribal wealth, it can play a significant role in the Tribe's future. It can be used as a model for promoting communication within the Tribe, exercising Tribal sovereignty, and asking what makes the most sense given the Tribe's current base of resources and assets.

Table 3: Implementation Process

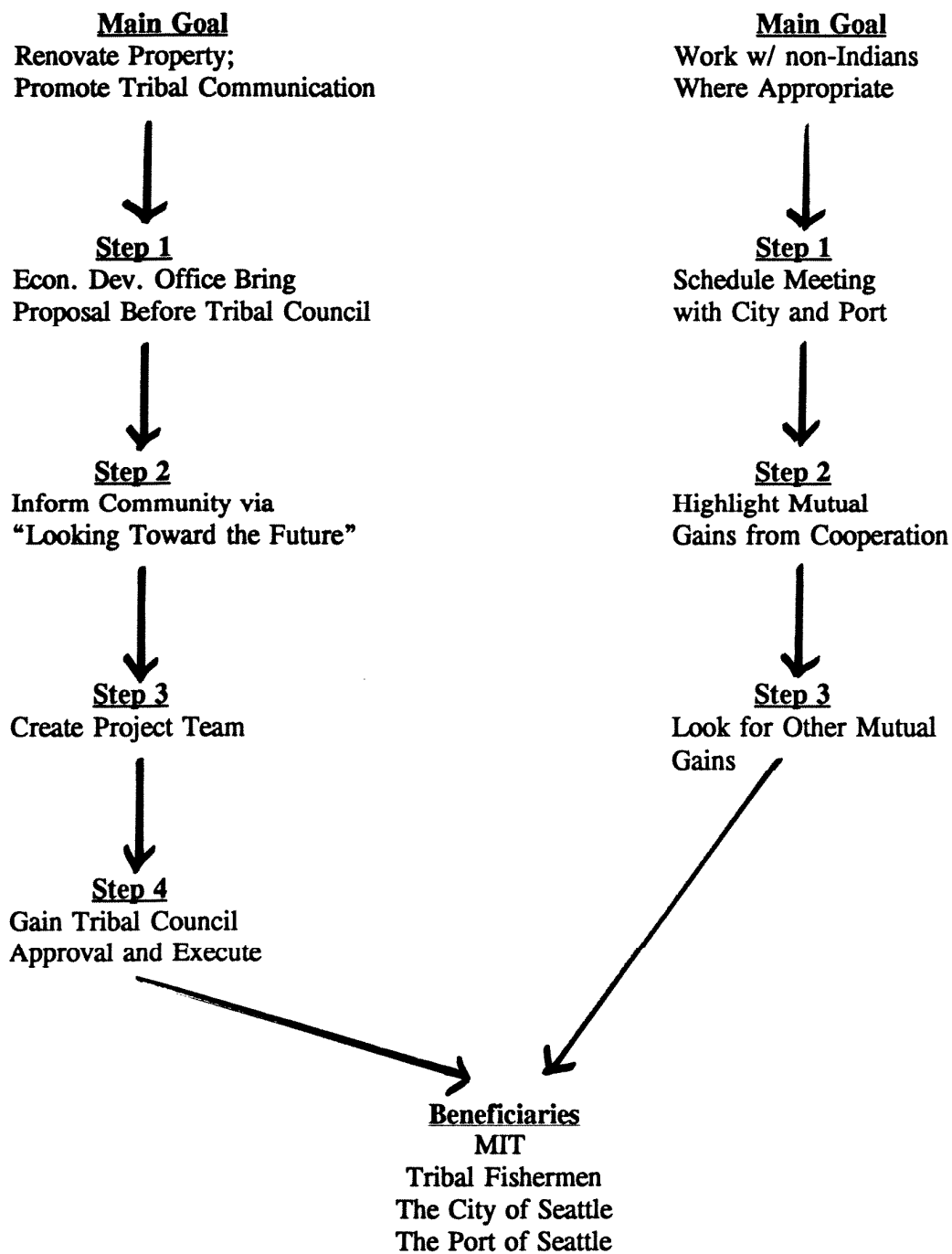


Table 1: Evaluation Matrix for Property Options

<i>Strategic Options:</i>	Primary Economic Development Goal(s)	Have We Ever Done This? Were we Successful?	What's the Financial Commitment?	What's the Cost of Not Doing It?	How Substantial are the Organizational Implications?	Is this a win-win with External Stakeholders? • Seattle • Port
1) Develop a marina and fish processing facility	Jobs; Income	Limited experience with Tribal enterprises	High plant & equipment acquisition cost	Lost revenue of slip leases; lost margin by selling to cannery bar	High	Questionable (?)
2) Develop a small hatchery	Preserve Habitat	Yes	Medium/High	Inability to directly influence preservation of salmon	Medium	Questionable (?)
3) Build terminal for transport to Amphitheater & Reservation	Income	No	High	Lost revenue plus feeder to Reservation	High	Questionable (?)
4) Develop tourism through boat tours of industrial and Port areas	Jobs; Income	No	High	Lost revenue	Medium	Yes
5) Establish a communication and scheduling system with the Port	Income	No, but learning curve is flat	Low	Continued loss of damaged nets and fish; safety	Medium	Yes
6) Purchase adjacent property to expand land base	Land acquisition	Yes	High	Limited expansion opportunities	Low	Not applicable
7) Lease the Property	Income	Yes, on or close to the Reservation	Low/Medium	Forgone cash flow	Medium/High	Questionable (?)
8) Exchange Property for cash or another parcel	Income or land acquisition	Somewhat	Low	No cost; Forego opportunity to trade land	Low	Not applicable
9) Restore Property; restore public boat ramp with help of Port	Land reclamation and restoration	Yes	Low	Property erodes into River; miss mutually beneficial work with Port	Low	Yes

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CHAPTER 1 — INTRODUCTION

The Muckleshoot Indian Tribe stands at a crossroads. In comparison with most other Tribes, they excel at maintaining political stability, exercising their sovereignty, and providing for future generations. They also have well-defined economic development goals and certain strengths in leadership and administration required to be successful, such as continuity, expertise, and vision. However, they need to take the next step to ensure prosperity into the next millennia. The Tribe must develop a framework for easily identifying and evaluating the economic development alternatives most likely to be successful. This will help to minimize the Tribe's investment in marginally beneficial projects, and provide consistent consideration and analysis across potential opportunities.

This report contains six chapters:

- Chapter 1 presents the challenge at hand: How should the Muckleshoot Indian Tribe use its property on the Duwamish River? It emphasizes that the answer to this question must depend not only on the potential economic returns from various land use possibilities, but also on the history, culture and modern political context. The conclusion of this section is that the MIT must create baseline (generic) land use and/or economic development guidelines, ones that will help answer this question as well as provide guidance for future potential opportunities.

- Chapter 2 gives guidance to the Tribe on how to develop a useful methodology for making economic development decisions, and further, suggests a particular method which the Tribe might find useful. Its main concerns are with the comparative advantages the Tribe

has because of its social capacity, objectives, location, institutional strength, and special rights. This section posits that there are certain criteria with which any development initiative must be analyzed, including the competitive advantages the Tribe has because of its social capacity, objectives, location, institutional strength and special rights. Certainly, the Tribe's priorities and objectives with regard to job creation, income generation, and cultural preservation are an important aspect of this calculation as well.

- Chapter 3 considers the current state of the property and surrounding area, and analyzes the strengths and weaknesses of each. It then considers the other actors with stakes in the region and suggests that some of them (particularly the Port and City of Seattle) might be willing to work with the Tribe in improving the property.

- Chapter 4 sets forth the various courses of action we considered. Using the criteria developed in Section II, we weigh the merits and feasibility of each possibility. According to this analysis, the most attractive option is to improve the land and the adjacent boat ramp with the help of the City and Port of Seattle.

- Chapter 5 discusses our recommendations in greater detail.

- Chapter 6 reviews the implications of our recommendation and relates it back to the Tribe's initial goals and means for achieving economic development mentioned in Chapters 1 and 2.

Historical Perspective

The Muckleshoot Indian Reservation in Auburn, Washington is located thirty miles southeast of Seattle and is home to most members of the Muckleshoot Indian Tribe. While not recognized by the federal government until the Treaties of Medicine Creek (1854) and Point Elliot (1855), this 1200-member nation has made the Pacific Northwest its home for generations. Due to their continuous and long residence in the area, the Tribe has watched, and to some extent participated in, the dramatic changes that have taken place in the region over the last 50 years. With the encroachment of non-Indian settlers, development of industry, and creation of inconsistent federal policies, the Tribe also has been forced to adapt. Self-sufficiency and living off the land via hunting and fishing no longer remain sustainable options.

As of 1993, the last date for which data were available, the Tribe had an unemployment rate of 44%. This is a sign that its members have either faced significant barriers to entering the marketplace or have struggled to find a job or field in which they feel prepared, appreciated, or respected. Of those who are employed, a large proportion work in enterprises located outside the reservation. With such heavy reliance on the surrounding regional economy, the ability of Tribal members to compete for jobs in the region must be improved. This sheds light on the direction the Tribe's efforts should advance, especially when considered with other factors, like low education attainment levels. The Tribe has to articulate not only its long range goals, but also workable means through which they can be met. It needs to interact more with the surrounding economic and political entities on its own terms, by reaffirming its political and economic strengths.

The Muckleshoot Indians stand at a crossroads. They recognize the need to maintain their society and culture and to initiate new economic projects and efforts to repatriate their land. At the same time, they want not just jobs, but sustainable careers, increased incomes, and the ability to provide for future generations. Fundamentally, these goals of economic prosperity and cultural preservation should not be viewed as mutually exclusive. Instead, they should be seen as necessarily going hand-in-hand. While only a single piece in this development puzzle, the analysis contained in this report adds to these discussions. It creates culturally and economically sensible criteria and recommendations for using the Tribe's parcel of land in the Port. By focusing on its potential uses in relation to the Tribe's comparative advantages, a useful development framework emerges.

We believe the approaches and options developed in this report are generically applicable. They can help the Tribe assess, prioritize, and better articulate its needs and other land use concerns. From increasing communication, creating a more stable political environment, and developing protocols for negotiating and interacting with other jurisdictions, the Tribe can continue on its path toward sovereignty and success.

Site Overview – 117 South River Street

117 South River Street (hereafter referred to as the Property) is not located on the Tribe's Auburn reservation. As *Figure 1* shows, it is approximately 38 miles northwest. On one hand, this fact raises jurisdictional and management concerns; on the other, it brings the Tribe's potential comparative advantages over other polities to the fore. Most previous economic development opportunities available to the Tribe have either been inside the

Reservation border, or within a 5-10 mile radius. Thus, this opportunity broadens the scope of development considerations. As a result, this site requires that the amount and availability of Tribal and outside resources be given significant weight. These outside resources are critical in order for the Tribe to improve its internal channels of communication, decision making capabilities, and development strategies.

Harbor Island, which is the primary shipping facility for the Port of Seattle, is located approximately 2.5 miles up river from the Property toward Elliot Bay.¹ (See *Figure 2*). This is where the majority of the large container ships are loaded and unloaded. Thus, the Tribe's waterway location has both positive and negative implications on their opportunity set. For instance, the large number of ships and high level of industrial activity in the area mean the Tribe's fishermen are frequently in danger when casting their drift nets into the channel.

In addition, *Figure 3* shows the Tribe's property is approximately four miles south of Seattle's financial and retail districts. It stands outside of the area that tourists and residents regularly visit, such as Public Market, the Space Needle, or King Dome. The importance of this fact cannot be underestimated. Unless an attractive way to induce individuals to visit the site can be developed, it is unwise to consider an option that relies on becoming part of the tourism industry. Second, the site's location near several major arterials, namely East Marginal Way (Route 99), U.S. Interstate 5, and the First Avenue South Bridge, means that

¹The Port of Seattle is an independent government and is not controlled by the City of Seattle. It has five commissioners that serve four year terms and are elected at large by the citizens of King County. Its mission is to provide transportation services and facilitate trade. By authorization of the State of Washington, it can also issue tax-exempt bonds through its Industrial Development Corporation.

Source: *Port of Seattle, Office of Communication.*

it has direct access to high-volume transportation routes. (See *Figure 4*). Hence, the costs of shipping or receiving goods and services at the site may be low in comparison to other areas controlled by the Tribe.

Having discussed the Property's locational advantages and challenges, the next step is to develop a framework for evaluating various options. Muckleshoot needs simple criteria for evaluating the land-use question, as well as other economic development proposals.

INTRODUCTION SUMMARY

Main Points:

- **MIT is at a crossroads**
- **MIT can shape its future and that of the surrounding region**
- **Duwamish River Property can be used as an economic development model**

STEP 1 Develop criteria to evaluate projects

STEP 2 Increase internal communication

STEP 3 Increase external communication

STEP 4 Redefine "Highest and Best Use"

CHAPTER 2 — EVALUATION PROCESS

The Muckleshoot Indian Tribe has outlined in its mission statement bold plans for the future, one of which is to purchase land and use it to create jobs and accompanying income for its members. To aid in reaching these goals, the Tribe must employ useful criteria for analyzing its economic development options. What's been done in the past can best be described as incremental and ad hoc. A new set of criteria needs to focus on the Tribe's assets and liabilities. Currently, we believe the Tribe's culture, sovereignty, location of properties, and treaty rights form its core asset base. While each of these factors will be discussed further, we believe they are the primary development tools that should be used in evaluating this opportunity. When broken down into a series of questions, these areas provide the most feasible and realistic ways to think about creating tangible gains. In addition, a clear articulation of these categories helps the Tribe better meet its expectations. We discuss five categories: the Tribe's assets and liabilities; ancillary advantages; matching objectives and opportunities; MIT's institutional capacity; and the importance of stability and communication.

Assessing Assets and Liabilities;²

While every project is ultimately concerned with its relationship to the outside world, its internal requirements should be considered first. Because traditional Muckleshoot culture

²By assets, we mean those elements of MIT that provide a position of strength; by liabilities, we refer to those organizational elements which present development challenges.

embodies many attributes like trading, fishing, and religion, and has historically been especially resilient, we believe culture is the most significant factor to consider when making a development decision. Fundamentally, the Tribe should not undertake an activity or project just because it has a funding source. This action creates a risk that MIT will endanger its vision of the future by undertaking random, unfruitful projects. Instead, its leadership and Economic Development Office should ask the following questions:

- Is this opportunity directly related to the Tribe's objectives?
(jobs, education, land ownership, and income)
- Has the Tribe been successful at this type of venture?
- Is it consistent with the Tribe's past?
- What financial commitment does this opportunity require?
- What is the cost of not undertaking this project?
- What new demands or unintended consequences might this project create?
- Is this project palatable to all involved stakeholders?

While none of these questions are easy to answer, asking them starts to move economic development beyond ad hoc decisions. It helps build institutional strength, political stability, and better communication, all of which are required for independent and self-defined development success.

Exploiting Ancillary Advantages

Location

The Tribe has several economic development advantages because of its location.

