



Stephen Dow Beckham

Identifying Land That Is Eligible for Indian Gaming

If There's a Driveway There Just May Be a Way

BY STEPHEN DOW BECKHAM

The routes of American Indian tribes to securing viable gaming sites that satisfy the requirements of the federal Indian Gaming Regulatory Act (“IGRA”) are often fraught with obstacles and intricacies of that law and the applicable regulations. Tribes and/or their development partners often discover during the development process that their preferred gaming sites do not satisfy the relevant requirements and, consequently, cannot be used for gaming.

However, with proper planning (and knowledgeable consultants and attorneys), potential barriers to tribal gaming can be identified early and, if appropriate, reconciled prior to commencement of planning and development.

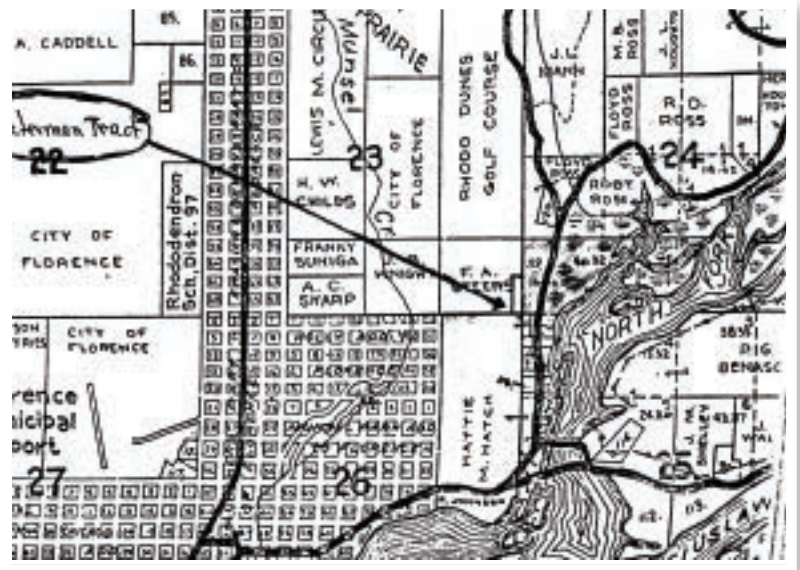
The following account explains how a small Oregon tribe overcame a seemingly impossible situation to qualify lands for gaming under IGRA. The path required a determined attorney, a committed tribal council, and an ambitious historian who followed the maxim “if you can imagine a document exists, it may exist and your mission is to find it!”

On October 21, 1999, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw of western Oregon received crushing news. Kevin Gover, Assistant Secretary of Interior for Indian Affairs, issued a finding that the “Hatch Tract,” a property of 122.6 acres purchased by the tribe and taken into trust in March, 1998, “was not contiguous to the boundaries of the reservation of the Indian tribe on

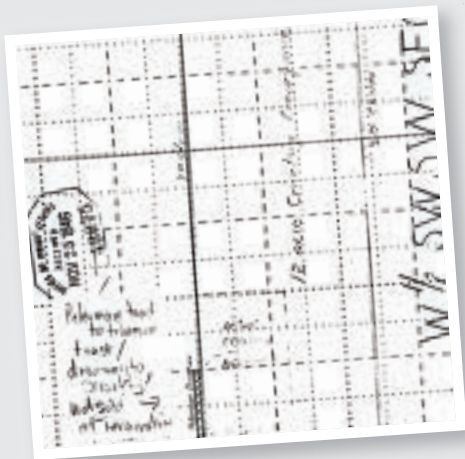
October 17, 1988.” Gover then declared that land failed to satisfy the requirements of Section 20 in the Indian Gaming Regulatory Act. Section 20 contains a special provision allowing tribal gaming on former tribal lands if an Indian tribe has been federally recognized, lost that recognition at some time and subsequently had its recognition restored through a special office within the United States Department of the Interior.

