

## **APPENDIX D: DRAFT GOVERNANCE AND OPERATION PLAN**

### **CELILO VILLAGE OPERATIONS, MAINTENANCE AND GOVERNANCE PLAN**

#### **1. INTRODUCTION**

In addition to traditional project elements discussed earlier in the PAC, the four Treaty Tribes have asked the Corps to support development of a Celilo Village governance plan. Redevelopment benefits will accrue through simple construction, but will be fleeting without a viable governance plan, resulting in the Village rapidly returning to its present unsatisfactory condition. This Appendix to the PAC outlines a tentative governance plan for Celilo. It is only a draft proposal outlining Corps governance suggestions, and may be readily modified by the parties. Its primary purpose is to serve as a starting point for discussions between the Tribes, the BIA, and the residents of Celilo Village.

This emphasizes the reality that when redevelopment is complete Corps involvement in Village governance ceases. Others are responsible for O&M at the site, and for the project's ultimate success. The Corps realizes, however, the necessity of having a viable governance plan and structure in place prior to construction being finalized at Celilo. The Corps will thus make an advance transfer of O&M funds to the BIA for the process of developing and adopting a Celilo Village governance plan.

Celilo Village, one of the most visible Indian communities in the Columbia River Basin, is a direct result of relocations associated with Federal Dam construction. The population dynamics, as well as the structure of the Village itself have changed multiple times since its creation. Currently there are approximately 50 individuals living in Celilo. The bulk of the population is composed of enrolled members of the four Treaty Tribes. There are also a number of residents not enrolled in any federally recognized Tribe, and several individuals not of Native American descent. Several residents lack the legal right to occupy homes in Celilo, raising questions regarding who should actually have a voice in Village affairs. Because residents possess a spectrum of legal rights and tribal affiliations, it has been difficult to forge Village governance consensus. There have been several attempts over the years to bridge this distance. They have largely failed.

In 1976, the Tribes and the residents created the Wyam Board "to provide adequate, safe and sanitary housing as well as granting resident eligible Tribal members...a voice in the affairs of Celilo." Unfortunately, the board accomplished little during its tenure, as it lacked real power, and was eventually disbanded.

The Mid-Columbia River Council was created in 1985, "to represent the people of the Mid-Columbia area." The Council included Celilo Village in a broader plan to provide structure throughout the Mid-Columbia region, as well as to empower area residents not enrolled in any recognized tribe. This was important because a number of Native Americans living in the Mid-Columbia region are "River People," a group that has never entered into treaties with the U.S. government, and is not a Federally recognized tribe.

Their rights and concerns must be considered while redeveloping Celilo. Though the Mid-Columbia River Council had a promising beginning, including the pursuit of non-profit status and plan formulation for a Celilo cultural center, it has since languished into obscurity.

## **2. PURPOSE**

For years there has been no stable governance structure at Celilo Village. The Wyam Board was disbanded. The Mid-Columbia River Council faded. The BIA's nearest agency is located on the Yakama Reservation, eighty miles distant. The tribes often disagree on what is best, and have historically been opposed to Village self-governance. While there are strong authority figures among the residents, none assumes the mantle of responsibility for providing services and security. These factors all contribute to a vacuum of authority at Celilo.

This vacuum is directly related to the problems facing Celilo today. The buildings and infrastructure were inadequate when constructed, and deteriorated rapidly. Garbage and abandoned vehicles have accumulated. There are no readily available law enforcement resources for combating crime and vandalism. Essential services are not provided, and those that are, such as water and sewage, fall below current health standards.

The Celilo Village Redevelopment project will solve the physical problems by providing safe housing and modern water and sewage systems. It will improve the appearance of the highly visible Village, making it a positive example of cooperation between Native Americans and the Federal government, rather than a bleak reminder of past mistakes. This appendix's purpose is to build on the foundation provided by these physical improvements to resolve some of the nonphysical problems: the "who," the "how," and the "when" of regulation, law enforcement, and community planning and decision making. The plan is composed of four major sections: 1) an Operations and Maintenance Plan, 2) an overview of an Interim Decision Making Structure, 3) a Governance Plan, and 4) suggestions for the possible transition to self-governance at Celilo.

There are several themes that characterize the overall plan. First, all efforts should be made to include the major actors in both the design and construction of the project. The BIA, the Tribes, and the residents all have a great deal of influence over the future of the Village, and should be frequently consulted to maintain project buy-in, as should all groups and individuals interested in Celilo. Second, it is crucial that a permanent, funded O&M Plan be created to insure that maintenance and repair is not haphazard and temporary as in the past. Finally, the Wyam Board should be resurrected and empowered to serve as the voice for Village affairs and a force for Village improvement.

## **3. OPERATIONS AND MAINTENANCE PLAN**

### **3.1 Roles And Responsibilities For Implementation**

The roles and responsibilities of the Corps, the BIA, the Wyam Board, the Tribes, and the residents, will evolve over the course of Celilo Village redevelopment. For a detailed

breakdown of these roles and responsibilities, please review Tables D-1 to D-3, which chart party responsibility from the planning, through design, and into operations and maintenance.

### 3.1.1 BIA.

The O&M of Celilo Village is currently the responsibility of the DOI-BIA. In response to the CRTFAS authorizing legislation, P.L. 100-581, a plan to share costs of OMR&RR between the Corps and BIA evolved in discussions (November 1994 and January 1995) between the Assistant Secretary of the Army for Civil Works, the Assistant Secretary of Interior for Indian Affairs. The discussions resulted in the 23 June 1995 Memorandum of Understanding between the Department of the Army and the Department of the Interior, entitled "Transfer, Operation, Maintenance, Repair, and Rehabilitation of the Columbia River Treaty Fishing Access Sites." (Hereafter 23 June, 1995 MOU). The 23 June 1995 MOU provides for the DOI, BIA to accept OMR&RR of the Treaty fishing access sites after construction and transfer.