First, they are the only federally recognized Indian Tribe in King County, Washington and the closest one to Seattle. The Seattle-Tacoma-Bremerton Consolidated Metropolitan Statistical Area (CMSA), which includes the Reservation, has a population over 2.97 million, according to the 1990 US Census³. It is one of the fastest growing areas of the country, with a growth rate of approximately 23% between 1980 and 1990⁴. This fact gives the Tribe access to a broader consumer market than any other tribe in the region.

If the Tribe can build enterprises for which there is adequate demand and that fit in with the Tribe's capacities and economic development goals, it can do quite well. The Tribe's soon to be completed Amphitheater underscores this potential. This 25,000 seat facility, with its cultural center and campgrounds, will bring a substantial windfall to the Tribe.

Land

The manner in which the Tribe holds and expands its land base is also one of its comparative advantages. The more land the Tribe purchases, the stronger it grows economically, politically, and socially. The Tribe currently has two different ways it can procure land. It can purchase "fee simple" land and pay state and local property taxes on it, as is the case with all non-Indians. Or, it can purchase a parcel of land adjacent to one

³The World Almanac and Book of Facts 1994, Funk and Wagnalls, Mahwah, New Jersey, p.367.

⁴Ibid., p.367.

already in trust, pay off the mortgage and then place it in trust.⁵

Having land in trust exempts the Tribe from state and local property taxes because the land is owned by the federal government and held for exclusive use by the Tribe. As an example, this may give the Tribe advantages over other non-Indian jurisdictions in attracting businesses. Because of the lower cost of land, firms can be induced to locate on trust land at below market rates. Unfortunately, trust land also has some potential limits associated with its use as a tool for economic development. The federal government, through either an act of Congress or action taken by the Secretary of the Interior, can legally dispose of the land without Tribal recourse. Conversely, the Tribe cannot legally dispose of trust land without getting permission from the Department of the Interior, Bureau of Indian Affairs (BIA).⁶

⁵According to the Code of Federal Regulations (CFR), 25 CFR Ch.1 (4-1-94 Edition), which explains all regulations regarding Tribal land acquisition, the Tribe may also put land not adjacent to another parcel of trust land in trust, "when the Secretary of the Interior determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing." This is apparently how the Tribe's property was originally put in trust.

⁶ Parts 151 and 152 of 25 CFR outline the conditions and procedures through which Trust land can be sold or exchanged. The importance of these regulations will become more apparent in Section V, Property Value Assessment and Options.

Tribal Rights

Tribal rights are properly regarded as a comparative advantage of the Tribe. Since the Muckleshoots are federally recognized by BIA and Congress, they exist in a unique jurisdictional capacity, one that is enhanced by their status as a treaty tribe. They are a "domestic, dependent nation" with links to only the federal government.⁷ They have special rights that cannot be abrogated and have recently been reaffirmed by the federal government, for example the right to fish.

Through the Boldt Decision of 1974, MIT has reasserted its right to obtain up to 50% of the catch of salmon, and other types of fish, in its "usual and accustom" fishing areas. This special treaty deserves attention. It directly relates to the actions the Tribe may take with its Duwamish River property.

Matching Objectives and Opportunities

The Tribe well realizes that 'if you don't know where you wish to go, any road you take will get you there'. Its desired future direction is already well established and cogently laid out in the following statement of purpose.

The success of the economic development program for the Muckleshoot Indian Tribe is directly tied to (1) the acquisition of an adequate land base to provide for economic development, housing, and the protection and enhancement of the natural resource base; (2) the education and training of a labor force attractive to future

⁷ The quote, "domestic, dependent nation," comes from Chief Justice John Marshall, *Cherokee Nation v. Georgia*, 1832. It refers to the unique position of Indian tribes relative to the federal government and states. For additional information see F.P. Prucha, Indian Policy in the United States, University of Nebraska Press, Lincoln, 1981.

economic development projects; (3) the creation of employment opportunities on and near the Reservation which match the training and skills of the labor force; and, (4) the establishment of an investment fund sufficient to provide the resources to stimulate desired development.

-Muckleshoot Indian Tribe, Overall Economic Development Plan 1993-1998

The Tribe's Property use is best understood in relation to these four objectives. The only problem is that generating income, maintaining a fishing site on the Duwamish, buying land, and creating jobs inevitably lead to different development decisions. For example, considering the small size of the Property, fewer jobs can be sustained at this location than on a comparably priced, albeit much larger, parcel near the reservation. The tradeoff in this case is between generating the maximum number of jobs on a plot of land vs. maintaining a fishing venue on the Duwamish. Another obvious tradeoff is that land in Seattle is much more expensive than land in Auburn. Thus, if the Tribe sold the half-acre Duwamish Property, it could use the proceeds to purchase a much larger parcel near the Reservation. This forces a tradeoff between maximizing total acreage owned and maintaining a fishing venue on the Duwamish. It makes setting priorities essential to the success and sustainability of the development of this Property.

The Tribe's priorities must be set within the context of the particular development opportunity under consideration. For example, an important contextual consideration in this case is that the Property is not located on (or even near) the Reservation; hence, any jobs created would require a 40 minute commute from Auburn, rather than a negligible drive through town. Another element of context is that, currently, activities that occur on the Property are, because of geographic distance, well insulated from the Tribe's political

process. This provides those who use the Property more latitude to pursue what they wish. Taken together, then, the Tribe's objectives need not be mutually exclusive, although when combined, they do create stresses that could jeopardize the success of the entire effort.

Assessing Political and Administrative Institutional Capacity

Within the Tribe's culture, its institutional strength stands as one of its primary assets. Unlike most other Tribes that have weak governing structures, and are limited by intense factionalism, MIT has relatively strong institutions and mechanisms to manage and direct change. For example, through its parliamentary system of government, the Tribe promotes consensus around the need for land acquisition, economic development, education and job creation. We raise this attribute because those projects that create or sustain internal agreement are far more likely to receive broad support and succeed than those that do not.

The Muckleshoot administration has an extensive set of working relationships, skills, human capital, and assets at its disposal. These resources represent the Tribe's social capacity.⁸ Each one should be used to help the Tribe make constructive development decisions. They should be viewed as an informal source of strength. For example, if a certain Tribal member has an aptitude for planning or other special insight, he or she should be consulted. In any organization it's not uncommon to overlook and take for granted the special skills of those we interact with on a regular basis.

Utilizing the Tribe's social capacity should be an important goal in redeveloping the

⁸Professor R. Ferguson, Harvard University, John F. Kennedy School of Government, Class Notes, Spring 1995.

Property. It promotes political stability, builds consensus and increases the odds of success. These are three vital areas most other Tribe's forget they have control over. They forget that ideas, plans, and actions must go hand-in-hand with using all available resources. With this in mind, the Tribe might consider the following:

They need to 1) mobilize and sustain the Tribal community's support for its institutions and for particular development strategies; 2) efficiently make and carry out strategic choices; and 3) provide a political environment in which investors large and small, tribal members and non-members feel secure. These institutions of self-governance have to work at both the level of policy and group action and at the level of day-to-day bureaucratic functions.

Kalt & Cornell, "Reloading the Dice: Improving the
Chances for Economic Development on American Indian
Reservations, " p. 16-17

In addition to using its social capacity and keeping in mind its main goals, the Tribe also must think about communication.

Expanding Communication

The Muckleshoot Indian Tribe has the sound government structure necessary to make responsible development decisions. However, it can use the Duwamish Property to further strengthen its internal capacity. Through developing more sustained communication channels between the Tribal Council, various commissions, and the Economic Development Office, it can place all actors, "on the same page" when it comes to development. In turn, this will help the Tribe better deal with external governmental jurisdictions with one unified voice. It will enhance and reinforce the Tribe's credibility and respect because "talking" will create a more shared vision of the future.

Looking Toward the Future, the monthly newsletter of the Economic Development and Planning Offices, is an excellent example of how increased communication can be easy and helpful. This newsletter informs Tribal members about the Tribe's many economic development efforts and how they are progressing. It creates accountability to produce tangible results, increases Tribal coordination and fosters policy consistency. The role for this type of communication device should be expanded.

Most important, the Economic Development and Planning Offices' newsletter keeps the larger community informed. It encourages greater participation by all Tribal members. In turn, increased communication brings more participants into discussions about the economic development process. This expansion of input may cause misunderstandings and disagreements. However, these differences are constructive; they help the Tribe develop a clearer and more acceptable vision of the future which includes all members. These types of improvements in the conveyance of information are very likely to increase the Tribe's sense

of community, sovereignty, and shared vision of the future. In the case of the Tribe's Property, we believe increasing communication is vital. This is because economic development is rarely undertaken by a single portion of an organization. By its nature, it involves the entire community.

EVALUATION PROCESS SUMMARY

Main Points:

- **Develop criteria for analyzing opportunities**
- **Exploit Tribal assets; develop liabilities**
- **Expand communication within Tribe**
- **Match economic development objectives with opportunities**

Evaluation Questions:

- **Is this opportunity directly related to the Tribe's objectives? (e.g. jobs, income, education, land)**
- **Has the Tribe been successful at this in the past?**
- **Is it consistent with the Tribe's past?**
- **What financial commitment does it require?**
- **What is the cost of not pursuing this opportunity?**
- **Are there any new demands or unintended consequences associated with this opportunity?**
- **Is this opportunity palatable to all involved stakeholders?**

CHAPTER 3 — THINKING ABOUT "HIGHEST AND BEST USE"

Property Condition, Current Use, and Surrounding Issues

According to available records and deeds, the Tribe obtained the Property in 1982, at which time MIT requested it be placed in trust for their use by the Bureau of Indian Affairs. It lies in the heart of the world's eighth largest port facility, and is near the area designated Slip #3 (See *Figure 5*). Like most of the surrounding land, the site is zoned industrial (IG1U/85) by the City of Seattle. This means that certain residential and commercial uses generally are not permitted, however it is unclear where this regulation applies to the Tribe.

Although it has controlled the property for more than a decade, the Tribe has not undertaken any large scale improvements or constructed any physical plant on the site. The lot size, as recorded by the King County Assessors Office, is 17,455 sq. ft., or slightly less than one half acre. Relative to almost all other sites in the area, it is quite small. As will be further addressed in Section V (Options), this fact limits the range of possible activities that can be pursued.

The property abuts the Duwamish River. (See *Figure 5*). It has approximately 35 yards of waterfront and no retaining wall to prevent erosion, which presents a clear concern. According to various interviews and sources, each year a larger and larger swath of land is eroded away. (See *Figure 6*) Regardless of what action is planned for the site, the structural capacity to construct physical plant on it in the future should be maintained through preventing erosion.

On the rear left hand side of the waterfront a small boat ramp can be seen. Although

it is in a state of disrepair, it would be functional if renovated. Toward the front of the property, on the same side as the boat ramp, there is a ruptured septic tank. We do not know what effect this has had on the site, but its cleanup represents an additional cost which must be taken into consideration when any renovations are carried out.

Tribal Fishing

The Tribe currently uses the Property as a dry-dock area on which to store boats, nets, and fishing equipment. Originally, its intended use was to provide Tribal fishermen with direct access to the Duwamish River, Elliot Bay, and Puget Sound.

Fishing has been a major part of the Muckleshoot's culture and economic base for generations. Our estimates show that between 15% to 30% of the Tribe's adult males fish and use the Property year-round⁹. In addition, the Property probably generates between \$8,000 to \$10,000 a year for those who fish from it regularly¹⁰. But, with the environmental changes in the Duwamish river this activity no longer yields the same volume it once did. As mentioned, it has been contaminated with the byproducts created by the surrounding industries. Additionally, its waters have been diverted, rerouted, and dredged to make the waterway navigable by large shipping vessels. Clearly, some of these surrounding uses are incompatible with the Tribe's fishing.

Past Efforts

⁹Gregg Paisley, Office of Economic Development, Muckleshoot Indian Tribe.

¹⁰Ibid.

Plans existed to develop a small scale fish processing facility on the site. They were developed by the Fishing Commission in the early part of the 1980s, with the support of the Tribal Council. *Figures 7a and 7b* illustrate the actual scale and plans for the facility. This has been the only development effort for which concrete plans were made concerning the Property.

Neighboring Properties

On the side of the Property closest to the First Avenue South Bridge, an under-utilized public boat launch owned by the City of Seattle exists. Currently, Tribal members who fish in the area move their boats from the property and launch them from the adjacent site. There are no docking or mooring facilities on either the Tribe's property or that owned by the City.

On the other side of the Property is a 2.5 acre site owned by Silver Bay Logging, Inc. of Juneau, Alaska. It has a large wharf running across the back of the site and a 7,640 sq. ft. warehouse on its right side. Currently, this parcel is vacant. As of 1994, the City appraised its value at \$928,000. If we assume this represents a ballpark figure for its fair market value, then the Tribe may desire to purchase this property when it has the resources to do so. This would increase the Tribe's total land holdings at the Port to approximately 3 acres, which is sufficient for a variety of uses.

Less than 1.5 miles south of the Property, Boeing, Inc., the largest employer in the region, operates its main production facility. This site, and many others in the area raises pollution concerns that effect the health of the fish (and hence the ability of the Tribe's

fishermen to draw income) in the waters of the Duwamish River.

First Avenue South Bridge

Currently, the State and City are refurbishing and expanding the First Avenue South Bridge. The Tribe was consulted throughout the planning process, although it is unclear to what extent their input was given adequate consideration.

Foreign Relations and Protocols — Involving the City and Port

In the next section, we examine the Tribe's historical and current relationship with the City and Port governments. The strength of these relationships has important implications for the relative amount of "red-tape" the Tribe encounters as it develops the Duwamish Property. The Muckleshoots presently have limited relationships with the City of Seattle and the Port. This is because, as mentioned earlier, they exist as an independent jurisdiction and have no legal obligation to interact with anyone other than the federal government. They only have to interact with the state and surrounding localities to the extent that building codes, police powers, and education are stipulated by the federal government. While having some merits, this situation causes conflict, tension, and miscommunication. The Tribe frequently feels the City or Port are acting capriciously without taking their treaty and historical rights into account. Conversely, most outside jurisdictions see the Tribe as acting arbitrarily. There are at least four ways in which the Tribe might immediately gain from working with the City and Port.

1. Sand Point Naval Base

The problems surrounding Sand Point Naval Base, which has been closed under the Federal Base Realignment and Closure Act of 1993, illustrates this point, but also offer the

Tribe an opportunity with respect to the Property. Since the Property is located both in the Port and in Seattle, the Tribe might be able to use it as a bargaining chip, or building block for fostering a more consistent dialog about the rights and goals of the Tribe.

The Tribe would like to purchase Sand Point Naval Base, or a portion thereof to develop a community college for local Indian tribes, or to undertake some other economic development initiatives. The City, on the other hand, wants to turn the property into a park similar to one currently adjoining it. The fact that these activities appear mutually exclusive, however, is not the point. The issue is whether, and how, the Tribe and the City can develop workable protocols for recognizing the opinions, concerns, or desires of each other. Arguably, the problems and possible legal actions that might emerge as a result of the tensions over Sand Point could be avoided if better channels of communication are developed. With this in mind, the Property should be viewed as an opportunity to foster a better working relationship between interested parties.

