



# United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

H30(2200)

JUL 02 2019

Ms. Chrissy Curran  
Deputy State Historic Preservation Officer  
Oregon Heritage  
Oregon Parks & Recreation Department  
725 Summer Street NE, Suite C  
Salem, Oregon 97301

Subject: Proposed National Register Nomination for the Q'alya ta Kukwis shichdii me  
Traditional Cultural Property Historic District, Coos Co., Oregon

Dear Ms. Curran:

I am returning your May 23, 2019 request for a determination of the eligibility of the Q'alya ta Kukwis shichdii me Traditional Cultural Property Historic District in Coos County, Oregon for listing in the National Register of Historic Places (National Register). Your request indicates that your office decided not to nominate the District for listing in the National Register, because you concluded that a majority of private property owners in the District objected to the listing. As explained below, based on a detailed review of all of the materials your office has provided on this nomination, including applicable portions of the National Historic Preservation Act of 1966 (NHPA), applicable portions of the National Register program regulations (36 C.F.R. § 60 et seq.), written comments of federal agencies with property within the proposed district, and the written comments of other persons or entities with an interest in the proposed District, including the certified local governments of North Bend and the City of Coos Bay, I have decided to return this nomination.

## **Background**

The nomination, prepared by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI), covers approximately 26 square miles of Coos Bay with approximately 16 square miles identified as the estuary subtidal. Ownership, both subtidal and estuary adjacent uplands, consists of roughly 6.4 square miles of federal and state ownership, less than 0.2 tribally owned, 7.8 of local government ownership and 4.6 square miles of private ownership. It includes portions of the cities of Coos Bay and North Bend and Coos County. It contains 158 historic "contributing" properties associated with the history, culture, and beliefs of the Coos people. The nomination form identifies the property as significant at the state and local level, under National Register Criterion A, B and D.

Your office, Oregon's state historic preservation office (SHPO), first submitted the nomination for the District to the Keeper on May 23, 2019, along with the opinion that the District is eligible for listing in the National Register. In that submission, you explained that the Oregon SHPO identified a total of 1001 private property owners with fee-simple title to real property within the District, and that your office had received 696 notarized objections, or 70% of the total number of owners. Accordingly, you determined that the majority of the property owners object to listing the District. Due to a recent Oregon State Court of Appeals ruling, the total number of property owners on your property owner list does not include trusts, and objections submitted on behalf of trusts were not counted. However, you concluded that counting trusts as owners and/or objectors would not have affected the outcome here; put differently, had trusts been counted by your office, you determined that the property owners objecting to listing would still be in the majority.

At CTCLUSI's request, the parties involved in the nomination process were provided with copies of the nomination that had content relating to the location of archaeological resources, storied sites, resource gathering areas, information deemed culturally sensitive by the tribe, and identifications of specific persons. You encouraged private and public property owners to contact the Oregon SHPO to obtain specific information. On February 20, 2019 the City of North Bend and the Oregon International Port of Coos Bay commented that the SHPO's large number of redactions preclude property owners, local governments, and the public from fully evaluating the merits of the nomination. You subsequently determined that you were required to provide unredacted site specific information to the Coquille Indian Tribe, Coos County, and the cities of North Bend and Coos Bay, and state in your letter accompanying the nomination that you intend to provide this information to those jurisdictions.

You explained that of the 16,656 acres in the proposed District, 3,550 acres, or 21%, is administered by federal agencies. Your office contacted each of these agencies in April 2019 and requested their review and comment on the proposed nomination pursuant to 36 C.F.R. 60.6(y). Below is my understanding of the status of each of these agencies' response:

- U.S. Bureau of Indian Affairs (BIA): BIA administers trust lands within the District on behalf of the Coquille Indian Tribe and the CTCLUSI, BIA's Federal Preservation Officer initially deferred to the two Tribal Historic Preservation Officers with respect to BIA's comments on the proposed nomination. Via letter dated May 23, 2019, BIA subsequently stated that it is currently reviewing the documentation in the nomination form and compiling its comments for review by its Federal Preservation Officer. BIA stated that its intent would be to provide its position directly to the National Park Service (NPS). To date, the NPS has not received BIA's comments. The Coquille Indian Tribe submitted a letter to the National Park Service requesting that the nomination be returned for several reasons. Among the reasons cited by the Tribe was the heavily redacted nomination form which the Tribe contended made it difficult for the Tribe to understand the scope and scale of the nomination.
- U.S. Department of the Navy (Navy): The NPS is unaware of any response by the Navy to the request for review and comment.

- U.S. Army Corps of Engineers (USACE): Via letter dated May 17, 2019, USACE explained that it was still reviewing the nomination and compiling its comments but that it would not be able to complete those comments by May 20, 2019, when the SHPO requested those comments. USACE stated that its intent would be to provide its position directly to the NPS. To date, the NPS has not received USACE's comments.
- U.S. Coast Guard: Via letter dated June 17, 2019, the Coast Guard indicated that it was still conducting a thorough review of the listing document and was requesting an unredacted copy of the nomination document to facilitate their review. To date, the NPS has not received the Coast Guard's comments.
- U.S. Bureau of Land Management (BLM): BLM's Federal Preservation Officer signed the nomination form for the District.
- U.S. Forest Service (USFS): The delegated Federal Preservation Officer for the USFS signed the nomination form for the District.