Operating as a confederated tribe government since 1918, the Coos, Lower Umpqua, and Siuslaw were forced to share a common history of dealings with the United States when, in 1856, they were concentrated together on the Oregon Coast Reservation. In 1860 the tribes were moved farther north to Yachats Prairie, a boggy rain forest on the central Oregon coast where, for the next fifteen years, they were forced to become farmers. The exposed shorelands grudgingly yielded potatoes and turnips but proved a complete

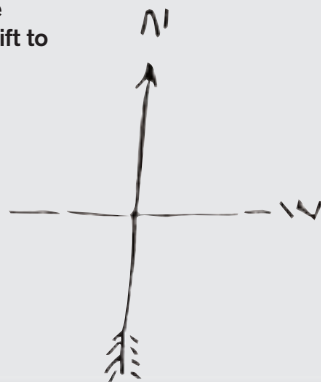
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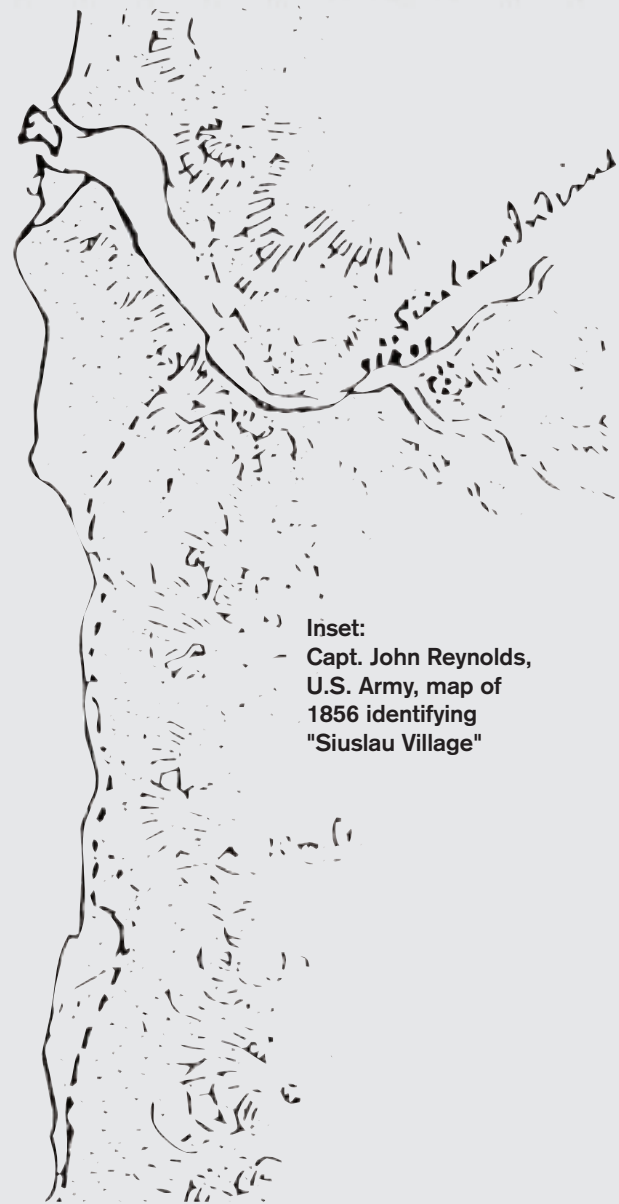
Land ownership map showing Hattie Hatch, heir to the Jesse Martin Indian trust homestead