2. Fishing Preservation

In meeting with senior officials at the Port, we have determined that the Port desires to work with the Tribe to make the Duwamish River as safe as possible for the Tribe's fishermen, and as efficient as possible for their own benefit. Although large scale container shipping appears to be wholly incompatible with salmon fishing or other environmentally-based Tribal activities, perhaps it need not be.

One possibility that was mentioned by officials from the Port was the establishment of a River traffic scheduling system. This system would coordinate the needs of MIT fishermen, the Coast Guard, Puget Sound Pilots, Northwest Tugboat Association, the Marina

Exchange, *et. al.*, to minimize the conflict between commercial navigation and fishing expeditions. Currently, many of the fishermen's gill nets are destroyed by sea vessels passing through the waterways. This scheduling system could thus lead to a decrease in the number of nets damaged each year, and quite possibly increases in the size of the salmon catch, without adversely effecting Tribal treaty fishing rights.¹¹

More important, if the Tribe could possibly reserve portions of the channel for fishing during certain times of day, and during certain peak fishing seasons, they would benefit enormously. The nuisances to both the Tribe and the Port would be reduced. In thinking about other options that exist, working to clean up the environmental damage in and around the Duwamish River's lowlands is something the Tribe could work on with the Port. The Port is in the process of developing long range plans to deal with several superfund sites that exist in the area. Improving and maintaining the environment is something in which the Tribe should involve itself regardless of what is done with the Property.

3. First Avenue South Bridge

The Property is located directly adjacent to the First Avenue South Bridge. As already mentioned, this bridge is currently being refurbished. The Tribe was given an opportunity to voice its concerns during the design and comment period of the planning process, and, as we understand, it is relatively satisfied with the outcomes that will emerge. The area around the Property will sustain no further damages as a result of these efforts.

We believe working with the Port is a net gain to the Tribe. Indeed, its efforts to

¹¹Conversations with Port officials on 26 March revealed that much progress has been made on this idea, and the Tribe, Port, and other relevant parties will likely draft and sign an agreement within the next several weeks.

sustain the fishing industry in general, and salmon fishing in particular, as a tradition on the Duwamish River and Elliot Bay might well depend on it. While not insisting that an amiable friendship be maintained, we believe maintaining a working relationship based on the Port's and City's recognition of legitimate and continuing Tribal concerns is useful. Studying the Property and determining through what means the City and Port can be induced to get involved can lead to a win-win situation for all parties.

As an example, given the City's desire to make sure any work done on the Tribe's site meets its building, shoreline, and access codes, the existence of the City's boat ramp on the bridge side of the Property provides a strong incentive for cooperation.

4. The Boat Ramp

In 1985 the Port of Seattle and the City of Seattle considered undertaking major improvements to the First Avenue South Boat Ramp. These improvements included parking, temporary moorage, and a redesigned ramp. It was recognized that there is poor accessibility to the area and that the boat ramp is, "too steep for easy launching."¹² As *Figure 8* shows, these changes have the potential to substantially increase the value of the Property, thus warranting the Tribe's partnership in the project. The improvements could attract increased traffic to the area, in addition to improving the appearance and vitality of the area, and making the fishermen's use of the ramp more hassle-free.

Creating Linkages

¹²"Comprehensive Public Access Plan for the Duwamish Waterway," Port of Seattle, Sept., 1985, p.2-13.

If the Tribe has problems procuring the permits needed to expand their property, then it may be useful to link its actions to any possible improvements the City might undertake. Arguably, it would be difficult for the state, its environmental impact office, or other jurisdictions to allow only one shoreline improvement and not another, especially when they are adjacent to one another.

Property Value Assessment

This section of the analysis relates the strengths and weaknesses of the Tribe to the fundamental question of the Property's highest and best use. It takes all of the issues raised earlier and collapses them into a matrix that shows what makes the most sense for the Tribe. However, prior to showing why some options have a higher likelihood of success than others, it's important to review how the Tribe might think about the Property's value. Ultimately, no decision should be made regarding the Property unless an agreed upon value and level of importance can be developed and discussed openly.

Opportunity Cost — How Should the Property Be Valued?

In determining what actions will yield the highest benefits (both economically and culturally) to the Tribe, an asset value must be established for the Tribe's property. A discussion of value is necessary because it provides a benchmark against which the Tribe can judge its options. It allows for more accurate, and honest, conversations about the role of the Property in increasing the Tribe's sovereignty and economic development success. Just because it is already under their control, it does not have an opportunity cost of zero. It has value and is not free. Once the Tribe decides which course of action to take and benefits

to seek, then the potential benefits that might have accrued from other uses will greatly decline, if not disappear.

As an example, if the Tribe chose to lease the site, then they could no longer use it as a dry-docking facility. The amount of money brought in through rents would at least have to equal the amount currently taken in by the fishermen in order for it to be worthwhile. If the fishermen catch \$20,000 of fish after covering their expenses, then a leasing arrangement on the site would require a rent of at least \$1,515 a month, or \$20,000 per year, plus expenses.¹³ These are important values to estimate. They place a lower bound on the level of return the Tribe needs to receive to undertake an alternative to its current use.

Currently, we see two ways to value the site. First, the Tribe can use the taxable land value as assessed by the City. Second, a value based on use, option, and existence can be developed. This approach considers how much it means to the Tribe to know they have a property on the Duwamish, can use it at will, and pocket the proceeds of their efforts. When compared to the assessed value approach, these two different methods probably yield different numerical values. Then, the question becomes which one should be used.

Assessed Value Approach

The 1994 assessed value of the Tribe's property is \$139,000. This is the value used by the City to determine the parcel's property tax basis, even though the Tribe is exempt from paying this amount. If we assume this value is a rough estimate of the market price of

¹³For simplicity, this calculation assumes that the Duwamish River is the only relevant fishing site available to the Muckleshoot fishermen.

the land, then have a lower bound on the valuation. The only problem with this approach is that the site is an unrealized asset. It is held in trust by the BIA and cannot be liquidated very easily. However, BIA has procedures for this type of situation.¹⁴ If the Tribe could better use this money and show BIA that it is used for a different development project, then an arrangement, sale, or trade can be developed.

Use, Option, and Existence Value Approach

In developing a more accurate measure of the Property's value, it is useful to think of it in terms of its use, option, and existence value. These three areas broaden the definition of value and importance and help to answer relevant questions that market value alone cannot address.

Use value focuses on how much income the property generates for Tribal members. The easiest way to determine this value is by figuring out how much fish the Tribe takes in through this area that it would not otherwise if it did not own the Property. If we assume this is the Tribe's only access point to the Duwamish, then the value, in real terms, is best expressed through finding out how much Tribal members earn on the site after covering there expenses. This value is likely in the range of \$10,000 to \$20,000. However, this value is a bit misleading, in that it only includes those factors for which costs and benefits can actually be determined.

In addition to use and income generation, the Property has a value to the Tribe because its fishermen know they can utilize it whenever they wish. This value is called the Property's option value. Since the Property is convenient and contains a place for them to

¹⁴See parts 151 and 152 of 25 CFR, The Code of Federal Regulations.

store their equipment, it saves time and money. Tribal fisherman do not have to haul their boats from the reservation to the City each time they want to fish. They can just show up. Unfortunately, the dollar value of this component of the property's worth cannot be quantified very easily. It is heavily dependent on the importance of the Property to the Tribe's fishermen. The higher they value it, the more heavily this weighs on which option, given its other requirements, makes the most sense. The same situation occurs when the Property's existence value is considered.

The existence of the Tribe's Property generates non-monetary value. It gives them a larger stake in the actions taken by the City and the Port, as discussed earlier. Because of the Property, they are forced to give the Tribe the recognition it deserves. It places the Tribe on more equal footing with those who would like to see their views and concerns pushed aside. When taken together, these non-quantifiable values represent the cultural importance of fishing and the environment of the Duwamish area to the Tribe.

Both the assessed tax value and the use, option, and existence values should be weighed when making any decision. In addition, all of these ways for thinking about value should be directly related back to the Tribe's primary economic development goals.

THINKING ABOUT "HIGHEST AND BEST USE" SUMMARY

- Main Points:**
- **The Property is small, off the Reservation, and south of Seattle's tourist area, near several arterials**
 - **Tribal fishermen use the Property year-round**

Tribe can gain from working with the City and Port to:

- **Promote goodwill during Sand Point negotiations**
- **Minimize fishing disruptions caused by sea vessels**
- **Stay involved in rebuilding First Avenue South Bridge**
- **Improve the City's public boat ramp.**

CHAPTER 4 — OPTIONS — ASKING WHAT MEETS CRITERIA

We have constructed a template as an evaluation tool to use when weighing the relative attractiveness of various economic development options. (See *Table 1*). Though here we apply the tool to the Property discussed in this case study, we intend for this template to be generalizable beyond the scope of this case. Each strategic option is evaluated against five criteria. We first consider the *Primary Economic Development Goals* that each option addresses, such as jobs, income, land acquisition, etc. This is important in that it allows the Tribe to clearly identify the focus of a particular initiative, and enables them to make trade-offs among different goals. Next, we ask consider a two fold question: *Have We Ever Done This?*; and *Are We Good At It?* This is fundamentally a question about whether or not the Tribe has amassed sufficient experience and capacity to promote the success of a particular project. We believe it is important for the Tribe to thoroughly assess its strengths and challenges in answering this fundamental question.¹⁵

The next two questions, *What's the Financial Commitment?*, *What's the Cost of Not Doing It?*, consider the costs involved. In the first instance, we evaluate the relative amount of monetary commitment; in the second, we measure the opportunity costs, or the cost of not pursuing the option. These provide good indications of what the Tribe must be prepared to expend, in totality, to realize an opportunity. Last, we address *How Substantial are the*

¹⁵After an evaluation, the Tribe might determine that, though the skill set required to be successful in a particular endeavor is not in hand, developing this expertise is prudent, given the opportunity.

Organizational Implications? and Is This a Win-Win with External Stakeholders?¹⁶

The nine options (not all of which are mutually exclusive) which we evaluate are:

- 1. Develop a marina and fish processing facility;**
- 2. Develop a small-scale fish production hatchery;**
- 3. Build a terminal for transport of visitors to the Reservation;**
- 4. Build a terminal for operating boat tours of the industrial/Port area;**
- 5. Establish a communication and scheduling system in collaboration with the Port of Seattle**
- 6. Purchase the adjacent parcel to expand land base;**
- 7. Lease the property;**
- 8. Exchange the property for cash or another parcel from the City of Seattle;**
- 9. Restore the property, along with the adjacent public boat ramp, with the assistance of the City and Port.**

¹⁶The principle stakeholders in this case are the City and Port of Seattle.

Table 1: Evaluation Matrix for Property Options

Strategic Options:	Primary Economic Development Goal(s)	Have We Ever Done This? Were we Successful?	What's the Financial Commitment?	What's the Cost of Not Doing It?	How Substantial are the Organizational Implications?	Is this a win-win with External Stakeholders?: ● Seattle ● Port
1) Develop a marina and fish processing facility	Jobs; Income	Limited experience with Tribal enterprises	High plant & equipment acquisition cost	Lost revenue of slip leases; lost margin by selling to cannery bar	High	Questionable (?)
2) Develop a small hatchery	Preserve Habitat	Yes	Medium/High	Inability to directly influence preservation of salmon	Medium	Questionable (?)
3) Build terminal for transport to Amphitheater & Reservation	Income	No	High	Lost revenue plus feeder to Reservation	High	Questionable (?)
4) Develop tourism through boat tours of industrial and Port areas	Jobs; Income	No	High	Lost revenue	Medium	Yes
5) Establish a communication and scheduling system with the Port	Income	No, but learning curve is flat	Low	Continued loss of damaged nets and fish; safety	Medium	Yes
6) Purchase adjacent property to expand land base	Land acquisition	Yes	High	Limited expansion opportunities	Low	Not applicable
7) Lease the Property	Income	Yes, on or close to the Reservation	Low/Medium	Forgone cash flow	Medium/High	Questionable (?)
8) Exchange Property for cash or another parcel	Income or land acquisition	Somewhat	Low	No cost; Forgo opportunity to trade land	Low	Not applicable
9) Restore Property; restore public boat ramp with help of Port	Land reclamation and restoration	Yes	Low	Property erodes into River; miss mutually beneficial work with Port	Low	Yes

1. Develop a marina and fish processing facility

Thirteen years ago, the Property was purchased to develop a fish processing facility that Tribal members could use on a regular basis. One option worth considering is to build this fish processing facility and marina, which would enable the fishermen to vertically integrate and hence reap greater revenues for the higher value added processed fish.

We see several advantages to this option. First, as mentioned briefly above, a fish processing facility enables the Tribe to utilize its shoreline location to add value to its fishing trade. When one considers that the Tribe brings in a large number of fish each year, the financial implications of this option become more evident.

The marina brings additional advantages. Currently, the Tribe's fishermen dock their boats and store fishing equipment inland; a marina would free up the inland space for more productive uses. Also, after a one time capital investment to build the slips, there isn't a high operating cost to offset the revenue the Tribe could generate from leasing them.

There are some challenges associated with this option which make it difficult to accomplish. The Tribe has no past experience in fish processing or marketing that it could leverage for this business. Currently, the fishermen simply sell their catch to a cannery at a price determined by the cannery. The only way to reap the gains from vertical integration is to, on the one hand, process a minimum scale of fish to make the economics attractive, and on the other hand, do this at a cost which is less than the price at which they could contract it out.

A central consideration in this alternative is that to have enough space to build a reasonable number of slips and a minimum scale processing facility, the Tribe must purchase the adjacent property. This 2.5 acre parcel of land, including the physical plant built on it, is currently valued close to \$1 million by the Seattle Tax Assessors Office. This is a considerable investment to make, in addition to building out the shoreline to accommodate the slips.

2. Develop a Small Hatchery

Developing a small hatchery naturally arises as an option due to the goals of the Tribe to preserve habitat, particular aquatic species, and the shoreline location of the Property. Currently, the Tribe employs fifteen outside biologists who operate two hatcheries -- one at Keta Creek, the other at White River. These hatcheries cost approximately \$250,000 per annum to operate, and require between 1000 square feet and 1+ acre (depending on scale) to operate.

When viewed against our established criteria, the attractiveness of establishing a hatchery at the Property appears fairly appealing. On the positive side, the Tribe has been building a competency in this area; the two existing fisheries together represent 23 years of experience. In this sense, it seems that the Tribe has been successful at cultivating and maintaining productive relationships with those they hire to operate the fisheries. In addition, any effort aimed at preserving aquatic species is consistent with the historical goals of the Tribe. Developing a hatchery would likely be supported, conceptually as well as financially, by both the Port Authority and the City of Seattle.

On the downside, however, it might be difficult to transplant a run of salmon to an area in which they haven't historically inhabited. This option also is unlikely to generate many new jobs for the Tribe.

3. Build a terminal for transport to the Reservation and Amphitheater

The thrust of this option comes in response to the work in progress to build a

casino, amphitheater, and cultural center on the reservation in Auburn. These developments will add a lot of entertainment capacity to the Tribe's existing bingo hall.