Recognizing the need to develop Celilo Village governance prior to construction, the Corps will make an advanced transfer of OMRR&R dollars, in the sum of \$150,000, to the BIA to be used for the development and adoption of a governance plan. This sum will be deducted from the total estimated amount of OMRR&R that will be transferred to the BIA. The BIA will accept the remaining OMRR&R of Celilo Village after construction and transfer, upon completion of the redevelopment process, and all efforts will be made to insure the transfer from the Corps to the BIA is as rapid and seamless as possible.

It is recommended that the BIA create a hired position, preferably from among the Village residents, to provide basic repair and maintenance work at Celilo. The BIA previously considered a similar idea, where a locally hired maintenance worker would be employed 3 hours a day, 3 days a week. A full time employee may be necessary however. This employee would be charged with OM&R of the Village common areas and buildings, and would advise the Wyam Board and the BIA regarding any larger scale projects that may become necessary. The employee would also be responsible for general OM&R of the water and sewage systems, advising the BIA of any larger scale projects that may become necessary. The BIA should preferably hire a resident for three reasons. First, it provides an economic opportunity where few are available. Second, it will lead to more project buy-in by the residents as they will have an additional voice in Village affairs (particularly regarding physical conditions therein). Finally, it allays the residents' concerns regarding the security of their homes and possessions from "outsiders."

The Corps will provide the maintenance worker with a publication outlining technical standards for the buildings and grounds. The publication will include technical standards for both the frequency of service (buildings) and desired results (grounds). The requirements for maintenance will be outlined in the O&M Manuals. Potable water quality standards for the Village will be in accordance with current state standards for community water systems.

### 3.1.2 The Residents.

Village residents will be responsible for basic home repairs that the O&M Manuals do not specifically allocate to the maintenance worker. This will include general upkeep, as outlined in the residency permits. Residents will secondarily be responsible for monitoring the upkeep of the common buildings and areas, and helping to insure that the condition of these common properties does not interfere with their use by the Tribes and other residents.

### 3.1.3 The Tribes.

The three Treaty Tribes will be responsible for monitoring the upkeep of the common buildings and areas, and insuring that the condition of these common properties does not interfere with their use by the Tribes and the residents.

### 3.1.4 The Corps.

During the redevelopment process, the Corps will continue to consult with the BIA, the Tribes, and the residents. By actively engaging the other parties in discussions, the Corps better insures that the O&M needs of these groups are considered and met to the greatest extent practicable. This interaction will also enable the Corps to design and site buildings optimally at the Village, providing a better environment for the eventual residents. The Corps will not be responsible for O&M of Celilo buildings and facilities following their construction and transfer to the BIA.

## **3.2 Funding**

Celilo Village was constructed with substandard materials that created substandard housing and fishing facilities. One of the major causes of the deterioration of Celilo, beyond the historical fact of substandard initial materials and construction, has been the lack of funding for Village maintenance. There are few available income sources for the Village, and this is exacerbated by the fact that Celilo effectively has no tax base. Therefore, any funding for the Celilo Village Redevelopment Project, including general site preparation and debris removal, demolition and construction of buildings, O&M, and later governance of the Village, must be provided by sources outside of Celilo.

The Corps will use CRTFA project funds to complete Celilo Village redevelopment. Additionally, the Corps has agreed to contribute a one-time amount for O&M of Celilo Village, consistent with other sites included in the project authorization. After construction the Corps will transfer the capitalized funds to BIA. As stated before, the Corps will make an advance transfer of these funds, which will be deducted from the total of funds transferred, for the purpose of developing and adopting a Village governance plan.

It is recommended that the BIA contract with the Tribes to establish a trust fund, using these funds to provide for the salary of the maintenance worker, meet other O&M costs, and to possibly support governance efforts at the Village. This agreement will be an Indian Self-Determination Agreement for O&M between the Tribes and the DOI-BIA. The provisions of Title I of the Indian Self-Determination and Education Assistance Act

(25 U.S.C. 450 et seq.) are incorporated in this agreement. The agreement would contain investment guidelines and would call for the BIA and Tribes to develop a Five-Year Plan for O&M. Another option would be for the BIA to transfer these funds to a not-for-profit organization organized by the Tribes that could oversee these activities.

The Tribes have limited resources, and though they have allocated funds for Celilo in the past, these sums have been too little to effectuate lasting change or progress. Similarly, BIA funds have been unable to make a significant difference. The BIA has formerly expended funds to provide for maintenance work in the Village, and to hire individuals for performing repairs, but has not budgeted for a regular O&M program on a continuing basis. Currently the BIA is rethinking its procedures and considering creating a permanent funding allocation for the O&M at Celilo. This allocation would be added to the O&M funds the Corps provides, and would greatly enhance the rapidity of completion as well as the potential scale of future O&M projects. It is essential that, at a minimum, the Tribes and BIA both continue to support Celilo at current funding levels. Corps funding should not, and cannot, replace these sources. They must remain to ensure that there is a maximum gain in O&M funding resulting from the Redevelopment Project.

Future funding may be available through the State of Oregon and the Federal government. Oregon legislators have suggested that funds might be available if the Tribes were united in their support for redevelopment at Celilo, and if a proper governance structure was created to insure the long-term success of such redevelopment. Sympathetic members of Congress have made similar statements. Additional monetary support could come from other Federal or state agencies. This support in the state legislature and on the federal level serves as added encouragement for the diverse parties to come together for a long-term solution at Celilo, a solution that would appear much more likely as a result of these additional funds.