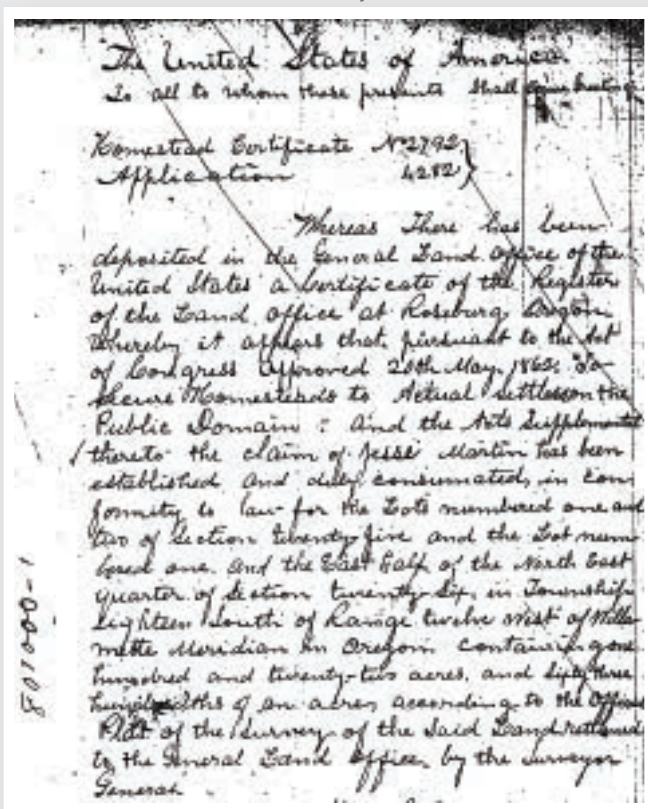
BIA Map showing the Peterman driveway gift to the United States



Siuslaw - river



Inset:
Capt. John Reynolds,
U.S. Army, map of
1856 identifying
"Siuslaw Village"



Trust deed for
Isaac Martin,
Coos, Indian
Homestead,
1892

“
In 1856 a U.S. Army
expedition visited the
site and its leader drew
a manuscript map
showing the lodges
and wrote on it
“Siuslaw Village.”
”

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failure for cereal crops and most vegetables. Tribal ancestors starved. In 1875, reduced nearly 50% in population, they learned Congress had thrown open their part of the reservation for pioneer settlement.

Approximately 95% of the ancestors returned to their old homes along the southwestern Oregon coast. Initially landless, they eventually obtained trust lands through the Indian Homestead Act (1881) and, after 1892, the General Allotment Act (1887). On August 13, 1954, in spite of their strident opposition, the tribal confederation was included in the Western Oregon Termination Act, a federal law that terminated federal recognition for a number of Oregon tribes. Effective in 1956, the tribe lost federal recognition. Individual trust lands were placed in fee and subjected to taxation. Because the tribes had vehemently opposed “termination” of their 6.1 acre reservation in Coos Bay, Oregon, a tract taken into trust status for the tribes in 1940, was not sold but was leased by the Bureau of Indian Affairs to the U.S. Navy Reserve.

After years of attempting to overcome “termination,” the Confederated Tribes obtained restoration of its federal recognition through an Act of Congress introduced by Congressman James Weaver, 4th District, Oregon. Weaver’s bill was enacted on October 17, 1984. It affirmed reservation status for the 6.1 acres in the tribes’ home (located in the City of Coos Bay), and two other minuscule parcels that had been deeded to the tribe.

However, before the tribes could proceed with a gaming agenda, the Coquille Tribe which is headquartered in the Town of North Bend and was restored in 1989, exercised a clause in its federal restoration act to purchase land on Coos Bay, secured its trust status, and got the property qualified for gaming under IGRA. The Coquille Tribe erected the Mill Casino and captured the Indian gaming market on Oregon’s south coast.

The Confederated Tribes had to find another route to a viable casino location but had to do so within the Section 20 exemption. The first step was tribal purchase of the Hatch Tract, 122.63 acres, immediately east of Florence, Oregon, and some 50 miles north of Coos Bay. The land was an Indian trust homestead secured in 1887 by Isaac Martin, a Coos Indian whose fourteen heirs in 1998 continued to own the untaxed parcel. The county had missed the lifting of trust status at “termination” in 1956 and the land had remained in untaxed ownership of the heirs of Hattie (Martin) Hatch.

As a never-taxed Indian homestead held by a family of Coos ancestry, the Confederated Tribes obtained reservation status for the property and anticipated casino development.



Kevin Gover of the Bureau of Indian Affairs, however, destroyed that possibility with his ruling that the land was “not contiguous to the boundaries of the reservation.” Having borrowed over \$600,000 to buy the Hatch Tract, the tribe was in a difficult, if not impossible situation. None of its three, small trust properties identified in its restoration act appeared viable for gaming.