Erecting a terminal on the Property to serve as a transshipment point for visitors to the above mentioned entertainment venues has some appeal. A rough estimate of the profit potential for such an operation is \$69,000 annually.¹⁷ Presumably, the Tribe would contract with a local coach service to provide the vehicles and drivers, thus saving huge investments in equipment and skills. The Tribe could utilize the state-of-the-art video equipment on the coaches to show educational videography that would explain Muckleshoot history, and give an overview of the educational and recreational opportunities on the Reservation.

To encourage visitors to come to the Tribe early in the day (for, say, an evening performance at the amphitheater), the Tribe could make special offers available to those who arrive at one of the attractions before midday. Such offers could take the form of discounted admission to the cultural center, or free bingo boards. An additional incentive could be provided to those who ride the Tribe's coach from Seattle as a way of spreading the bus utilization throughout the day.

The principle limitations of this option include the fact that Seattle is a commuter city; most individuals commute by auto, and this diminishes the need for Tribe-provided transportation to the Reservation. A related limitation is that there is no shortage of parking space on the site slated for entertainment development. We

¹⁷See Table 2 for assumptions used in the profit calculation.

believe that, all else equal, individuals would choose to enjoy the flexibility that comes with driving one's own vehicle if there aren't inherent obstacles to doing so (e.g. an exorbitant parking fee, inadequate parking surfaces, etc.).

From a practical standpoint, there are two other downsides to this option. First, as was mentioned earlier in the report, the Property is far from primary foot traffic areas of the City, and is not well served by public transportation. This necessitates the use of vehicles to get to the terminal point at the Property, which requires adequate parking space. Given the physical limitations of the area, parking is extremely constrained. Second, a point of incongruence between this land use option and the Tribe's goals is that it doesn't enable them to utilize the space for aquatic purposes -- the most obvious and appropriate use given it's shoreline location.

Table 2: Revenue projection for Transshipment Point option

Average number of passengers for amphitheater events: (2% of capacity)	500
Number of special events per year:	14
Round trip ticket price:	\$12 ¹⁸
Revenue projection for special events:	\$84,000
Revenue projection for general activities ¹⁹ :	\$21,000
<i>Total annual revenue projection:</i>	<u>\$105,000</u>

Contract Costs

Monthly fee:	\$3,000
Total Profit:	\$69,000
Fixed Investment in Physical Plant	\$80,000

¹⁸This figure was derived by assuming a Reservation parking fee of \$8, and adding a one-third mark-up for the service.

¹⁹General activities include all those for which visitors come to the Reservation except for amphitheater events. We assume this revenue to be 25% of that for amphitheater events.

This option becomes more attractive if, instead of building the transshipment concept around the limited confines of the Property, the idea is structured around the high volume tourist locations, such as the Space needle and Pike Point Market. This would allow the Tribe to take advantage of a much larger draw of customers.

4. Develop tourism through boat tours of industrial and Port areas

This option focuses on drawing people into Seattle's industrial area for recreation purposes. It is premised on using the Tribe's Property as a way to show the vitality of the Duwamish River and the many industries which line its banks.

Through setting up a small-scale boat tour operation the Tribe could inform the public about its needs and efforts to work with the Port to develop responsible development solutions. Short tours could leave from the Property, travel toward the Elliot Bay and the mouth of the Duwamish, and return 1 1/2 hours later. Along the way, one could see the Port's bustling activity, Tribal fishermen, and the efforts by all to promote improvement of the surrounding environment.

Unfortunately, this idea has several major drawbacks. They can be seen when one looks at the questions running across the top of *Table 1*. First, the Tribe has not undertaken any similar initiative in the past. Second, they are not organizationally prepared to involve themselves in an effort of this magnitude. This proposal's requirements lie beyond the scope of those any of the Tribe's commissions are primarily focused on. Third, no link between this project and the past efforts of the Tribe exists. This recreational venture would be more appropriate if the Property were located on the Tribe's actual reservation.

In addition to the concerns raised above, the main flaw with this idea lies in the realm of consumer demand. While the odds are high that individuals and tourists may desire to learn about the Port of Seattle and the efforts of the Tribe, its doubtful whether they would be willing to go far out of their way to visit the Property.

Located approximately four miles from Public Market and the major commercial/retail sections of the City, the site is probably well outside of most individual's convenient travel ranges.

5. Establish a communication and scheduling system with the Port

The Port's interest in this idea is high. As mentioned earlier in this report, fishermen's nets often get tangled and ripped apart by the large vessels that pass through the Port's waterways. It is presumed that this occurs largely due to a lack of communication between the Port, the vessels and the fishermen concerning the whereabouts of the vessels within the Port's sailing zone. Establishing a communication and scheduling system could fill this gap.

Establishing a communication and scheduling system has several potential upsides for the Tribe. It would not require a commitment of space, capital, or human resources. This frees up the Tribe's resources for additional development options on the Property. Perhaps the biggest benefit of this alternative is that it aids the Tribe's fishermen in avoiding accidents with their nets, thus reducing the "shrinkage" in total fish yield attributable to ship-damaged nets. The financial importance of this option is highlighted by the high proportion of working Muckleshoot men who fish in the Duwamish to earn a living. Another upside of this option is the opportunity to establish a business relationship with the Port.

The fact that the Tribe has likely never before undertaken such an endeavor is not a major impediment, since the learning curve is relatively flat. This action could benefit the Tribe in the future, should they need the Port's support for other development endeavors within its jurisdiction. However, a communication and scheduling system requires moderate organizational changes within the Tribe and Fishing Commission. Tribal fishermen will have to increase their commitment to

communicating with the Port and informing, and committing to, rather routine schedules. The Tribe is currently negotiating with the Port to undertake this option and further discussions regarding the level of commitment on both sides should be encouraged.

6. Purchase adjacent property to expand land base

Although mentioned as part of Option 1, the Tribe may want to purchase the Silver Bay Logging Facility to the left of the property, without having intentions to develop the site. This option focuses on using the Tribe's Property as a means for expanding its land base in the Port and City of Seattle. Since this Silver Bay Logging Facility is adjacent to the Tribe's current property, it could be placed in trust quite easily. Then, over time, the Tribe could purchase other parcels which abut its expanded land base. Through slowly regaining control over the area, the Tribe could regain and reassert their influence along the Duwamish River.

While a step in the direction of one of the Tribe's main economic development objectives, purchasing this property is not the best alternative available. To begin with, in comparison to other recent purchases, the high cost, on a per acre basis, of this 2 acre parcel is easily seen. It has a price slightly less than that paid for the Fiori property, which was purchased at \$1,100,000.²⁰ However, two main differences exist between the two. First, the Fiori property was on the reservation, and hence added to the critical mass of land already held in one location. From a development and Tribal standpoint, it can be used more easily by more members of the Tribe than it could had it not been on the Reservation.

Second, the Fiori property was 280 acres, quite a bit larger than the 2 acres of

²⁰*Looking Toward the Future*, December 1994.

the Silver Bay Logging property in the Port.²¹ This is important because on a per acre basis the Tribe would be paying approximately \$464,000 per acre for a parcel that is not on the reservation, as opposed to only \$3,929 per acre for a nearby property. We are, of course, comparing apples with oranges, but the analysis does suggest the Tribe clearly examine the advantages of expensive Port property.

Unless strong desires to buy land in the Port prior to expanding the reservation exist, the exorbitant price of the land suggest it's not the wisest investment. It is not the most cost effective way for the Tribe to reach one of its primary goals, the acquisition of land.

²¹Ibid.

7. Lease the Property

One of the first options that comes to mind in evaluating the Tribe's property is to lease it to a non-Indian entity or enterprise. While this may go against the interests of the fishermen, it could actually provide the Tribe with a constant flow of resources (i.e. rents). These monies could then be used to undertake higher priority development projects by the Tribe. If they were to do this, they would not be giving up the property; it would still be theirs. And, they could regain control of it at the end of their tenants' lease if using it for fishing could yield a higher return than the monthly income which could otherwise be generated. However, its important to note that leasing does not mean fishing must stop. It just means slight increases in transportation costs since the fishermen will have to haul their boats to and from the Reservation.

In taking the Tribe's fishermen into account, the resources that the site generates could be used to provide them with new equipment or nets. In essence, they could be compensated for temporarily giving up the site. Regardless of whether the Tribe would consider this action, research into the level of demand for properties of this quality, size, and location in the Port should be given active consideration.

From what we have gathered, there is currently excess industrial capacity in the Duwamish basin. The average rent levels do not appear to be affected by a restricted level of supply. While the site's location near several major arterials does provide it with several advantages, many other sites in the area have the same

attribute.

The size of the site is also a drawback in considering the likelihood of its being a desirable location for a firm to locate or use as a storage facility. If we assume most activities in the Port benefit from economies of scale or having facilities with large footprints, then it does not make sense to consider this course of action any further due to its size.

In relation to the questions at the top of *Table 1*, it can be seen that leasing the property does not fit well with the Tribe's comparative advantages. In the past the Tribe has had limited success in leasing land to others, and in some respects doing so is not consistent with its past. If one of the Tribe's main goals is to expand its land base, leasing a portion of it away likely reduces the Tribe's ability to obtain other properties within the surrounding area.

Leasing the Property also foists new responsibilities upon the Tribe that it may be unwilling to take. Managerially, it would require constant attention.

8. Exchange the Property for cash or another parcel

Option 8 asks if the Tribe, working through BIA, gains through disposing of, or exchanging the property for another parcel. This is a one-shot effort. It neither alters the Tribe's governing institutions, nor the roles and requirements they must fulfill. It also requires little to no financial contribution by the Tribe.

The benefits of exchanging the property for cash or another parcel are that it provides the Tribe with the opportunity to purchase land closer to or on the Reservation. As a result, the Tribe may then be able to better meet its economic development goals by reassessing what types of land it needs. The Property can be used as a means to acquire more productive pieces of land and to have BIA pay for it.

As previously mentioned, the regulations of the federal government 25 CFR, Parts 151 and 152, outline the process through which the Tribe can dispose of trust properties. The Tribe can apply for BIA to dispose of the property and give them the proceeds. If we assume the proceeds from disposal of the property could be used to purchase another parcel of land, and that the Tribe receives a sales price equal to the property's assessed value of \$139,000, then on the reservation, when compared with the Bliner property purchased last year, the Tribe might be able to buy between 5 and 15 acres. This is yet another illustration of the opportunity cost of the property.

Under this option the non-monetary values associated with having the property are not considered. When thinking about disposing of the Property, the Tribe needs to consider whether there are important, and immeasurable, reasons for it to maintain

a property in Seattle and on the Duwamish River. The value of having a property which increases the actual presence of the Tribe in an area in which it already has legitimate claims may be more than the amount that could be obtained from either an exchange or swap. Its very existence suggests that it can be used by the Tribe as an important avenue for exercising its influence and sovereignty throughout the region.

9. Restore the Property and adjacent public boat ramp

In the spirit of Option 8, this option considers how the Tribe can use the property to increase its rightful influence and sovereignty in the region. It focuses on stemming the decay that is currently destroying the Property, using its improvement and repairs by the Tribe as reasons for the City of Seattle to make improvements to its adjacent public boat ramp, and promoting a dialog in situations where there appears to be a match between the gains the Tribe can make and any external stakeholders. This option is our recommended course of action and will be explained in the Chapter 5, Recommendation: Restore Property, Improve Boat Ramp with the City and Port.

CHAPTER 5 — RECOMMENDATION

RESTORE PROPERTY, REFURBISH PUBLIC BOAT RAMP

The primary goals of this option are to prevent the Tribe's Property from further eroding and to develop protocols for interacting with the Port and the City of Seattle. Relative to all the other options, it has a small financial and organizational commitment, maintains the Property's use for Tribal fishing, and creates a win-win situation in which the Tribe can exercise its influence in the larger political environment. It prevents the Property from being forgotten.

This recommendation views the development of the Tribe's Property as a two step process. First, it focuses on how the project relates to the Tribe's internal capacity and decision making practices. Second, it considers how the Tribe's internal actions effect the external environment in which it exists. To maximize the likelihood of success in developing the Property, we believe these two components must be brought together. The internal actions of the Tribe must be well-crafted and able to account for changes that arise in the external environment. This manner of analyzing the Property expands the definition of highest and best-use.

To layout what we mean by the external and internal environments and how they can be jointly maximized, the following implementation plan is offered. It is designed to serve as a rough guide for proceeding.

Internal Implementation

Restoring the Property entails no major organizational changes for the Tribe; it relies on using the Tribe's current social capacity and advantages. It focuses on bringing the Tribal Council, Fishing Commission and Economic Development Office together to develop a suitable time line and plan for making sure that action is taken. It also outlines means through which the larger Tribal community can be made aware of the Tribe's economic development efforts. As illustrated in *Table 3*, this process should focus on building consensus and setting realizable goals.

Although the overlap between those individuals who preside over one commission, and are in regular contact with those from another are high, we recommend the Tribe formally increase the interactions that occur between Tribal Council, Commissions, and Economic Development Office. Toward this end, the creation of cross functional project teams holds promise.²² Anytime a new idea or development suggestion is advanced, a cross functional team including members of the Tribal council, the economic development office and the commission that might be directly impacted by the effort should be created. Further, we recommend that the economic development office's accountability be increased in return for their ability to further coordinate and implement the Tribe's main objectives.

