

Coquille Forest Ordinance
CITC Chapter 403

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403.000 Background and Purpose

The Coquille Indian Tribe was terminated from federal recognition on August 13, 1954. On June 29, 1989 Congress adopted the Coquille Restoration Act (P.L. 101-42), which restored the Tribe's federal recognition.

The Coquille Restoration Act provided, among other things, for the Secretary of the Interior to develop an economic development plan for the Tribe. (25 U.S.C. § 715b). On March 29, 1994, the Tribe and the Bureau of Indian Affairs (the "BIA") completed this economic development plan, entitled the Coquille Indian Tribe Self-Sufficiency Plan (the "Self-Sufficiency Plan"). The "flagship" proposal of the Department of the Interior-approved Self-Sufficiency Plan was the restoration of 59,000 acres of federal forest land to be managed on a perpetually sustainable basis and to generate sufficient revenue to no longer make the Coquille Tribe dependent on federal programs and services.

Despite the Tribe's efforts to become economically a self-sufficient and sovereign nation, Congress ultimately elected to restore less than one tenth of the acres identified in the Self-Sufficiency Plan. In 1996 and in one of Senator Mark O. Hatfield's final actions as Oregon's Senior Senator, Congress adopted the Coquille Forest Act (P.L. 104-208, title V). The Coquille Forest Act transferred only 5,410 acres of federal lands to the Coquille Indian Tribe. One central purpose of the Coquille Forest Act was to achieve the goals described in the Self-Sufficiency Plan. "The overall goal and plan of the [Coquille] forest are to move the standard of living for the members of the Coquille Tribe closer to that of the people of Oregon overall and to provide for the cultural restoration of the Coquille People," (142 Cong. Rec. S9656) (remarks of Senator Hatfield). The Coquille Forest Act also represented Congress' attempt "to provide a measure of restitution to the Coquille Tribe. . . . The restoration of 5,400 acres can never atone for the hardships imposed on the Coquille people. It can, however, restore some semblance of culture and a tie to the land that our Federal Government attempted to destroy over 150 years ago." (*Id.*) The United States Department of Justice and Interior Solicitor have also recognized that the purpose of the Coquille Forest Act was to provide economic benefits to the Tribe. "The purpose of creating . . . [the Coquille Forest] was 'to provide a basis for restoring the Tribe's culture as well as providing economic benefits.'" (*Cascadia v. United States et al.*, 801 F.3d 1105 (2015), Answering Brief for Federal Appellee). Therefore dominant purpose of the Coquille Forest is to provide economic benefits and the secondary purpose is to provide for the cultural restoration of the Tribe and its members.

As it neared its final passage through Congress the Coquille Forest Act language governing forest management was revised to include language requiring the Secretary of the Interior, acting through the Assistant Secretary of Indian Affairs, to manage the forest "subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future." This same section of the Coquille Forest Act provides that, "[t]he Secretary shall otherwise manage the Coquille Forest in accordance with the laws pertaining to the management of Indian Trust lands and shall distribute revenues in accord with Public Law 101-630, 25 U.S.C. § 3107," the National Indian Forest Resources Management Act (the "NIFRMA").

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Since the adoption of its original Coquille Forest Management Plan, the Tribe has asserted that management of the Coquille Forest is subject to NIFRMA. (See, e.g. Coquille Tribal Resolution CY9851). Moreover, the Bureau of Indian Affairs has recognized that, “. . . [t]he planning and implementation of forest land management activities on the Coquille Forest, which are not specifically addressed in the Coquille Forest Act, will be subject to the provisions of NIFRMA.” (Coquille Forest Resource Management Plan, May 1999, p. 12).

The NIFRMA, in part provides that, “the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment, or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands.” (25 U.S.C. § 3108).

The development of any applicable federal forest management plan and the selection of any applicable forest management plan have extremely dramatic consequences for the Coquille Forest.

The Coquille Forest is an Indian forest. Resolutions and Ordinances both constitute Coquille Tribal law.

The Tribal Council adopts this Ordinance to:

- Establish a Tribal law that pertains to certain Indian forest lands;
- Establish a Tribal law that provides economic benefit, regulates the environment, and provides for historic and cultural preservation within certain Indian forest lands;
- Provide direction to the U.S. Secretary of the Interior (the “Secretary”) regarding management of the Coquille Forest;
- Provide direction to the Secretary under 25 U.S.C. § 3108;
- Advance the Congressionally-directed self-sufficiency of the Coquille Tribe and its members;
- Make critical findings regarding the purpose and management of the Coquille Forest; and
- For other purposes.