### **3.3 O&M Manuals, Technical Standards And Maintenance Schedules.**

The Corps will produce operation manuals, technical standards, and maintenance schedules that the operations manager can refer to in the pursuit of his duties and responsibilities. These documents will be designed, edited, and produced concurrent with the construction at the Village, and will be available upon completion of the project. There will be no lag between project completion and publication availability, insuring that O&M will commence immediately, and that there will be no dead time when structures and facilities might deteriorate without care.

## **4. INTERIM DECISION MAKING STRUCTURE**

### **4.1 Planning, Design, And Construction Phase**

The Corps has consulted with the Tribes, the BIA, and the residents in developing the Celilo Village Redevelopment plan, and will consult with the Wyam Board when it is operational.

## **4.2 Re-creation of the Wyam Board**

The residents, the BIA, and the Tribes have begun to develop a governance structure that will inherit a large portion of decision-making authority as the redevelopment process proceeds: the re-created Wyam Board. This process will be finished concurrently with the completion of the PAC report and before the Corps completes designs for redevelopment of the Village buildings and infrastructure.

The Umatilla, Yakama, and Warm Springs Tribes have appointed representatives and alternates to the Wyam Board. The Tribes and the BIA have cooperated in developing a list of the Village's legal residents that is the primary means for determining voter eligibility. The Tribes, their staffs, and their appointed representatives on the re-created Wyam Board have made board position eligibility determinations, and have conducted an election at Celilo to determine which two legal residents will serve on the re-created board.

### 4.2.1 Historical Makeup of the Wyam Board

By the 1970's, Celilo had greatly deteriorated, and the residents of the Village were in need of better houses and living conditions, as well as participation in the decisions that affected them. The Tribes desired to provide adequate, safe, and sanitary housing as well as granting resident eligible Tribal members a voice in Celilo affairs. To this end, Resolution Number 76-01 on 27 May, 1976, created the Wyam Board, which was established to carry out certain administrative functions and responsibilities at Celilo. (CTUIR Historical Record). The board was composed of one member and one alternate appointed by each of three Treaty Tribes (the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation, and the Confederated Tribes and Bands of the Yakama Indian Nation), and two representatives elected by and from Celilo residents.

While the Tribes granted some powers to the Wyam Board, they reserved approval authority, subject to the concurrence of the Secretary of the Interior, over all leases, permits or developments that would be an encumbrance of the land, and the ability to plan for the future of Celilo. The Tribes also reserved the right to veto any decision of the Wyam Board, ensuring that they and not the Wyam Board existed as the ultimate authority in Celilo.

### 4.2.2 Changing Climate for Governance

Though the first incarnation of the Wyam Board in the 1970's was not as successful as hoped, there are a number of signs that the body could be more effective the second time around. The Tribes are apparently united in supporting redevelopment at Celilo. They have all supported the re-creation of the Wyam Board, and reaffirmed their participation on that board. Included in their support is the belief, at least on the part of the Umatilla Tribe, that an increase in Village self-governance may lead to the residents taking a more active role in maintaining the condition of the Celilo buildings and common areas. Because each of the Tribes views Celilo to be of great cultural, spiritual, and economic importance, and uses Village common areas and fishing facilities extensively, each has a vested interest in future conditions at the site, even apart from their established treaty

rights. Though the Tribes may be against relinquishing authority in the Village, they may well be disposed to share or refocus it if this results in improved conditions at Celilo.

The residents also support the Redevelopment Project and the creation of a governance structure, because of the potential for living condition improvements. They are concerned regarding the health and safety of the Village, particularly the quality of their water and sewage systems. The Redevelopment Project will improve these physical systems, while the creation of a governance structure presents the residents the opportunity to have a new, stronger voice in Village decision-making. If the recreated Wyam Board also provides a better forum for interaction with the Tribes and the BIA, all the better.

The BIA is taking a much more active role in Celilo Village affairs as well. Though the BIA has a trust responsibility for Celilo, Congress has structured the BIA to deal directly with Tribes, rather than individual settlements inhabited by Native Americans with various Tribal affiliations. This has led to Celilo having a tenuous status regarding BIA funds and attention. Residents who are enrolled members of the Yakama, Warm Springs, or Umatilla Tribes can access benefits and services through those respective reservations, but the rest of the residents, and the Village itself, can fall through the Federal protective net. The BIA's participation in the redevelopment process insures that additional technical resources are available for Village governance.

Another factor portending improvement is the approaching Lewis & Clark bicentennial. All parties involved: the BIA, the Corps, the Tribes, and the residents, have a great deal to gain culturally, spiritually, and/or economically from the redevelopment of the Village. The new governance structure will be a vital part of that redevelopment. The fact that the bicentennial is quickly approaching is a great impetus for the groups to put aside their perceived historical differences and to do what they are able to finish the project in the near future. All these factors taken together suggest there is greatly increased support for a new Wyam Board, and that it will have a much greater chance at success than during its first inception.

#### **4.3 The Structure Of The New Wyam Board**

Though the Wyam Board is being resuscitated to serve as the governance entity for Celilo Village, it should not be a mirror image of its previous form. Several changes should be implemented to remove some of the prior obstacles to its effectiveness. These suggested changes are only independent Corps recommendations, and the Tribes and the BIA are free to implement or ignore them.