Through undertaking this course of action, we believe the Tribe strengthens

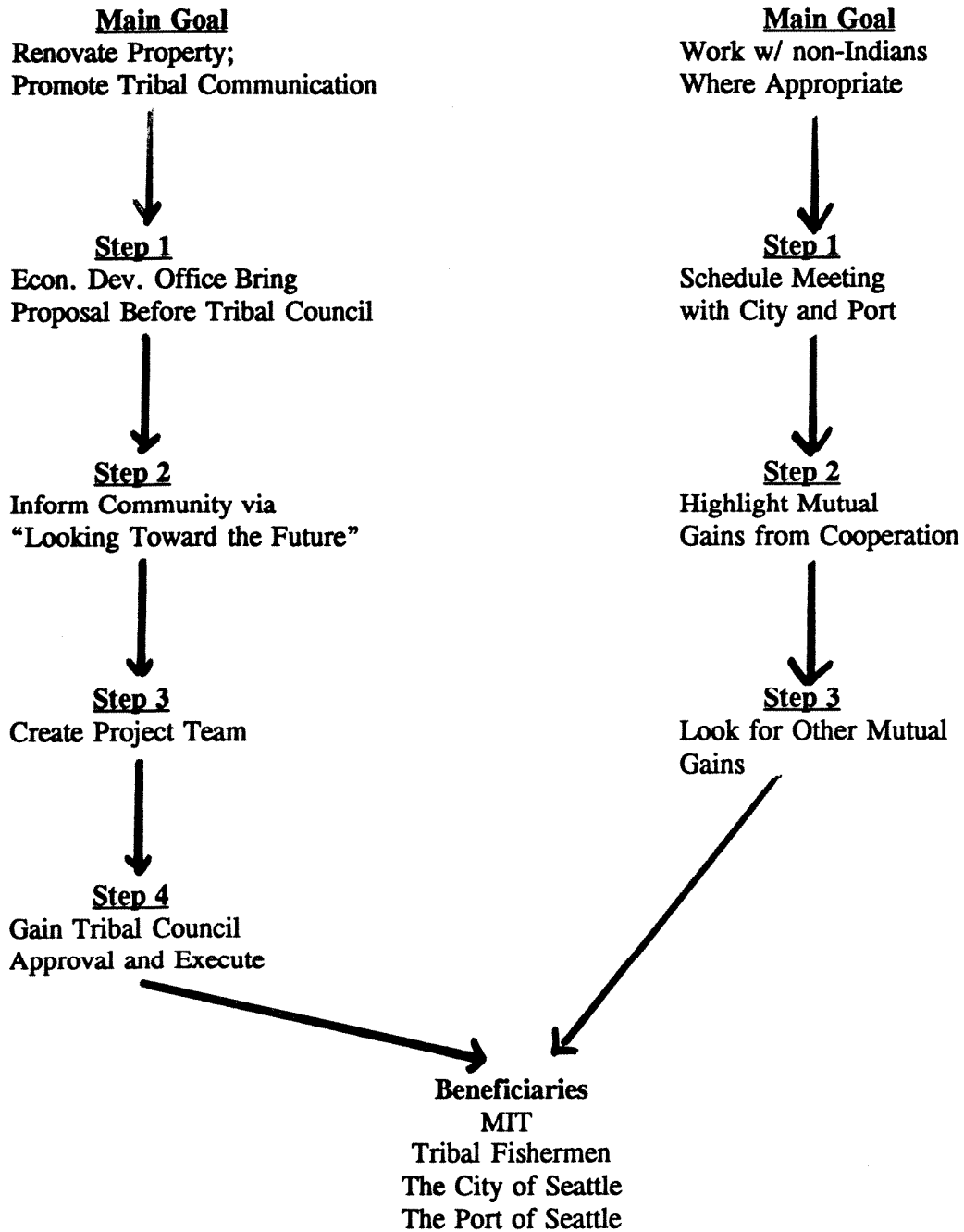
²²Such a team would, for example, be composed of a representative from the Economic Development Office, the Planning Office, and the Fishing Commission.

the likelihood that this project will succeed. However, this action plan has another more important benefit. It provides an opportunity for the Tribe to exercise its influence over types of policies taken by non-Indian governments like the City of Seattle and the Port of Seattle.

External Implementation

The Tribe can use the Property to build political capital and influence within the region. It can link its efforts to restore its Property to the adjacent, city-owned boat ramp. The Tribe can build mutually beneficial links and promote goodwill. Since the City has had plans to improve the boat ramp for quite some time, and the Tribal fisherman extensively use the boat ramp, it is a unifying issue around which many parties can gain, namely the Tribe, the City of Seattle, and the Port of Seattle. It can also be used as a possible stepping stone for further negotiations involving Sand Point.

Table 3: Implementation Process



Who Gains, and Why does it Matter?

Tribal Fishermen

Under this option the Tribe's fishermen maintain full use of the Property and do not lose any of the revenue they currently receive through fishing in the area. More important, their fishing and launching of boats becomes substantially easier, and less burdensome, if the City agrees to make substantial improvements to the boat launch. If the City reduces the slope of the ramp, which it currently believes is too steep, and installs floating docks that can be used for easier loading and unloading, the fishermen would be more efficient and put at less risk.

The Tribe and its Political Environment

In addition to the Fishermen, the entire Tribe gains by engaging the City on the non-contentious issue. It shows the Tribe's willingness to separate issues and to seek win-win solutions in face of uncertainty in other areas. It forces outside political jurisdictions to respect the Tribe and work with them. It builds "chits" that the Tribe can use when other difficulties arise the surrounding environment. Most important, it promotes understanding and forces other actors to take the Tribe into account on a more regular basis.

The City of Seattle

If the Tribe can use the Property as a way to engage the City in an area of mutual gain, the City will be more likely to give the Tribe the increased respect and legitimacy it deserves the next time they interact. Although not guaranteed, its likely that such action will help reduce the high tension levels which currently surround the Sand Point negotiations.

The Port of Seattle

Through our interviews we have learned that Port officials are interested in working with the Tribe in areas where there are mutual gain, such as reducing the likelihood that the nets of Tribal fishermen will be destroyed by large freighters, and working to restore the quality of the Duwamish River environment. For instance, the Port has been working to develop several environmental clean-up proposals from which the Tribe stands to gain. It is in the Tribe's interest to play a role in this process.

CHAPTER 6 — CONCLUSION — FOCUSING ON THE FUTURE

Table 1 sets forth a template the Tribe can use to assess the likelihood of success for any economic development project. While specifically created for the Tribe's Duwamish River property, we believe it is generalizable. It takes any potential opportunity and asks:

- Is this opportunity directly related to the Tribe's objectives?
(jobs, education, land ownership, and income)
- Has the Tribe been successful at this type of venture?
- Is it consistent with the Tribe's past?
- What financial commitment does this opportunity require?
- What is the cost of not undertaking this project?
- What new demands or unintended consequences might this project create?
- Is this project palatable to all involved stakeholders?

These questions link the Tribe's economic development processes to its ultimate decisions. They help ensure everyone is analyzing an opportunity through the same lens. They also help the Tribal Council, all commissions, and Tribal members get a more complete sense of what the Tribe's future plans are, and how they relate to its primary economic development goals- land acquisition, education and labor force training, creation of employment opportunities, and creation of other

resources for the purposes of stimulating development.

As stated in the introduction, we believe the Muckleshoot Indian Tribe stands at a crossroads. It has the assets it needs to move into the next millennia. It also has several liabilities, the effects of which can be minimized through developing systematic methods for analyzing which types of economic development are most important and can be expected to flourish. We believe the analysis developed for this "single acre" can be used as the touchstone for increasing Tribal sovereignty and economic development success.

APPENDIX A: LIST OF FIGURES AND TABLES

Figure 1: Regional Map of the Reservation and the Duwamish River Property

Figure 2: Port of Seattle Facilities and the Duwamish Property

Figure 3: Seattle Core Business District and the Duwamish Property

Figure 4: Major Arterials and State Routes Near the Duwamish Property

Figure 5: Property Location on the Duwamish, Slip Number #3

Figure 6: Photographs of Property Erosion

Figure 7A: Original Plans for Fish Processing Facility, Side View

Figure 7B: Original Plans for Fish Processing Facility, Overhead View

Figure 8: Proposed Changes to First Avenue South Boat Ramp

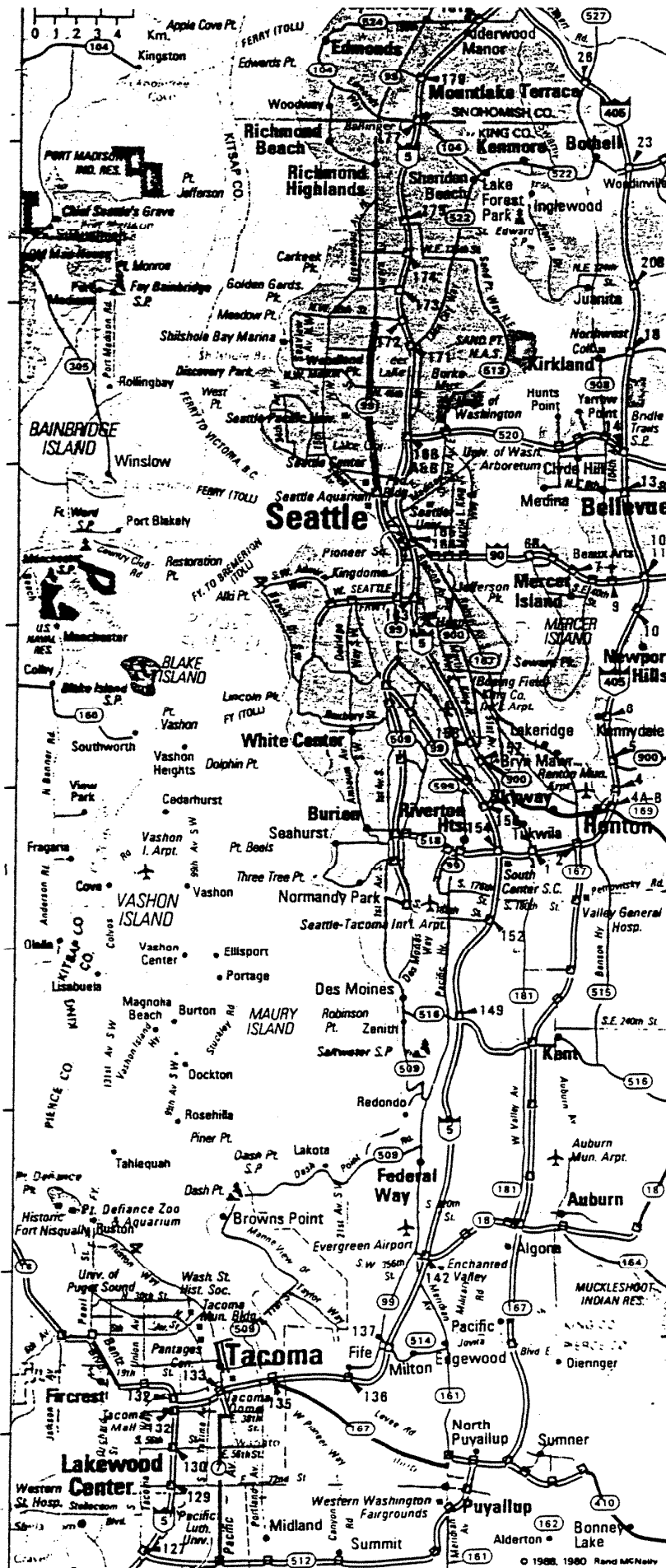
Table 1: Evaluation Template for Property Options

Table 2: Revenue Projection for Transshipment Point Option

Table 3: Implementation Process

Figure 1

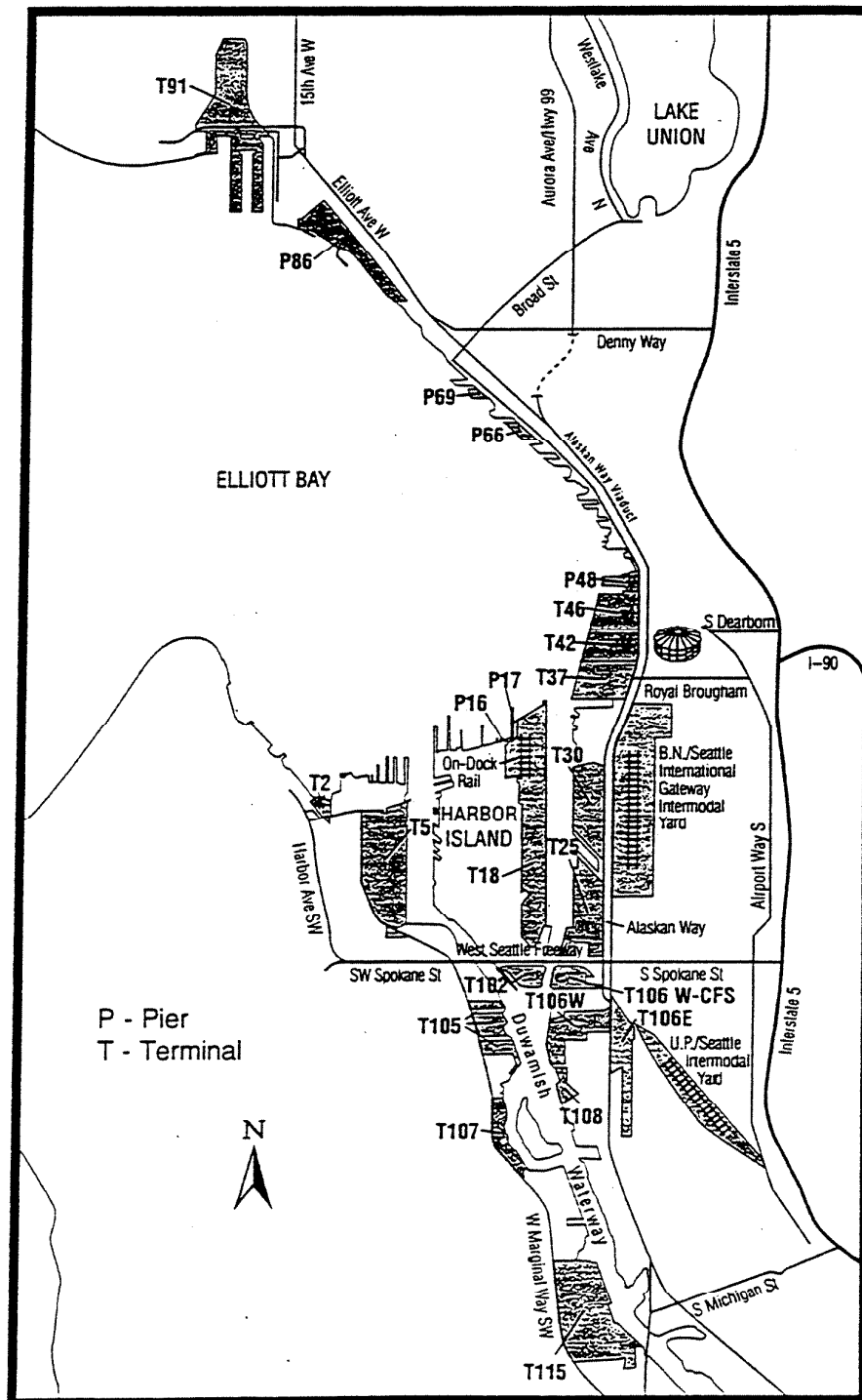
Regional Map of the
Reservation and
Duwamish River Property



Source: Rand McNally
p Code, Atlas & Market
anner, Rand McNally & Co.,
1988, p.100.