403.050 Jurisdiction

The Tribal Council adopts this Ordinance under the authority of (CITC Chapter 120) and the Tribal Constitution.

403.100 Indian Forest

The Coquille Forest is an Indian forest and shall be managed consistent with the Coquille Forest Act and the laws pertaining to the management of Indian trust lands and Indian forests, including the NIFRMA and the Indian Trust Asset Reform Act (ITARA). All statutory provisions of the NIFRMA apply to the Secretary and the Coquille Forest. Consistent with provisions of this Ordinance and to further Tribal self-determination, the Tribe elect Coquille Forest management under a Trust Asset Management Plan developed and approved pursuant to ITARA.

403.120 Dominant Purpose of the Coquille Forest

The dominant purpose of the Coquille Forest is to generate sustainable revenues sufficient to support the Coquille Tribal government’s ability to provide services to Coquille Tribal members, including, but not limited to, health care, education, housing, nutrition, elder care, heat and energy assistance, and cultural restoration.

403.140 Duty to Manage Coquille Forest

Subject to the requirements of the Coquille Forest Act, all federal government management decisions and activities involving or affecting the Coquille Forest—including the establishment of standards and guidelines of an applicable federal forest plan—must:

1. Serve the dominant purpose of the Coquille Forest;
2. Prioritize no other purpose above the dominant purpose, except as authorized by Tribal law;
3. Be made within reasonable timeframes; and
4. Be preceded by meaningful and adequate Tribal consultation in conformity with Tribal law.

403.150 Standards and Guidelines Applicable to the Coquille Forest

Since the adoption of the Coquille Forest Act, the standards and guidelines applicable to the Coquille Forest have been limited to the Northwest Forest Plan’s *Standards and Guidelines for Management of Habitat for Late–Successional and Old–Growth Forest Related Species Within the Range of the Northern Spotted Owl*, (the “NFP Standards and Guidelines”) and include no other component of a Federal forest plan. The dominant purpose of the Coquille Forest is better served by NFP Standards and Guidelines than the management direction of the Bureau of Land Management (the “BLM”) Northwestern and Coastal Oregon Resource Management Plan (the “BLM NCORMP”), which the BLM approved by Record of Decision on August 5, 2016. The Tribal Council finds that management under the BLM NCORMP—regardless of the land allocations selected for the Coquille Forest—would violate the dominant purpose of the Coquille Forest. Whenever presented with a choice to manage the Coquille Forest under the NFP Standards and Guidelines or the BLM NCORMP management direction, the Secretary shall select the NFP Standards and Guidelines.

403.200 Adjacent or Nearby Federal Lands

1. For the purposes of the Coquille Forest Act, Federal lands qualifying as “Adjacent or Nearby” to the Coquille Forest include, at a minimum, those that fall within the adjudicated exclusive aboriginal lands of the Coquille Indian Tribe as described in *Alcea Band of Tillamooks et al. v. United States*, No. 45230, April 2, 1945; *provided*, that the Tribe reserves the exclusive right to revise this area.

2. The standards and guidelines of forest plans on adjacent or nearby Federal lands shall be eligible for application to the Coquille Forest; *provided*, that
 - a. By resolution adopted after the effective date of this Ordinance, the Tribal Council may designate which standards and guidelines of adjacent or nearby Federal lands governs management of the Coquille Forest;
 - b. If the Tribal Council does not designate applicable standards and guidelines of adjacent or nearby Federal lands to govern management of the Coquille Forest, the Secretary shall make such a designation based exclusively on the dominant purpose of the Coquille Forest;
 - c. Nothing in this section may be interpreted to alter the federal trust responsibility or the obligation to manage the Coquille Forest for its dominant purpose.

403.400 Tribal Council Resolutions

By resolution, the Tribal Council may:

1. Authorize deviations from 403.120-403.200;
2. Provide direction to the Secretary regarding which federal forest plans apply to the Coquille Forest and/or best serve the dominant purpose of the Coquille Forest; or
3. Prescribe new, amended or additional management objectives and standards applicable to the Coquille Forest consistent with federal law.

403.500 Tribal Court

Nothing in this Ordinance shall be deemed to limit or qualify:

1. The jurisdiction of the Coquille Indian Tribal Court; or
2. The doctrine of Tribal Court exhaustion.

403.600 Severability

If any provision of this Ordinance is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the remaining provisions shall continue in full force and effect.