Substantive review of the nomination was requested by Jordan Cove Energy Project L.P, a private property owner within the District, and its affiliate Fort Chicago Holdings II U.S. LLC. Pursuant to the National Register regulations, where a majority of private property owners object to listing, I am required to review the nomination and make an eligibility determination within 45 days of receipt of the nomination, unless an appeal is filed or the nomination is returned. 36 C.F.R. § 60.6(s). Because July 7, 2019, is a Sunday, my determination is due July 8, 2019.

### **The Keeper's return decision**

#### **a. Procedural reasons for returning**

The National Register regulations provide that if a nomination contains property under Federal ownership or control "completed nomination forms shall be submitted to the Federal Preservation Officer for review and comment," and further that the "Federal Preservation Officer, may approve the nomination and forward it to the Keeper..." 36 C.F.R. § 60.6(y). The National Historic Preservation Act requires that local landmark commissions and chief elected local officials are provided an opportunity to comment on completed nominations. 54 U.S.C. § 302504. The purpose of these requirements is to ensure that those entities have an opportunity to review and comment on the nominations, and that the Keeper then has the benefit of that information when substantively reviewing a nomination to determine its eligibility.

The National Register regulations provide that in the nomination notification process or otherwise, the SHPO "need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission

for certified local governments) specific information relating to the location of properties proposed to be nominated to...the National Register if he or she determines that the disclosure of specific information would create a risk of destruction or harm to such properties.” 36 C.F.R. § 60.6(x). Accordingly, your office, at the request of the nomination’s proponent made appropriate redactions to the nomination.

Local officials and federal agencies with substantial property and operational interests within the proposed District, were not provided unredacted copies of the nomination prior to its submission to the Keeper. It is my understanding that some or all of them continue to work with the nomination proponent in order to obtain unredacted copies of the nomination while, at the same time, ensuring that sensitive information remains protected.

In returning this nomination, I am not offering an opinion on the appropriateness of the redactions made by the SHPO. The reason I am returning the nominations is that private property owners, local officials and federal agencies were not provided with an unredacted version of the nomination, and thus were not able to substantively comment on the district’s eligibility, prior to submission of the nomination to the Keeper or prior to the deadline for the Keeper to make an eligibility determination. I find that, in this instance, submission of the nomination to the Keeper was premature and the nomination is being returned on that basis. I am aware of the challenges that are presented with respect to protecting sensitive information while, at the same time, affording those entities that are entitled to review such information sufficient information to do so, and the NPS is willing to assist in that process, to the extent such assistance would be helpful.

#### **b. Substantive issues**

Although these issues are not the primary rationale for returning the nomination, I note that there are certain substantive issues with the nomination that should be addressed when it is resubmitted.

##### **1. The Resource Count**

National Register guidance stipulates that nominations must identify all resources located within the bounds of the nominated property to assess their contributing or non-contributing status. *See* National Register Bulletin: How to Complete a National Register Registration Form, pp. 16, 32. The nomination form for the District does not provide an accurate count of the non-contributing resources; instead, the nomination attempts to address this issue through blanket statements regarding the categorization of resources not directly identified as contributing or significant to the traditional tribal community. If the nominated areas were rural in nature and contained only minimal numbers of such non-contributing resources, this approach might be acceptable as an accommodation for documenting traditional cultural properties. However, given the extensive nature of the proposed historic district, its inclusion of sizeable areas of developed and urbanized land, and the fact that much of the locational information is redacted and precise boundaries are unclear in many areas (see Boundary discussion below), it is difficult to assess the eligibility of the nomination.

In describing many of the significant contributing sites in Section 7, the narratives in the nomination are often unclear as to what is actually extant at these locations. In certain cases this may refer to modern intrusions or the level of alteration that has taken place, while in other situations the nature of the historic tribal resources is not always clear. It is important that the descriptions of the specific sites in Section 7 directly address the issues of integrity, particularly in those areas of significant modern redevelopment. Justification should be provided for the inclusion of highly developed or altered lands. The narratives should also clearly acknowledge the nature of the extant historic features at certain sites and the basis for identification of those features as contributing resources. When reference is made to former village sites, for example, is there specific evidence of intact features? Or was the basis for identification simply oral and ethnographic history? In some cases contributing features are identified as archeological features. Are these documented archeological sites or assumed potential resource locations? A more direct connection between the sites identified in Table 2 and the individual site descriptions might help here. It is important to clearly outline what is being protected at these locations. For the most part the site descriptions do a good job at the end of each narrative in highlighting what the most noteworthy contributing features are and what are non-contributing features, but amplification of this would strengthen the nomination.