Figure 2

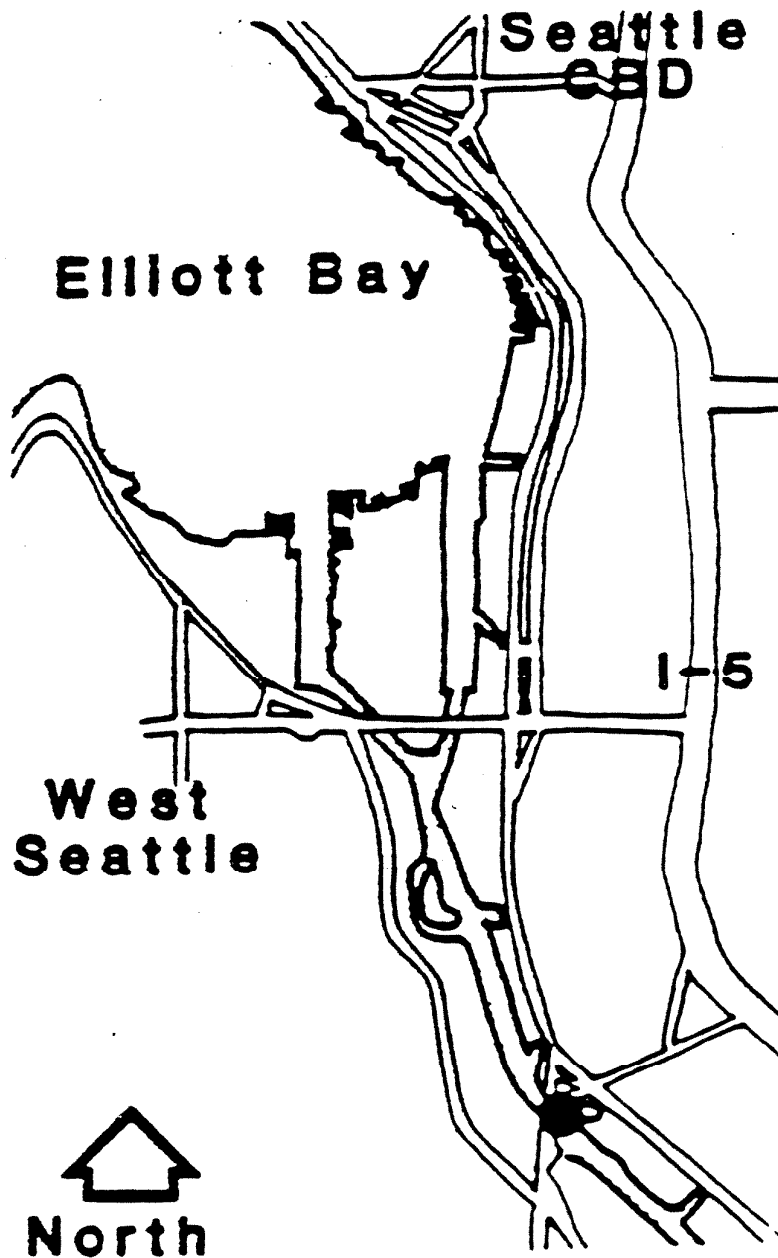
Port of Seattle Facilities and the Duwamish Property



Source: Western Washington Port Handbook 1992-1993, in
Toward a Sustainable Seattle: A Plan for Managing Growth 1994-2014, Seattle City
Council, July 1994, p. A44.

Figure 3



Seattle Core Business District and the Duwamish Property

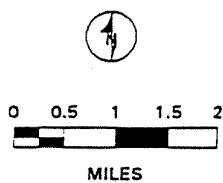


Source: "Comprehensive Public Access Plan for the Duwamish Waterway", Port of Seattle, 1985. p. 2-12.

Figure 4

**Major Arterials and State Routes
Near the Duwamish Property**

 State Route
 Other Arterial



Prepared by:
 The Planning Department
 c. 1994 City of Seattle
 July 12, 1994

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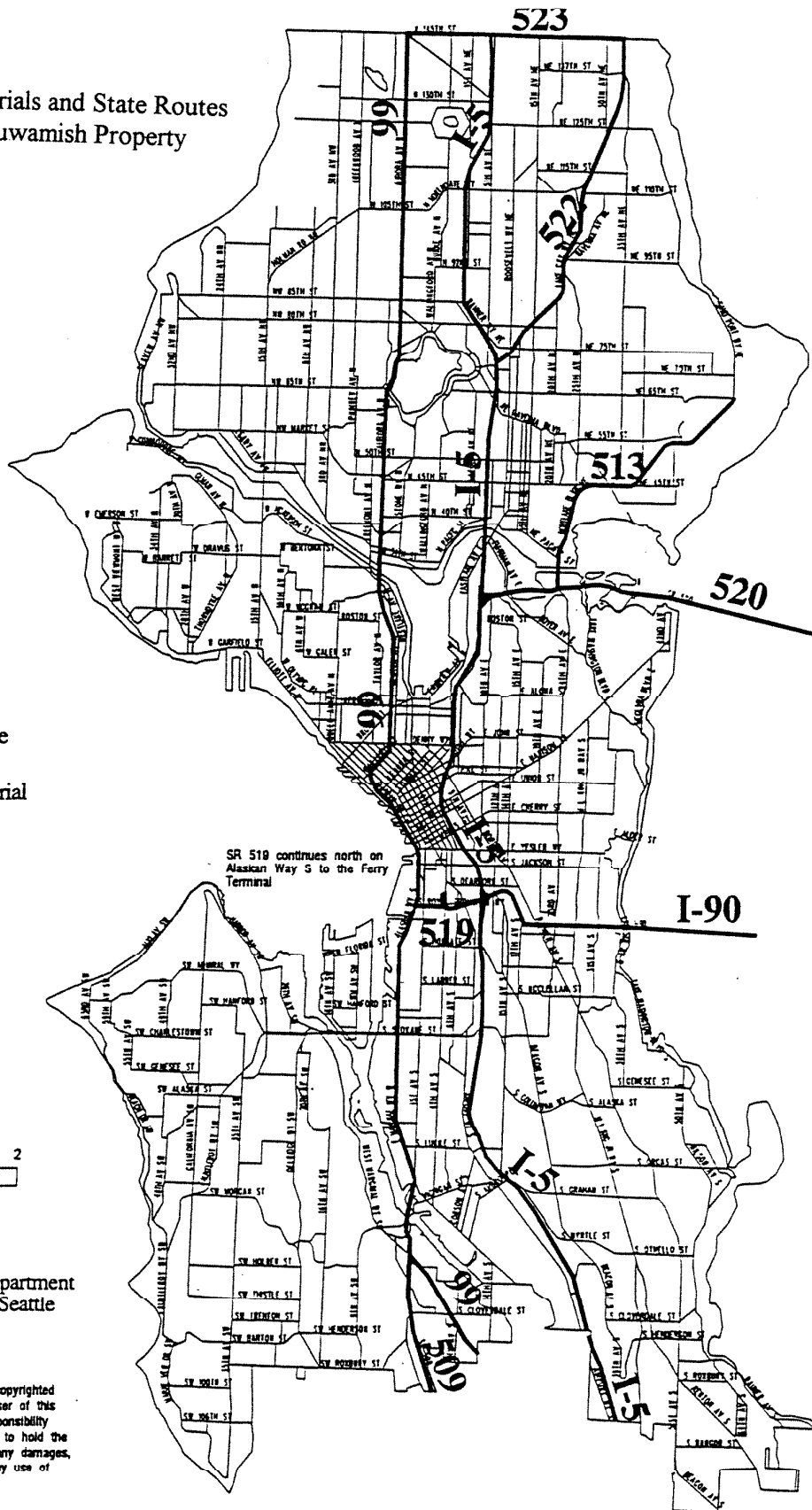
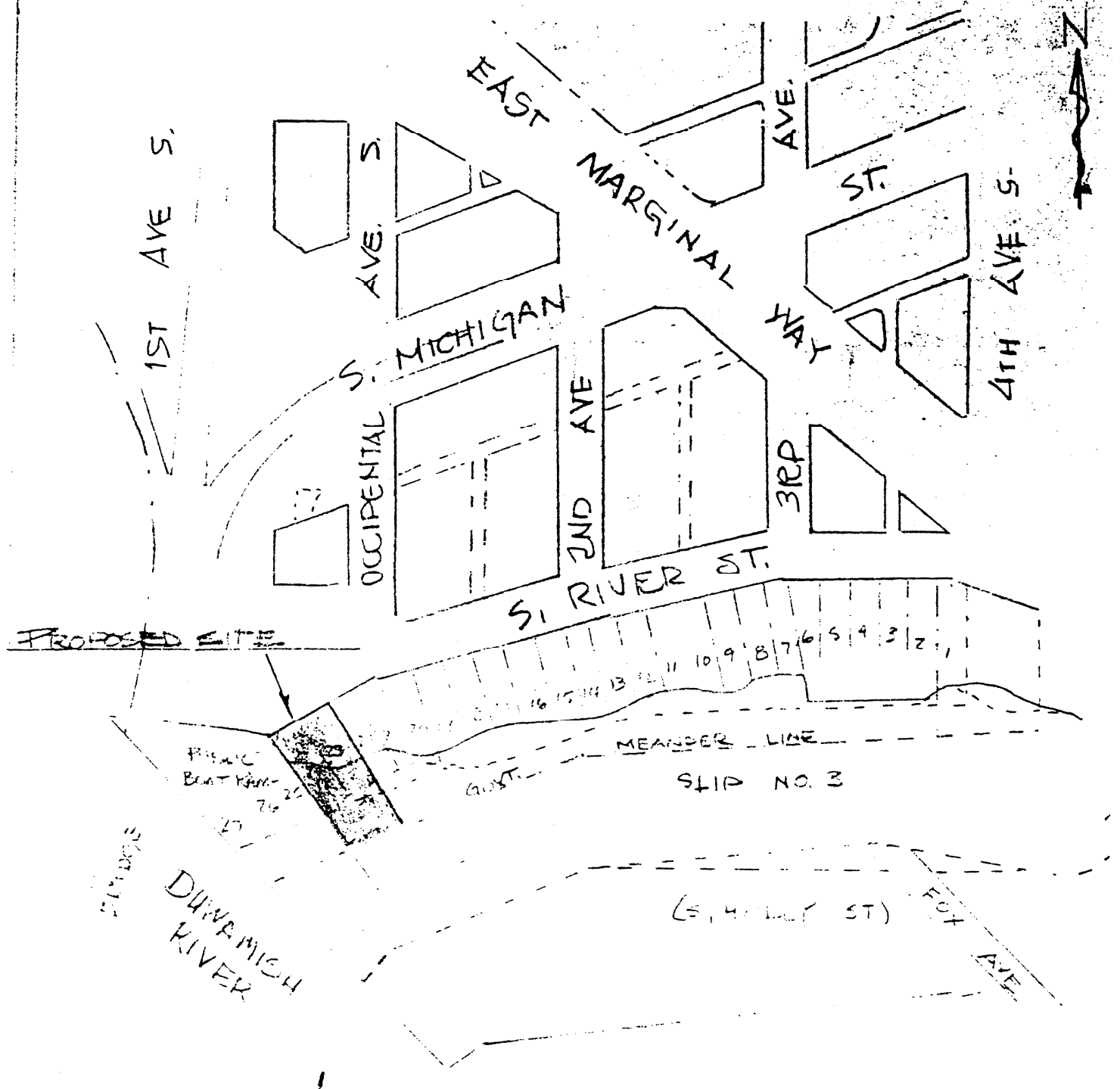


Figure 5

Property Location on the Duwamish, Slip Number 3



Source: Muckleshoot Indian Tribe, Fishing Commission, Draft by Donald B. Murphy Contractors, Inc., 1983.

Figure 6

Photographs of Property Erosion

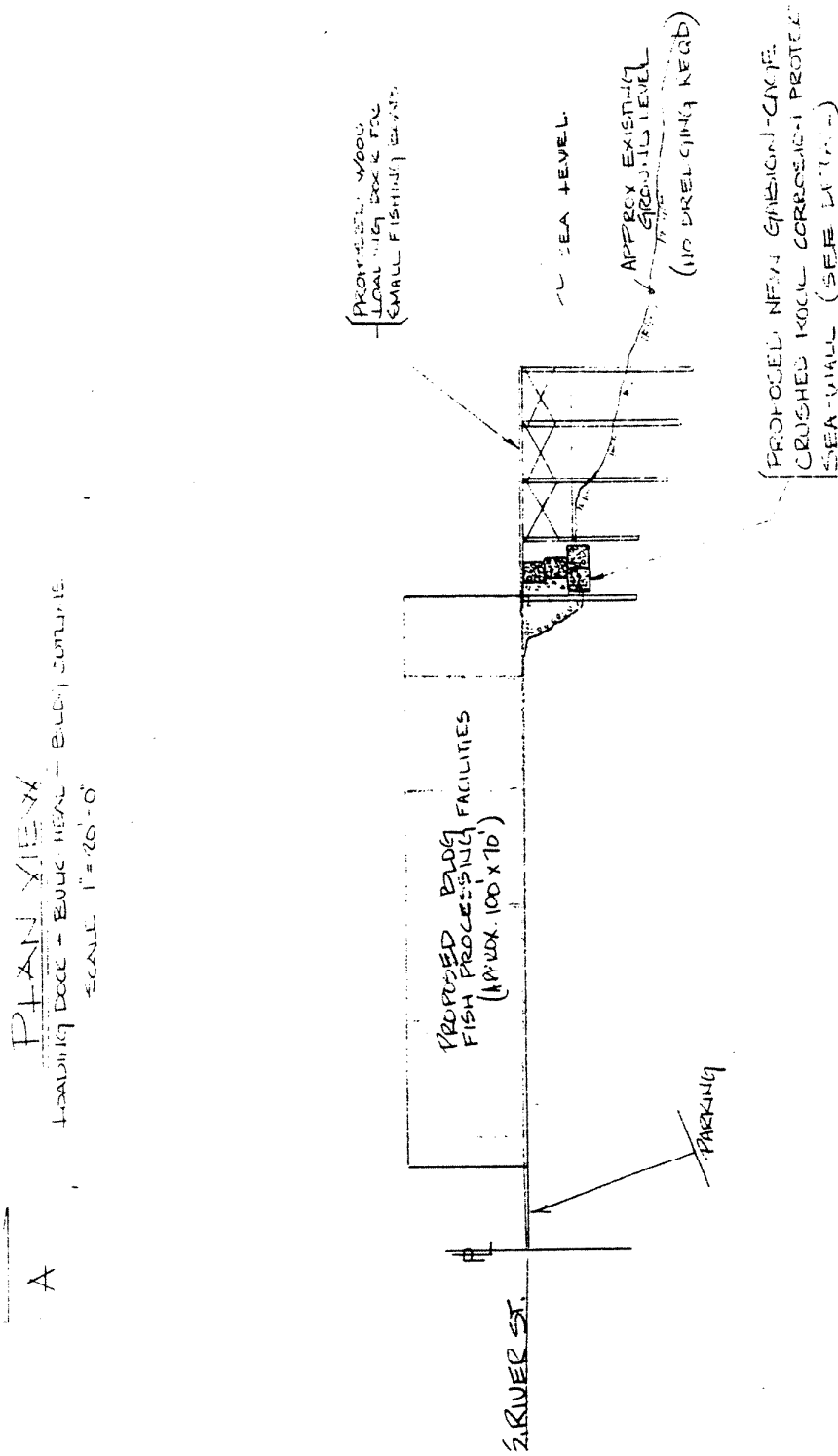


(clockwise):
left rear side of Property;
right rear side of Property;
eroding retaining wall.