The new Wyam Board should be composed of five members, with non-voting BIA advisors possessing various technical areas of expertise joining the three representatives from the Treaty Tribes and the two elected representatives from Celilo Village as appropriate. The Corps will have no role on the Wyam Board. Each of the five board members should be able to cast a vote in board decisions. The presence of three voting members of the Wyam Board should constitute a quorum. Board members elected from

among the residents should serve staggered, six-year terms, while the Tribes will determine their representatives' tenures. It is recommended that the Regional Director of the BIA designate staff persons from the Bureau with relevant expertise in the issues under discussion before the Wyam Board, to serve as liaisons to the board. The particular staff persons designated will change, as the needs of the board and the issues before it change.

The Wyam Board will be the primary governance body during the Implementation and Post-Project Stages, in consultation with the BIA and the Tribes. After the Board is constructed, and its operating regulations are set, the Board will have the opportunity and discretion to create advisory committees for particular topics of interest. The Wyam Board should also be responsible for the creation of a Master Development Plan for Celilo Village, which will be created, at least in part, during the development and adoption of a governance plan prior to construction. This will focus attention on using the Village's redevelopment as a springboard for further economic, social, structural and cultural improvements. The board will have decision-making authority over Celilo Village matters not specifically reserved for the BIA or the Tribes. Obviously, the board would not have any power to bind the agencies or the Tribes to its decisions unless these groups first consent to the board's authority.

Four votes should pass any resolution before the full board, while three votes would be sufficient if less than five voting members attend. If voting had to be unanimous, it is possible that little would be accomplished. A simple majority voting structure would also be unacceptable, because it would minimize the ability of minority voices to affect board decisions.

The board will be housed in the current doublewide trailer previously used by the BIA, the Wyam Board and the Mid-Columbia River Council, or elsewhere should a more suitable structure become available.

The role of the Wyam Board will change as it moves from the planning phase, through design and construction, and into the operations phase. Early on, the Board should focus on designing regulations governing its own internal practices and procedures, in consultation with the Tribes and the residents. While the Corps develops plans and specifications for the Village, the board should actively participate in drafting ordinances regulating activities within the redeveloped Village. These draft ordinances should be reviewed by the DOI –BIA, which would accept, modify, and/or supplement them in consultation with the Tribes and the residents, prior to their being published. During the operations and maintenance phase, the board should focus more on creating a Development Plan for the Village, and possibly on the creation of Advisory Committees. The board itself will assume an advisory role regarding nearly all activities within the Village, from O&M to security and law enforcement. The board will be a crucial liaison between the residents, the BIA, and the Tribes, while also serving as a link between the Village and exterior services that may be pursued, including "head start" and other educational programs, health care, etc., and as a contracting body for those services.

When the board has succeeded in creating and implementing regulations and ordinances, and attains some organization stability, it will be ready to move on to more aspirational goals. These goals include fixing some of the chronic problems facing Celilo Village: unemployment, indifference, and isolation. The Wyam Board would pursue cultural and economic development within the Village, consistent with the social, spiritual, and cultural significance of Celilo. The board may also create frameworks for providing economic opportunities, substance abuse programs, and day-care for young children.

#### 4.3.1 The BIA Representative

Currently, there are no designated BIA advisors to the re-created Wyam Board. Reflecting the authority that the BIA has traditionally held in matters regarding Celilo Village, the agency should designate appropriate staff members to advise the reestablished Wyam Board on technical matters within the BIA's expertise. BIA advisors would serve as a link between the Bureau and the residents. This would allow for more direct and productive interaction between the two groups than has been the case in the past.

One of the traditional complaints of Celilo Village residents is that they are distanced from benefits and that the BIA does not address their concerns quickly. They maintain that the BIA has historically been lax regarding O&M at the Village. The BIA counters that the residents have not always communicated their needs and concerns to the agency, and have not participated adequately in the maintenance of their homes. Having a BIA representative at relevant board meetings would address each group's communication needs, in that both side's concerns and issues could be easily discussed, if not resolved, within the board setting.

The BIA's delegated advisors should be nonvoting liaisons to the board for several reasons. First, the BIA and the Tribes have not always seen eye-to-eye on issues, and the three Tribes, as well as the residents, may be uncomfortable with the BIA having voting authority in Celilo Village decisions. By having advisors to the board however, BIA can still affect decisions through discussion and consultation.

The BIA would devise its own method for designating staff representatives to the Wyam Board. Such elements as eligibility, appointment authority, and length of service should be left to the discretion of the agency.

#### 4.3.2 The Tribal Representatives

Celilo Village is of undeniable cultural, historical and spiritual importance for the Treaty Tribes. They traditionally came to Celilo Falls for fishing, trade, and spiritual purposes. For 10,000 years Celilo Falls was the Interior Columbia River Indian Tribe's most valuable economic asset. Salmon caught at the falls provided for the subsistence and market economy of the region's people. Indians came from all over the Northwest to trade on the banks of the world's greatest salmon river. (CTUIR handout). When the site of the original Celilo Falls Village was flooded by the backwaters of the Dalles Dam in 1957, the Village was moved upland to its present location. Though the Village currently

has only about 50 permanent residents, it is the temporary home of a significant number of additional individuals during the spring and fall fishing seasons. Because of the long history of the Tribes in the area, each of the Tribes desires to have a strong voice in affairs at Celilo Village. Each of the Tribes deserves to have that voice.

To this end, each of the three Tribes will have a position on the new Wyam Board, insuring that each will be able to participate in decisions that affect their traditional fishing grounds. Each Tribe will be able to devise its own method for electing or appointing members to the Board. Each Tribe will also elect or appoint an alternate, who will have voting authority in the absence of the usual Board Member. Since the release of the draft PAC report, each of the three Treaty Tribes took these steps and appointed members and alternates to the re-created Wyam Board.