## **2. The Boundary**

The verbal boundary description and justification sections need to address the lack of specificity with regard to the proposed boundaries. While the general concept for the district appears appropriate—following the general outlines of the bay/estuary at the high tide line diverging to capture specific named sites and resources—the verbal boundary description lacks sufficient specificity at the locations of the contributing site/resources. For example, the current verbal boundary description reads “From *Hanisiich* it [boundary] continues north following just above the high tide mark to the site of *Ntiise'ich*, and includes the tribally-owned Old Empire Cemetery. The tribal land is located in T...” While providing the Town Range Section narrows the location to some degree there is really no sense from the boundary description or the narrative description in Section 7 as to exactly how large an area is included in the boundaries. Figures 30-39 showing the ownership parcels provides some additional information, but not at a scale sufficient to allow someone to clearly establish the boundary area on the ground. In addition, without labeling it is often difficult to reconcile the ownership parcel lines with specific sites.

The lack of specificity makes assessments of the character and integrity of the resources difficult. It also renders it unclear what exactly is inside the District and what is outside. The latter is a particularly acute issue given the redacted nature of the document and the highly developed setting for many of the resources, which often include considerable modern private development (see discussion above). While we acknowledge the difficulty inherent in establishing fixed boundaries for traditional cultural places and sites, for purposes of National Register designations such detail is necessary. There may be a number of options for providing such documentation including, but not limited to, a full disclosure of the included parcels at each site (as was provided for the Tribal Hall and Chief Daloose Jackson burial site), or larger scale maps for the contributing resources. Parcel numbers could be provided

on spreadsheets rather than in the narrative, but there would need to be some clarity in the case of partial lots. The most direct solution would be more detailed sketch maps or aerials for the specific contributing site locations.

In areas with significant modern development that overlays significant tribal locations and sites it will be important to directly address the boundary selection justifications and the issues of physical and associative integrity. There should be a very direct discussion of the reasoning for including large swaths of altered (private and public) lands. Such a discussion should tie back to the main nomination narratives as well.

### **3. Maps**

With regard to the maps in Figures 30-39. Are the lands off shore from the high-tide line privately owned? It seems that in some cases there is land marked as private located within the boundaries, but in areas where the boundary is noted as following the high tide line. Please clarify. In addition there are areas in which the boundary lines on the maps appear to take in lands beyond the high tide line (for example, the area east of the Charleston marina around Barview wayside).

The use of two different base scales for the tax lot maps (Figures 30-39) and the contributing resource maps (Figures 7-13) often makes overlaying the map information unnecessarily difficult.

On Figures 14-17, it is unclear what the term “historic parcel” refers to and what the connection of these parcels is to the sites defined in the nomination. Additional clarification regarding the purpose of these figures would be useful. In addition, it would be helpful to clarify what it means when “historic parcels” extend beyond the district boundary. The same question arises with Figures 22-29 and the demarcation of “cultural land use” areas.

#### **c. Treatment of Trusts**

Another issue with this nomination is the treatment of trusts. The National Register Program regulations (36 C.F.R. § 60.3(k)) define the terms owner/owners as “...those individuals, partnerships, corporations, or public agencies holding fee simple title to a property.” Trusts are not included within this definition. As we have previously advised, the NPS views the intent and purpose of the NHPA and National Register Program regulations to be inclusive rather than exclusive when it comes to recognizing the legitimate rights of private property owners. If, under applicable state law, a valid trust can legally own a fee simple interest in real property, such trust should be accorded the right to object to listing. If, under applicable state law, the trustee or settlor/grantor of a validly created trust holds the fee simple ownership, the trustee or settlor/grantor should be accorded the right to object to listing.

As you have explained, on April 3, 2019, the Oregon State Court of Appeals found that when the Oregon SHPO published our guidance describing trusts as property owners eligible to object to a National Register nomination, you “inadvertently created a ‘rule’ within the meaning of the Oregon Administrative Procedures Act,” and the court held that your

compliance with our guidance was invalid because your office failed to comply with Oregon rulemaking procedures. As a result, until the Oregon SHPO promulgates a rule pursuant to State law, the court has held that you are precluded under state law from complying with our guidance regarding a federal program.

The Secretary of the Interior, acting through the Director of the NPS, has the authority to make rules and regulations regarding the National Register and to interpret those regulations, which are applied nationwide. The Oregon State Court of Appeals' ruling was limited to a question of state law, and does not affect the NPS's guidance with respect to the ability of validly created trusts to be counted as property owners and to object to listing, if they so choose. I appreciate that in submitting the nomination you acknowledged this conflict and, in addition to a certification that a majority of owners objected to listing if trusts were not counted as owners, you also completed an analysis to determine if counting trusts as owners and objections received on behalf of trusts, and determined that this would not affect the outcome. At present, on the facts of this nomination, this issue does not require resolution, though if the owner/objector count were to change, this may become an issue.

If you have any questions regarding this determination, please feel free to contact Paul Lusignan (202-354-2229).

Sincerely,

A handwritten signature in black ink, appearing to read "Joy Beasley", with a long, sweeping horizontal stroke at the end.

Joy Beasley  
Acting Associate Director, Cultural Resources, Partnerships, and Science  
and Keeper of the National Register of Historic Places