Figure 7A

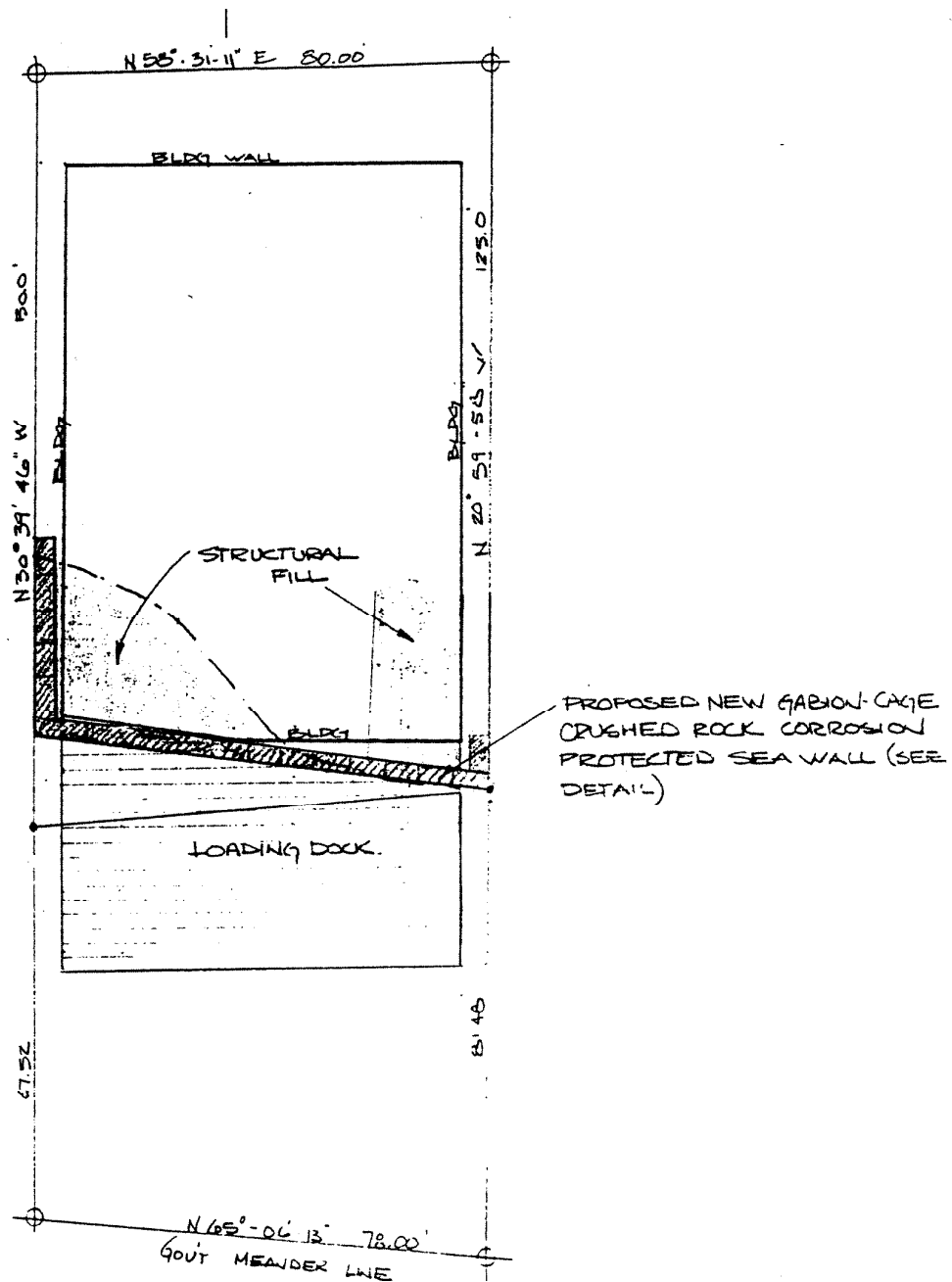
Original Plans for Fish Processing Facility, Sideview



Source: Muckleshoot Indian Tribe, Fishing Commission, Draft by Donald B. Murphy Contractors, Inc., 1983.

Figure 7B

Original Plans for Fish Processing Facility, Overhead View



Source: Muckleshoot Indian Tribe, Fishing Commission, Draft by Donald B. Murphy Contractors, Inc., 1983.

Figure 8

Proposed Changes to First Avenue South Boat Ramp

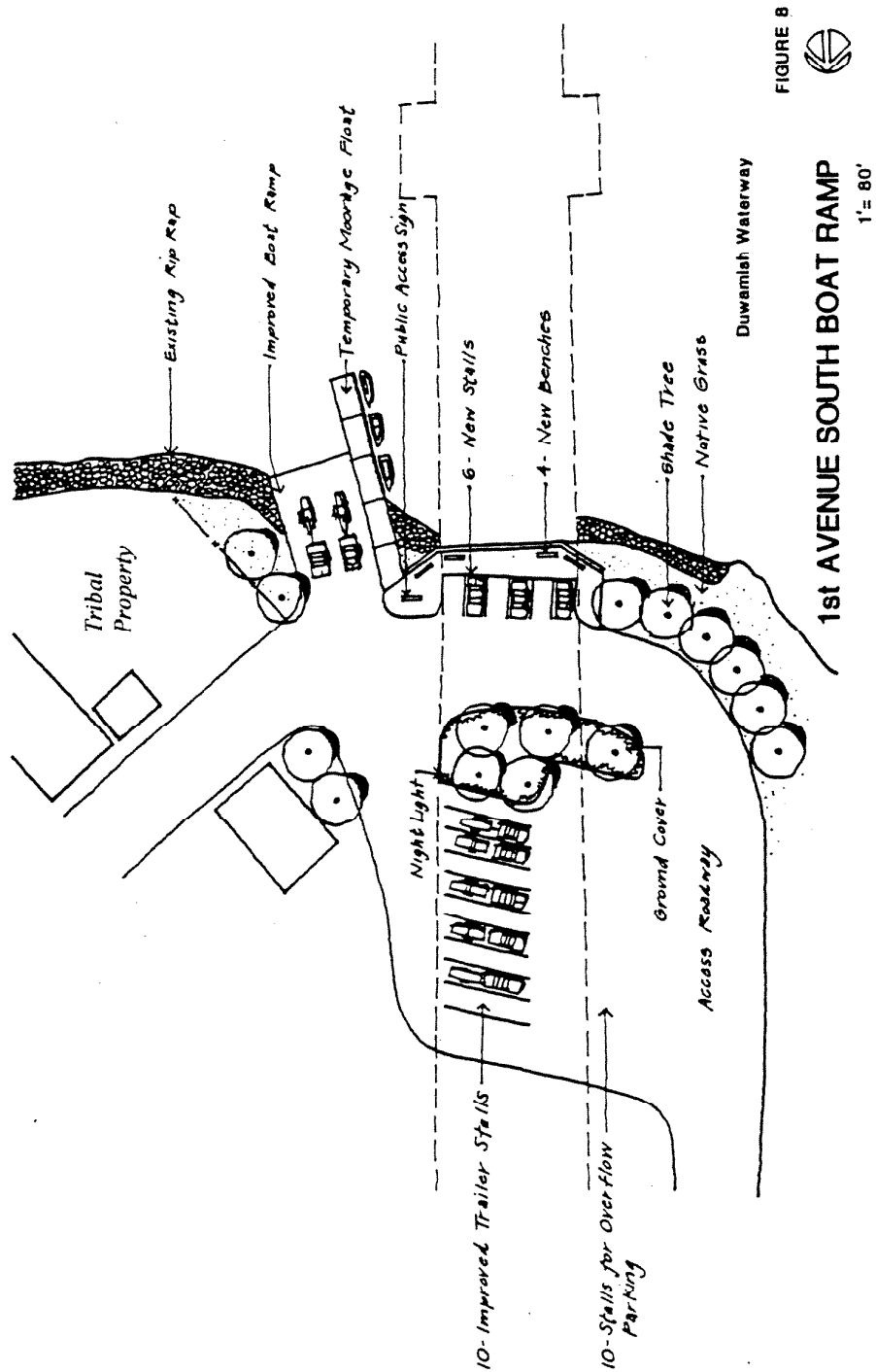


FIGURE 8



Source: "Comprehensive Public Access Plan for the Duwamish Waterway," Port of Seattle, 1985, p.35.

APPENDIX B: CODE OF FEDERAL REGULATIONS

Code of Federal Regulations (CFR) 25 CFR Chapter 1 (4-1-94 Edition)

- **Part 151 -- Land Acquisitions**
- **Part 152 -- Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands**

quited to be returned to the originating office with appropriate recording information.

(b) *Probate records.* In accordance with 43 CFR Part 4, Subpart D, Administrative Law Judges shall forward the original record of Indian probate decisions and copies of petitions for rehearing, reopening, and other appeals to the Land Titles and Records Office which provides service to the originating Agency. If trust land or Indian heirs involved in the probate are located within the jurisdictional area of another Land Titles and Records Office, the Administrative Law Judge shall also send a duplicate copy to that office. Probate records submitted by an Administrative Law Judge for recording will be retained by the Land Titles and Records Office.

§ 150.7 Curative action to correct title defects.

Land Titles and Records Office shall initiate such action as described below to cure defects in the record discovered during the recording of title documents or examination of titles.

(a) If an error is traced to a defective title document other than probate records, the Land Titles and Records Office shall notify the originating office of the defect.

(b) If errors are discovered in probate records, the Land Titles and Records Office may initiate corrective action as follows:

(1) An administrative modification shall be issued to modify probate records to include any Indian land omitted from the inventory if such property is located in the same state and takes in the same line of descent as that shown in the original probate decision. Authority is delegated to the Commissioner by 43 CFR 4.272 to make such modifications except on those Indian reservations covered by special Inheritance Acts (43 CFR 4.300). Copies of administrative modifications shall be distributed to the appropriate Administrative Law Judge, Agencies with jurisdiction over the Indian land, and to all persons who share in the estate.

(2) Land Titles and Records Offices shall notify the Superintendent when modifications are required by Administrative Law Judges for other types of

probate errors. Corrective action is then initiated in accordance with 43 CFR Part 4, Subpart D.

(3) Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not affect vested property rights or involve questions of due process. Copies of administrative corrections are distributed to the appropriate Administrative Law Judge and Agency.

§ 150.8 Title status reports.

Land Titles and Records Offices may conduct a title examination of a tract of Indian land provide a title status report upon request to those persons authorized by law to receive such information. Requests for title status reports shall be submitted by or through the Bureau office that has administrative jurisdiction over the Indian land. All requests must clearly identify the tract of Indian land.

§ 150.9 Land status maps.

The Land Titles and Records Offices shall prepare and maintain maps of all reservations and similar entities within their jurisdictions to assist Bureau personnel in the execution of their title service responsibilities. Base maps shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. These base maps, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and townsite maps, may also be prepared and maintained to meet the needs of individual Land Titles and Records Offices, Agencies, and Indian tribes.

§ 150.10 Certification of land records and title documents.

Under the provisions of the Act of July 26, 1892 (27 Stat. 273, 25 U.S.C. 6), an official seal was created for the use of the Commissioner of Indian Affairs in authenticating and certifying copies of Bureau records. Managers of Land Titles and Records Offices are designated as Certifying Officers for this

purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Manager, Land Titles and Records Office, the copy or reproduction shall be admitted into evidence the same as the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee schedule applicable to all constituent units of the Department of the Interior and published in 43 CFR Part 2, Appendix A.

§ 150.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore, the policy of the Bureau of Indian Affairs to allow access to land records and title documents unless such access would violate the Privacy Act, 5 U.S.C. 552a or other law restricting access to such records, or there are strong policy grounds for denying access where such access is not required by the Freedom of Information Act, 5 U.S.C. 552. It shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations will not be disclosed insofar as leases of tribal land are concerned.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

PART 151—LAND ACQUISITIONS

- Sec.
- 151.1 Purpose and scope.
- 151.2 Definitions.
- 151.3 Land acquisition policy.
- 151.4 Acquisitions in trust of lands owned in fee by an Indian.
- 151.5 Trust acquisitions in Oklahoma under Section 5 of the I.R.A.
- 151.6 Exchanges.
- 151.7 Acquisition of fractional interests.
- 151.8 Tribal consent for nonmember acquisitions.
- 151.9 Requests for approval of acquisitions.

- 151.10 Factors to be considered in evaluating requests.
- 151.11 Action on requests.
- 151.12 Title examination.
- 151.13 Formalization of acceptance.
- 151.14 Information collection.

AUTHORITY: R.S. 161; 5 U.S.C. 301, Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 53 Stat. 1967, as amended; 53 Stat. 1129; 63 Stat. 605; 69 Stat. 382, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 174; 82 Stat. 174, as amended; 82 Stat. 894; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 86 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450n, 454, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 604, 608a, 610, 610a, 622, 624, 640d-10, 1466, and 145 and other authorizing acts.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 1332 Mar. 30, 1982.

CROSS-REFERENCE: For regulations pertaining to: The inheritance of interests in trust or restricted land, see Parts 15, 16, and 17 of this title and 43 CFR Part 4; the purchase lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see Part 103 of this title; the exchange and partial of trust or restricted lands, see Part 152 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see Parts 272 and 273 of this title; the acquisition of allotments of this title; the acquisition of allotments of the public domain or in national forests, 43 CFR Part 2590; the acquisition of National Allotments and Native townsite lots in Alaska, see 43 CFR 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 43 CFR 1823 Subpart N; the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 117.8 and 158.54 of this title.

§ 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though, in restricted status following acquisition, the acquisition of land in trust status by inheritance or escheat is not covered by these regulations. These regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for

§151.2

Metlakatla Indian Community of the Annette Island Reserve or its members.

§151.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, "Tribe" also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 509).

(c) "Individual Indian" means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendant of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, "Individual Indian" also means a person who meets the qualifications of paragraph (c) (1), (2) or (3) of this section where "Tribe" includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) "Trust land" or "land in trust status" means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) "Restricted land" or "land in restricted status" means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the convey-

25 CFR Ch. I (4-1-94 Edition)

ance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, "Indian reservation" means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, "Indian reservation" means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) "Land" means real property or any interest therein.

(h) "Tribeal consolidation area" means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

§151.3 Land acquisition policy.

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or (2) when the tribe already owns an interest in the land or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status (1) when the land is located within the exterior boundaries of an Indian reservation, or adjacent

Bureau of Indian Affairs, Interior

thereto; or, (2) when the land is already in trust or restricted status.

§151.4 Acquisitions in trust of lands owned in fee by an Indian.

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

§151.5 Trust acquisitions in Oklahoma under Section 5 of the I.R.A.

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465). If such acquisition comes within the terms of this part, this authority is in addition to all other statutory authority for such an acquisition.

§151.6 Exchanges.

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by Part 152 of this title.

§151.7 Acquisition of fractional interests.

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

§151.

§151.8 Tribal consent for nonmember acquisitions.

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or tribe already owns an undivided trust or restricted interest in the parcel land to be acquired.

§151.9 Requests for approval of acquisitions.

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition conforms within the terms of this part.

§151.10 Factors to be considered in evaluating requests.

In evaluating requests for the acquisition of land in trust status, the Secretary shall consider the following factors:

(a) The existence of statutory authority for the acquisition and a limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in a restricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in a status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from

the acquisition of the land in trust status.

§151.11 Action on requests.

The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to Part 2 of this title.

§151.12 Title examination.

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

§151.13 Formalization of acceptance.

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

§151.14 Information collection.

The information collection requirements contained in §§151.9 and 151.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0100. The collection of information is from Indian tribes or individuals who desire to acquire land in trust and who must identify the party(ies) involved and a description of the land involved. The information will be used by the Bureau to acquire the

land in trust on behalf of the Indian tribes and individuals. Response is required to obtain a benefit.

(53 FR 21995, June 13, 1988)

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.