The presence of the Tribal members on the Wyam Board is not solely for the benefit of the individual Tribes. Placing Tribal representatives on the Board also insures that there is an effective continuing line of communication between the Treaty Tribes and Celilo Village residents. This insures that the Tribes will be able to protect their interest in fishing access, as well as other economic, religious and cultural interests. Placing Tribal members on the board keeps the Treaty Tribes informed regarding the current state and needs of Celilo in a formalized and direct fashion. Additionally, this close interaction insures that the Tribes are cognizant of the highest priority Village needs, so that limited Tribal funds can be earmarked for Celilo and expended for the best possible result.

#### 4.3.3 The Celilo Village Representatives

While the Treaty Tribes have an unquestioned right to be involved with affairs at Celilo, there are also a number of Indians residing on the Columbia River who do not have a Tribal affiliation or local Tribal membership, and yet still deserve a voice. This lack of local Tribal enrollment is caused by outside marriages and/or an eventual loss of required blood degree, or by never entering into a treaty with the Federal Government (ex. The River People). Thus, many are not eligible for benefits offered by nearby Reservation Agencies. The River People consider themselves a separate entity and not affiliated directly, at least in part, with any of the neighboring Tribal Agencies.

The major complaint of the residents is that they have difficulty receiving assistance from the Tribal Agencies responsible. They attribute the lack of help to the distance from the Agencies, funding problems and differences of interest between they and the reservation Indians. Tribal Agencies are quite remote from Celilo Village. Yakama Agency is 80 miles away, Warm Springs Agency is 100 miles away, and Umatilla Agency is 120 miles distant.

Because the location is so important to the Treaty Tribes, and because they provide useful resources for the Village, they must be included in any governance plan for Celilo. It is important however, that the Treaty Tribes do not dominate the governance structure to the extent that the voices of the residents are silenced. The representatives of Celilo Village have long claimed that they have had little political influence over Village affairs.

To partially rectify this problem, there should be two Village representatives on the new Wyam Board.

These representatives should be elected from among eligible Village residents. Additionally, two alternates should be elected who would have voting authority in instances when the Board Members are unable to attend. Many of the villagers recognize a traditional chief, but this recognition is not universal among the residents. Voting allows the residents to determine whether or not to recognize the traditional chief by placing him on the Board. Election notices for resident board members should be posted for 30 days and conducted by the appointed Tribal Board Members. Determining who qualifies for election is a contentious issue however. This governance plan suggests that all legal residents of Celilo Village aged eighteen or over should be entitled to participate in the election. This method increases the likelihood of buy-in because more members of the Celilo Village community would be able to have a hand in determining elected representatives, than if elections were limited to enrolled tribal members, giving elected representatives a stronger mandate from the residents. A procedure should be created for determining who qualifies as a legal resident.

The problem with this method however, is that it could prove difficult administratively to track who the legal residents are over time, as well as determining the length and individual must reside at Celilo to qualify as a resident. This can be particularly difficult because American interpretations and practices of residency are frequently different from their Tribal equivalents. As stated previously, the BIA and the Tribes are currently formulating a list of the legal residents at Celilo Village. This list will be used to determine who will have voting rights in the Village.

Since the release of the draft PAC report for public review, the Tribes, in consultation with the BIA, have made voter eligibility decisions, conducted an election for the two available resident board positions, and promulgated a number of rules and procedures for future elections.

#### **4.4 Tribal Review Authority**

Though the Treaty Tribes had representatives on the original Wyam Board, each Tribe retained the ability to retroactively veto board decisions. This insured that the board had little real power or authority, as any Tribe could effectively block any unpopular decision. Because the Tribes have different cultures, histories, and objectives, this blockage could occur frequently.

The new Wyam Board should initially retain the previous structure that allowed for Tribal veto of board decisions, but should also limit the Tribes' ability to exercise this power to a certain period of time. Each of the Tribes should be able to veto decisions of the new board, but any veto should be registered with the board within 60 days of the initial decision, and should need to be accompanied by an explanation to insure that vetoes are not registered as a matter of habit. Ideally, if Celilo Village approaches self-governance, the Tribes will relinquish their veto power, but such a significant step, if it is ever taken, is still far in the future.

## **5. GOVERNANCE PLAN**

### **5.1 Applicable Laws**

Tribal governments have a unique legal and political relationship with the United States government, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. The United States has entered into over 600 treaties and agreements with American Indian Tribes. These treaties give the United States a variety of legal responsibilities toward Tribes and provide the basis for a government-to-government relationship. Congress created other responsibilities toward Indians through statutory enactment. Although the DOI, through the BIA, has the statutory responsibility for upholding the Federal government's obligations to Indians, this responsibility extends to all Federal agencies.

The text of the CRTFAS statute, Title IV, PL 100-581, November 1, 1988, Sec. 401(a) states that "All federal lands within the area described on maps numbered HR2677 sheets 1 through 12, dated September 21, 1988, and on file in the offices of the Secretary of the Interior, the Secretary of the Army, and the Columbia River Gorge Commission shall, on and after the date of enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Spring Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Indian Nation.

### **5.2 Published Policies**

#### 5.2.1 Executive Policy

On 6 November 2000, President William Jefferson Clinton issued Executive Order 13175, dealing with Consultation and Coordination with Indian Tribal Governments. The executive order stated that the United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

#### 5.2.2 The Corps

The Northwest Division of the Corps issued a Native American Policy regulation on 15 August, 2001, that covers the policy, responsibilities, and implementation of the U.S. Army Corps of Engineers Tribal Policy Principles. It is the policy of the Northwestern Division to apply the USACE Tribal Policy Principles in all division activities that may impact any federally recognized Indian Tribe. In those activities where consultation is warranted, it is the policy of the Northwestern Division to consult on a government-to-government level consistent with guidance found in references 3a-3e and Tribal regulations.