At this point the tribal attorney obtained the research services of an historian knowledgeable about Native American history and the records of the federal government. He combed the National Archives for early documentation of the Siuslaw village that once stood on the property. In 1856 a U.S. Army expedition visited the site and its leader drew a manuscript map showing the lodges and wrote on it “Siuslaw Village.”

The historian next turned to the records of the Office of Realty of the Bureau and found a deed recorded when the Realty Division was based in Chicago. In 1947 Edward J. and Vera Peterman of Florence, Oregon, gave .062 thousandths of an acre to the United States “for the use and benefit of the Indians of the Coos Bay, Lower Umpqua, Siuslaw and other tribes” as a driveway to their tribal cemetery. The land was approximately 17 feet wide and 42 feet long. The driveway lay adjacent to the north boundary of the Martin Indian Homestead (Hatch Tract).

The historian took copies of the deed and correspondence related to it to the BIA, but its officials refused to acknowledge the trust parcel existed. The historian then examined the Western Oregon Termination Proclamation issued in 1956 by Secretary of Interior Fred Seaton. His order exempted “valid rights-of-way” from sale by the BIA. Significantly, the driveway given by Petermans had remained in trust status and equally significantly was contiguous to the 120-acre potential casino site.

With this information and other relevant historical documents, the tribe obtained in 1998 a Technical Correction Act to add the Petermans’ driveway to its trust lands. The tribal

Aerial view of Three Rivers Casino and Hotel on Oregon's south-central coast.



“In spite of numerous obstacles and setbacks, the tribe prevailed. The research, legal briefing and arguments, and court decisions confirmed the eligibility of the property under the Section 20 of IGRA. The tribe found investors and erected Three Rivers Casino and Hotel, which today is a major destination resort on Oregon’s south-central coast.”

attorney then filed suit to compel the Interior Department to acknowledge the Hatch Tract abutted a “reservation” and therefore met the Section 20 exemption of IGRA. The case of *Confederated Tribes of Coos, Lower Umpqua & Siuslaw v. Bruce H. Babbitt* was resolved in 2000. The court rejected the government’s narrow interpretation of the word “restore” and observed:

“After considering the plain meaning of the statute, the statutory context, and the principle of liberal construction in favor of Indians, the Court finds that the defendants used an unduly restrictive analysis in determining that the Hatch Tract was ineligible for gaming. Because the Assistant Secretary did not consider all matters which might entitle the plaintiff to an exception pursuant to section 2719(b)(1)(B)(iii), and failed to adequately consider the principle of liberal construction in favor of Indians, the Court will not address whether the plaintiff is entitled to the exception, but will remand so the agency may make its full determination in light of this opinion.”

In spite of numerous obstacles and setbacks, the tribe prevailed. The research, legal briefing and arguments, and court decisions confirmed the eligibility of the property under the Section 20 of IGRA. The tribe found investors and erected Three

Rivers Casino and Hotel, which today is a major destination resort on Oregon’s south-central coast. The development is located on the Martin Indian Homestead. The Petermans’ narrow driveway which saved the entire project yet runs from North Fork Road on the Siuslaw River into the tribal cemetery.

If there is a driveway there may be a way. Finding the driveway is the product of knowing the questions to ask and how to find the answers. ✨

Stephen Dow Beckham earned his M.A. and Ph.D. at UCLA in history. He taught college students for forty-three years, and for many years was the Pamplin Professor of History at Lewis & Clark College, Portland, Oregon. He is the author of numerous books and articles, is a former “Oregon Professor of the Year,” and winner of the American Historical Association’s Distinguished Teaching Award. He has been retained as an expert witness in thirty-seven cases most relating to Indian gaming, treaty rights, and land claims. His consulting has involved the Delaware Nation, Eastern Pequot, Duwamish, Cowlitz, Chinook, Cow Creek Band of Umpqua, Quapah, Ottawa Nation, Karuk, Klamath, Mechoopda, Chemehuevi, three bands of the Pomo tribes in California, Chinook and other tribes and bands. He can be reached at beckham@lclark.edu