152.1 Definitions.

152.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

152.4 Application for patent in fee.

152.5 Issuance of patent in fee.

152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

152.7 Application for certificate of competency.

152.8 Issuance of certificate of competency.

152.9 Certificates of competency to certain Osage adults.

152.10 Application for orders removing restrictions, except Five Civilized Tribes.

152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

152.14 Removal of restrictions, Five Civilized Tribes, without application.

152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

152.16 Effect of order removing restrictions, Five Civilized Tribes.

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

152.17 Sales, exchanges, and conveyances by or with the consent of the individual Indian owner.

152.18 Sale with the consent of natural guardian or person designated by the Secretary.

152.19 Sale by fiduciaries.

152.20 Sale by Secretary of certain land in multiple ownership.

152.21 Sale or exchange of tribal land.

152.22 Secretarial approval necessary to convey individual owned trust or restricted lands or land owned by a tribe

152.23 Applications for sale, exchange or gift.

152.24 Appraisal.

152.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

152.26 Advertisement.

152.27 Procedure of sale.

152.28 Action at close of bidding.

152.29 Rejection of bids; disapproval of sale.

152.30 Bidding by employees.

152.31 Cost of conveyance; payment.

152.32 Irrigation fee; payment.

PARTITIONS IN KIND OF UNIMATED ALLOTMENTS

152.33 Partition.

MORTGAGES AND DEEDS OF TRUST TO BUREAU OF INDIAN AFFAIRS

152.34 Approval of mortgage and deeds of trust.

152.35 Deferred payment sales.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 666, 68 Stat. 359, 69 Stat. 666; 25 U.S.C. 378, 379, 405, 409, 372, 373, 483, 335, unless otherwise noted.

Source: 38 FR 10080, Apr. 24, 1973, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCES: For further regulations pertaining to the sale of irrigable lands, see parts 160, 159 and 134.4 of this chapter. For Indian money regulations, see parts 115, 111, 116, and 112 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see part 15 and §§11.30 through 11.32C of this chapter.

§152.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Agency" means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(c) "Restricted land" means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

(d) "Trust land" means land or an interest therein held in trust by the United States for an individual Indian.

(e) "Competent" means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefit thereof. (Act of August 11, 1955 (69 Stat. 666).)

(f) "Tribe" means a tribe, band, nation, community, group, or pueblo of Indians.

§152.2 Withholding action on application.

Action on any application, which I approved would remove Indian land from restricted or trust status, may be withheld, if the Secretary determines that such removal would adversely affect the best interest of other Indians or the tribes, until the other Indians or the tribes so affected have had a reasonable opportunity to acquire the land from the applicant. If action on the application is to be withheld, the applicant shall be advised that he has the right to appeal the withholding action pursuant to the provisions of part 2 of this chapter.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

§152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions shall be disclosed to employees of the Department of the Interior whose duties require that such information be disclosed to them; to the applicant or his attorney, upon request; and to Members of Congress who inquire on behalf of the applicant. Such information will be available to all other persons, upon request, 15 days after the fee patent has been issued by the Bureau of Land Management, or 15 days after issuance of certificate of competency

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or order removing restrictions, or after the application has been rejected and the applicant notified. Where the termination of the trust or restricted status of the land covered by the application would adversely affect the protection and use of Indian land remaining in trust or restricted status, the owners of the land that would be so affected may be informed that the application has been filed.

§ 152.4 Application for patent in fee.

Any Indian 21 years of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

§ 152.5 Issuance of patent in fee.

(a) An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent. When the patent in fee is delivered, an inventory of the estate covered thereby shall be given to the patentee. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), and other authorizing acts.)

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

(c) **White Earth Reservation:** The Secretary will, pursuant to the Act of March 1, 1907 (34 Stat. 1015), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application from such Indian, and without consideration as to whether the applicant is competent.

(d) **Fort Peck Reservation:** Pursuant to the Act of June 30, 1954 (68 Stat. 358), oil and gas underlying certain allotments in the Fort Peck Reservation were granted to certain Indians and provisions were made for issuance of patents in fee for such oil and gas or patents in fee for land in certain circumstances.

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(1) Where an Indian or Indians were the grantees of the entire interest in the oil and gas underlying a parcel of land, and such Indian or Indians had before June 30, 1954, been issued a patent or patents in fee for any land within the Fort Peck Reservation, the title to the oil and gas was conveyed by the act in fee simple status.

(2) Where the entire interest in the oil and gas granted by the act is after June 30, 1954, held in trust for Indians to whom a fee patent has been issued at any time, for any land within the Fort Peck Reservation, or who have been or are determined by the Secretary to be competent, the Secretary will convey, by patent, without application, therefor, unrestricted fee simple title to the oil and gas.

(3) Where the Secretary determines that the entire interest in a tract of land on the Fort Peck Reservation is owned by Indians who were grantees of oil and gas under the act and he determines that such Indians are competent, he will issue fee patents to them covering all interests in the land without application.

§ 152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

§ 152.7 Application for certificate of competency.

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 152.9, who holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

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§ 152.8 Issuance of certificate of competency.

(a) An application may be approved and a certificate of competency issued if the Secretary, in his discretion, determines that the applicant is competent. The delivery of the certificate shall have the effect of removing the restrictions from the land described therein. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372).)

(b) If the application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

§ 152.9 Certificates of competency to certain Osage adults.

Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be in the form approved by the Secretary. Upon the finding by the Secretary that an applicant is competent, a certificate of competency may be issued removing restrictions against alienation of all restricted property and terminating the trust on all restricted interests, except Osage headright interests, of the applicant.

CROSS-REFERENCES: For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see part 154 of this chapter.

§ 152.10 Application for orders removing restrictions, except Five Civilized Tribes.

Any Indian not under legal disability under the laws of the State where he resides or where the land is located, or the court-appointed guardian or conservator of any Indian, may apply for an order removing restrictions from his restricted land or the restricted land of his ward. The application shall be in writing setting forth reasons for removal of restrictions and filed with the agency having immediate jurisdiction over the lands.

§ 152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

(a) An application for an order removing restrictions may be approved and such order issued by the Secretary,

in his discretion, if he determines that the applicant is competent or that removal of restrictions is in the best interests of the Indian owner. The effect of the order will be to remove the restrictions from the land described therein.

(b) If the application is denied, the applicant will be notified in writing given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

§ 152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions from his restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), such application may be for either unconditional removal of restriction or conditional removal of restrictions but shall not include lands or interests in lands acquired by inheritance or devise.

(a) If the application is for unconditional removal of restrictions and the Secretary, in his discretion, determines the applicant should have the unrestricted control of that land described in his application, the Secretary may issue an order removing restrictions therefrom.

(b) When the Secretary, in his discretion, finds that in the best interest of the applicant all or part of the land described in the application should be sold with conditions concerning terms of sale and disposal of the proceeds, the Secretary may issue a conditional order removing restrictions which shall be effective only and simultaneously with the execution of a deed by said applicant upon completion of an advertised sale or negotiated sale acceptable to the Secretary.

§ 152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions under authority of section 2(a) of the Act of August 11, 1955 (69 Stat. 666), the Secretary will determine the competency of the applicant.

(a) If the Secretary determines the applicant to be competent, he shall issue an order removing restrictions having the effect stated in §152.16.

(b) If the Secretary rejects the application, his action is not subject to administrative appeal, notwithstanding the provisions concerning appeals in part 2 of this chapter.

(c) If the Secretary rejects the application, or neither rejects nor approves the application within 90 days of the application date, the applicant may apply to the State district court in the county in which he resides for an order removing restrictions. If that State district court issues such order, it will have the effect stated in §152.16.

§152.14 Removal of restrictions, Five Civilized Tribes, without application.

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

§152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

When an order removing restrictions is issued, pursuant to §152.14, a copy of such order will be delivered to the Indian, to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides. At the time the order is delivered written notice will be given the parties that under the terms of the Act of August 11, 1955 (69 Stat. 666), the Indian or the Board of County Commis-

sioners has, within 6 months of the date of notification, the right to appeal to the State district court for the district in which the Indian resides for an order setting aside the order removing restrictions. The timely initiation of proceedings in the State district court will stay the effective date of the order removing restrictions until such proceedings are concluded. If the State district court dismisses the appeal, the order removing restrictions will become effective 6 months after notification to the parties of such dismissal. The effect of the issuance of such order will be as prescribed in §152.16.

§152.16 Effect of order removing restrictions, Five Civilized Tribes.

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate. *Provided*, That the Secretary may make such provisions as he deems necessary to insure payment of money loaned to any such Indian by the Federal Government or by an Indian tribe. *And provided further*, That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

§152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 276; 25 U.S.C. 379), May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48

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U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 463), and pursuant to other authorizing acts, trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

§152.18 Sale with the consent of natural guardian or person designated by the Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 463).

§152.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

§152.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be

sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 463).

§152.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a-2); July 24, 1956 (70 Stat. 620); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this part 152 shall be applicable to sale or exchanges of such tribal land.

§152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

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§ 152.23 Applications for sale, exchange or gift.

Applications for the sale, exchange or gift of trust or restricted land shall be filed in the form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 152.25(d).

§ 152.24 Appraisal.

Except as otherwise provided by the Secretary, an appraisal shall be made indicating the fair market value prior to making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 152.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

Those sales, exchanges, and gifts of trust or restricted lands specifically described in the following paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales shall be by advertised sale, except as may be otherwise provided by the Secretary.

(a) *Consideration not less than the appraised fair market value.* Indian owners may, with the approval of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value: (1) When the sale is to the United States, States, or political subdivisions thereof, or such other sale as may be for a public purpose; (2) when the sale is to the tribe or another Indian; or (3) when the Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* With the approval of the Secretary, Indian owners may exchange trust or restricted land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised fair market value of the consideration given by him.

(c) *Sale to coowners.* With the approval of the Secretary, Indian owners

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may negotiate a sale of and sell trust or restricted land to a coowner of that land. The consideration may be less than the appraised fair market value. If in the opinion of the Secretary there is a special relationship between the coowners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

§ 152.26 Advertisement.

(a) Upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless for good cause a shorter period is authorized by the Secretary.

(b) The notice of sale will include (1) terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in § 152.27(b)(2) if applicable; (2) where and how bids shall be submitted; (3) a statement warning all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and (4) description of tracts, all reservations to which title will be subject and any restrictions and encumbrances of record with the Bureau of Indian Affairs and any other information that may improve sale prospects.

§ 152.27 Procedure of sale.

Advertised sales shall be by sealed bids except as otherwise provided herein.

(a)(1) Bids, conforming to the requirements set out in the advertisement of sale, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the

bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bidder's risk. Tribes submitting bids pursuant to this paragraph may guarantee the required 10 percent deposit by an appropriate resolution; (2) the sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

(b) The policy of the Secretary recognizes that in many instances a tribe or a member thereof has a valid interest in acquiring trust or restricted lands offered for sale.

(1) With the consent of the owner and when the notice of sale so states, the tribe or members of such tribe shall have the right to meet the high bid.

(2) Provided the tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 152.28 Action at close of bidding.

(a) The officer in charge of the sale shall publicly announce the apparent highest acceptable bid. The deposits submitted by the unsuccessful bidders shall be returned immediately. The deposit submitted by the apparent successful bidder shall be held in a special account.

(b) If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary with the consent of the owner may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances.

(c) The Secretary shall award the bid and notify the apparent successful bidder that the remainder of the purchase

price must be submitted within 30 days.

(1) Upon a showing of cause the Secretary may, in his discretion, extend the time of payment of the balance due.

(2) If the remainder of the purchase price is not paid within the time allowed, the bid will be rejected and the apparent successful bidder's 10 percent deposit will be forfeited to the land owner's use.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid, except that the fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government and such agency has given the Secretary a commitment that the balance of the purchase price will be paid when the fee patent is issued.

§ 152.29 Rejection of bids; disapproval of sale.

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he shall have determined such rejection to be in the best interests of the Indian owner.

§ 152.30 Bidding by employees.

Except as authorized by the provisions of part 140 of this chapter, no person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of part 140 of this chapter (see 25 U.S.C. 68 and 441).

§ 152.31 Cost of conveyance; payment.

Pursuant to the Act of February 1, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417, 2 U.S.C. 413), the Secretary may in his discretion collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount so collected shall be deposited to the credit of the United States a general fund receipts, except as stated in paragraph (b) of this section.

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(a)(1) The amount of the fee shall be \$22.50 for each transaction.

(2) The fee may be reduced to a lesser amount or may be waived, if the Secretary determines circumstances justify such action.

(b)(1) If any or all of the costs of the work performed or expenses incurred are paid with tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary, and that part of such fees deemed appropriate may be credited to the tribe.

(2) When the purchaser is the tribe which bears all or any part of such costs, the collection of the proportionate share from the tribe may be waived.

§ 152.32 Irrigation fee payment.

Collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. (Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a).) This statute is interpreted to apply only where such land is owned by Indians either in trust or restricted status.

(a) When any person whether Indian or non-Indian acquires Indian lands in a fee simple status that are part of an Indian irrigation project he must enter into an agreement, (1) to pay the pro rata share of the construction of the project chargeable to the land, (2) to pay all construction costs that accrue in the future, and (3) to pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for their payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

CROSS-REFERENCE: See part 159 and part 160 and cross-references thereunder in this chapter.

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ter for further regulations regarding sale of irrigable lands.

PARTITIONS IN KIND OF INHERITED ALLOTMENTS

§ 152.33 Partition.

(a) *Partition without application.* If the Secretary of the Interior shall find that any inherited trust allotment or allotments (as distinguished from lands held in a restricted fee status or authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483)), are capable of partition in kind to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378).) The authority contained in the Act of May 18, 1916, is not applicable to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) *Application for partition.* Heirs of a deceased allottee may make written application, in the form approved by the Secretary, for partition of their trust or restricted land. If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for the portions set aside to them. If the allotment is held under a restricted fee title (as distinguished from a trust title), partition may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§ 152.34 Approval of mortgages and deeds of trust.

Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure ap-

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praised information as he deems advisable. Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956. (76 Stat. 62; 25 U.S.C. 483a).)

§ 152.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved or the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

PART 153—DETERMINATION OF COMPETENCY: CROW INDIANS

- Sec. 153.1 Purpose of regulations.
- 153.2 Application and examination.
- 153.3 Application form.
- 153.4 Factors determining competency.
- 153.5 Children of competent Indians.
- 153.6 Appeals.

AUTHORITY: Sec. 12, 41 Stat. 755, 46 Stat. 1495, as amended.

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SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 153.1 Purpose of regulations.

The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

§ 153.2 Application and examination.

The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

§ 153.3 Application form.

The application form shall include, among other things: (a) The name of the applicant; (b) his age, residence, degree of Indian blood, and education; (c) his experience in farming, cattle raising, business, or other occupation (including home-making); (d) his present occupation, if any; (e) a statement concerning the applicant's financial status, including his average earned and unearned income for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others; (f) a description of his property and its value, including his allotted and inherited lands; and (g) the name of the applicant's spouse, if any, and the names of his minor children, if any, and their ages, together with a statement regarding the land, allotted and inherited, held by each.

§ 153.4 Factors determining competency.

Among the matters to be considered by the Commissioner of Indian Affairs in determining competency are the amount of the applicant's indebtedness to the tribe, to the United States Government, and to others; whether he is a public charge or a charge on friends

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