### 5.2.3 The BIA

The land for Celilo Village was acquired by deed pursuant to the Act of July 25, 1947, 61 Stat. 466, the title being taken in the name of the United States in trust for the Yakama Indian Tribes, the Umatilla Indian Tribes, the Confederated Tribes of the Warm Springs Reservation and other Columbia River Indians as described in the act and deed. It is the BIA's opinion that land ownership in Celilo is not dissimilar to the ownership of other lands held in trust by the United States for designated tribes and Indians. The Bureau's trust responsibility in respect to the Celilo property is the same as the responsibility the Bureau has for Tribal trust properties elsewhere, since the Celilo property is held in trust for the Umatilla, Warm Springs and Yakama Tribes. Celilo is within the service jurisdiction of the Warm Springs Agency. Currently, funds have come from the Warm Springs Agency solely on an "as needs" basis.

Under the 23 June 1995 MOU, after the Corps transfers the capitalized funds to BIA, the BIA will in turn contract with the Tribes to establish a trust fund, using these funds to provide for the salary of the maintenance worker, meet other O&M costs, and to possibly support governance efforts at the Village. This agreement will be an Indian Self-Determination Agreement for O&M between the Tribes and the DOI (BIA). The provisions of Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

### 5.2.4 Tribal

The Tribes do not have a unified published policy per se regarding Celilo other than the Modified Draft Memorandum of Understanding, but there are copious written records revealing their position on the Village, including correspondences between the Tribes and several federal agencies. Additionally, each of the Tribes has passed resolutions expressing support for Celilo Village redevelopment. (See Appendix C).

As was stated earlier, Celilo Village has great cultural, historical, and spiritual significance for the three Treaty Tribes, and each feels that they have a right to continue their traditional practices at the site. Also, the Tribes feel they have a right to reside at the Village, at least at the times of the year they traditionally moved down to the river for fishing and commerce.

The Tribes have often disagreed however, on how the Village should be governed. The Tribes have been opposed to the idea of self-governance at Celilo in the past, and even the Umatilla Tribe, the strongest proponent for self-governance at Celilo, believes the Village is a long way from reaching autonomy. The Tribes apparently feel they are the best source of Village governance, and that they should continue to have the strongest voice in governance. Perhaps there is no greater example of Tribal reticence in supporting self-governance at Celilo than their historical veto power over Wyam Board decisions.

However, the Tribes have worked on a draft joint resolution regarding guidelines in their approach to Celilo Village. These guidelines include that 1) the Wyam Board be structured and empowered to provide recommendations to the three Tribal Governing

bodies and the BIA on development plans and management policies; and 2) a Comprehensive Redevelopment Plan be prepared that includes at a minimum all the uses and facilities of the original community; and, 3) a plan for the maintenance, operation and governance of the community be developed; and, 4) Celilo Village redevelopment be used as a model in approach and form to accommodate the needs of other Indian people and communities in the area. (CTUIR Handout).

#### 5.2.5 Celilo Village

Celilo Village does not currently have any published governance policies, beyond those regulations contained in the particular building assignments, and in the now defunct Wyam Board regulations. In practice however, a significant number of residents defer to the traditional chief of Celilo, who has a great deal of authority in managing Village affairs. This deference is not universal among the Residents however, and does not encompass all aspects needed for proper governance of the Village.

### **5.3 Regulations**

Celilo Village was established pursuant to the Act of 25 July, 1947, (61 Stat. 466) the Title being taken in the name of the United States in trust for the Yakima Indian Tribes, the Umatilla Indian Tribes, the Confederated Tribes of the Warm Springs Reservation, and other Columbia River Indians affiliated with the aforementioned Tribes with all authority of ownership for such land resting in the Tribes mentioned above, subject to the approval, when necessary, of the Secretary of the Interior as the Trustee for the United States.

The Appropriations Act of 29 January, 1948, (69 Stat. 1120) provided funds to construct, repair and rehabilitate the buildings and utilities on the land, and by Act of 15 July 1955 (69 Stat. 361) funds were appropriated to relocate the permanent resident Indian families who were in the project area at Celilo.

Unfortunately, no regulations ever instituted and implemented for providing for the governance of the Village have attained any level of permanency.

#### 5.3.1 Current Status

Regulations are needed to deal with a wide variety of issues at the Village. The physical condition of the residences is one concern. The condition of the common areas and buildings is another. Regulations dealing with the use of these common areas and buildings, as well as with community development and law enforcement are critical. Additionally, regulations must be created spelling out who may reside at Celilo and for how long; alleviating Tribal concerns regarding the number of illegal residents currently inhabiting the Village and its environs, as well as residents' concerns regarding Tribal members lingering beyond the traditional fishing seasons.

Currently there is no code of regulations or body of local ordinances for Celilo Village. There are a number of Federal and state regulations that apply to the Village and its residents, yet there is no set program for regulation and enforcement at Celilo. A number of different authorities come together and overlap at the site, though this effectively

results in an absence of responsibility, rather than a surplus. One of the problems is that authorities are unsure of what their actual powers and responsibilities are at the Village. Another problem is that the residents themselves are selective in acknowledging outside bodies attempting to regulate activities within the Village and in their opinions of how regulations should be enforced.

The Assignments and Occupancy Permits for the existent buildings are a secondary source of regulation, containing provisions covering use and maintenance of the houses, and procedures for termination of the occupancy permits. BIA has enforcement responsibility for the assignment provisions, but does not actively pursue this responsibility. Some reticence is appropriate in cases where residents are unable to fulfill occupancy permit requirements due to advanced age or some similar physical incapacity, yet the BIA must be swifter in responding to permit violations caused by deliberate neglect or apathy.

### 5.3.2 Required in Conjunction with Redevelopment

The adoption of more stringent regulations regarding the use of common areas and buildings should be mandated concurrently with construction. It is critical to ensure that the historical pattern of neglect and deterioration that has characterized Celilo will not be tolerated following redevelopment, and that individuals falling afoul of these regulations could well lose their occupancy permits. Redevelopment and increased input in Village matters constitute positive encouragement for maintaining a certain state of repair and orderliness at Celilo. Perhaps active enforcement of regulations for the first time in the history of the Village can present an effective penalty for failing to do so.

A number of published codes could also be adopted by reference or used as a model for developing Village standards prior to redevelopment. The input of the residents, Tribes, and BIA must be considered carefully when determining what regulation structures and authorities will be created at Celilo. The Wyam Board can serve as an excellent lens for focusing this input, particularly during the effort to develop and adopt a governance plan prior to construction that will be funded with the advanced transfer of the OMRR&R dollars.

### 5.3.3 Roles of the Parties

The Wyam Board will perform the majority of regulation development and adoption, in consultation with the Tribes, and subject to review by the BIA. The Wyam Board will develop procedures for designing and adopting regulations covering a wide variety of topics of concern within the Village, focusing primarily on the use of the common areas and buildings. Ideally, this process of regulation creation and adoption would occur during the Planning Stage. Regardless of when this process occurs, the Wyam Board will continue creating and adopting needed regulations following the completion of Celilo redevelopment.

The Tribes will have a great deal of input in the creation and adoption of regulations, reflecting their continued role at Celilo Village. This input will take place in two ways. First, the Tribes will actively participate in the process through their presence on the

Wyam Board, and their veto power. Second, the Tribes will consult with the residents and the board on a more informal basis, presenting their opinions and advice, and offering their expertise.

The BIA has the ultimate authority to promulgate regulations at Celilo; either of its own design or through reviewing those drafted by the Wyam Board, residents, and the Tribes. The agency has important additional roles to play. Staff delegated to advise the Wyam Board on issues of Bureau concern have no voting power, but will inform the voting members regarding the Federal perspective towards any potential regulations. Hopefully the BIA liaisons to the reconstituted Wyam Board will also lead to the agency being more conscious of conditions at Celilo. In recent meetings, the BIA has exhibited a strong desire to be more actively involved with Village affairs. Having advisors to the Wyam Board presents the perfect opportunity.

#### **5.4 Permits**

The original residents signed Assignment and Occupancy Permits authorizing they and their family to live in and use permanent housing units at Celilo, subject to a number of conditions. Houses were to be used for residence purposes only, by the assignee and his or her family. No non-Indians were permitted to live in the houses. The buildings had to be kept in good repair, and in an orderly, clean and healthful condition. Any additions had to be approved by the government, in writing. When the original occupant died, his or her family could continue residing in the building.

The occupancy permits also provide for building reassignment in the case of abandonment, or for continued violation of permit conditions following a written noncompliance notice. As stated earlier, the BIA has been loath to enforce these conditions, preferring instead to pursue a strategy of either ignoring the poor conditions at the Village, or occasionally releasing moneys for repair and maintenance that are the responsibility of the residents.

##### 5.4.1 Current Status

The BIA in coordination with the Tribes is currently researching the status of all the original permits as well as that of all the current occupants, to determine who has a legal right to reside in the buildings at Celilo.

##### 5.4.2 Requirements for Redevelopment

The redevelopment process affords a number of opportunities to improve the physical condition of Celilo Village, as well as to insure that the condition of the rebuilt buildings is maintained. Perhaps the best method for insuring the maintenance of the private buildings in the Village is to include maintenance conditions in the new residency permits that will be created during redevelopment. Another option might be to adopt the package of rules and standards that Indian Housing Authorities use dealing with collection of rent and eviction notices. Housing and Urban Development CFRs may also be useful.

The BIA will have primary responsibility for reissuing occupancy permits, and then enforcing the conditions placed in them.

## **5.5 Enforcement**

Since its construction in the 40's, Celilo has had difficulties with law and regulation enforcement. This applies to the existence of crime in the Village, as well as it does to the frequent avoidance of building and housing regulations. These factors have contributed greatly to Celilo's current unsightliness and poor state of repair. The lawlessness that results in crime and building and facilities deterioration has been exacerbated by a host of other factors, from lack of economic opportunity to Federal abandonment.

Still, the need for enforcement is essential to insure that the redevelopment of the Village does not prove to be a mere cosmetic improvement. Cooperation and overlap of jurisdiction is necessary and must be acknowledged by the variety of Federal, state, local, and Tribal actors that have jurisdiction at the Village. It is equally important that the residents acknowledge the jurisdiction of these groups, and allow them to exercise that jurisdiction at the Village. The Wyam Board and the Tribes can devise numerous needed and positive regulations and ordinances for review by the BIA, but without enforcement and cooperation from the residents they will have little if any power to change Celilo. The residents themselves must take a greater role in maintaining the condition of the Village in general and of their specific residences. The BIA and other Federal, state, local, and Tribal actors must actively enforce regulations tied to the residency permits. Funding for enforcement and security measures must be available at Celilo. Other Federal agencies may need to be involved, as well as state or local law enforcement officers and Tribal officers, and the Federal judicial system must be more willing to prosecute misdemeanors. Another issue revolves around the possible bifurcation of regulations regarding the housing units and the common areas that will be accessible to the Treaty Tribes.

### 5.5.1 Current Status

Whatever the legal structure for enforcement and security, the reality is that little is being done in Celilo Village on either count. The houses and infrastructure have been deteriorating for years, from a state that was already considered poor in the late nineteen sixties. There has been insufficient effort to arrest this process on the part of both the Village residents and the BIA. Crime and vandalism occur frequently at Celilo, apparently perpetrated to a great extent by non-residents. There is uncertainty regarding who should provide services. Particularly chilling was a remark made by one of the residents at a 13 August, 2001 meeting with the Corps that she had witnessed her daughter's car being stolen, but "didn't know who to call." In order to insure a safer Village with better living conditions, it is essential that responsibilities for enforcement and security be clearly delineated. The BIA should work closely with the residents and the Tribes through the structure of the Wyam Board to clarify enforcement and security responsibilities and providers at the earliest possible date.

### 5.5.2 Requirement for Redevelopment

It is suggested that all law-enforcement authority, responsibilities, and duties be established and clearly delineated concurrent with design and construction and prior to the completion of redevelopment. Input from all actors should be considered, and it may be advisable to include the State of Oregon and the Columbia River Intertribal Fisheries Commission (CRITFC) in enforcement discussions as well.

### 5.5.3 Federal Presence

The BIA does in some cases provide law enforcement on tribal lands, but it is unclear whether such provisions can or will be made for Celilo Village. More consultation between the BIA, the Tribes, and the residents is needed to determine what role the BIA and other Federal agencies will have in law enforcement at Celilo. Through the maintenance worker position, the BIA will also assume some of the responsibility for the condition of the Village, and will be able to allocate moneys from the trust fund to provide for security measures.

Obviously, the BIA will have significant responsibility for insuring that any regulations tied to the Celilo Village Redevelopment Plan are honored by the residents of the Village, and not regularly ignored as in the past. The BIA has the discretion to determine the severity of the penalties for failing to meet these conditions.

The BIA certainly appears ready to take a greater role in activities at the Village, and the agency's yeoman work on determining the legal status of the current residents is an indication of a new intent to hold the residents to the conditions of the occupancy permits.

### 5.5.4 Tribal Jurisdictional Issues

A method for law enforcement at Celilo Village that has not been explored in great depth to this point would be expanding the law enforcement authorities of CRITFC. While CRITFC's duties are primarily guided by fishing issues on the Columbia River and at Tribal fishing sites, there exists a credible rationale for including law enforcement at Celilo Village within these duties. Again, consultation between the BIA, residents, and the Tribes, with the possible inclusion of CRITFC and the state might prove fruitful.

### 5.5.5 Contracts With State or Local Jurisdictions

According to Sec. 4, Subpart A of P.L. 280, which still applies to Celilo Village, the State of Oregon has exclusive jurisdiction over crimes and offenses committed by or against Indians to the same extent that the State has jurisdiction elsewhere in the State. It might be advisable to assign a particular law enforcement unit the duty to patrol the Village and its surroundings at regular intervals so that there is a visible and approachable law enforcement contact for the residents. Contracts could be entered into with the State, or with a local police department such as that present in The Dalles to provide this service.

### 5.5.6 Roles of Other Parties

A pride in the condition of the Village must somehow be instilled so that the residents become more concerned with the condition of the common areas and buildings and their

own residences, and pursue a program of self-enforcement regarding regulations. The redevelopment process will hopefully lead to improve civic pride, and be exhibited by better Village upkeep. The BIA will provide maintenance work for these structures, but the job will be significantly easier if there is buy-in by the residents.

The Tribes will also be involved with the upkeep of the common areas and structures, as they use them during their visits to the Village, and have an interest in maintaining their condition. The residents are concerned regarding the activities of “outsiders,” and must be provided with readily available law enforcement resources able to respond to disruptive or criminal activities of these offenders within the Village. Additionally, the Tribes can engage in self-policing of their own members who temporarily reside at Celilo during the fishing seasons. With the twice-annual influx of individuals, there is bound to be more strain on the facilities and grounds at Celilo, but Tribal influence could have a strong hand in minimizing this strain.

Finally, the Wyam Board will advise all the parties involved in enforcement of the perceived needs of the Village, and streamline the way in which agents of enforcement regulate activities in Celilo.

## **6. THE TRANSITION TO SELF GOVERNANCE**

### **6.1 Objectives**

Ideally, Celilo Village would become a self-governing unit upon completion of the redevelopment plan. Unfortunately, it is impossible to attain this ideal in a short time frame. Because of the fragmentation of authority and interests detailed in this appendix, it will be a difficult task to approach self-governance at Celilo. There are few economic opportunities beyond Treaty Fishing for the residents, ensuring a paucity of monetary resources for supporting a complete self-governing body. Certain outside resources are available however. O & M funds will be available through the BIA. The Tribes must continue to contribute as well.

The Corps of Engineers needs to construct a safe, healthy, and sound Celilo Village, including necessary buildings and water and sewer systems. BIA needs to implement their trust responsibility and authority to the full extent. The Tribes need to put aside their differences, as well as their differences with the Residents and the BIA. The residents must embrace change rather than focusing on criticizing the past. In time, Celilo may become a vital community, a cultural and spiritual center, a meeting place for diverse groups, as well as the present and the past.

After redevelopment, the Wyam Board will continue to grow and develop experience and expertise in dealing with the issues facing Celilo Village. As the Village moves towards self-governance, the abilities and authority of the Wyam Board will continue to increase, and the decision-making powers of the Tribes in the Village may metamorphize from absolute final authority to a more advisory bent.

## **6.2 Methods And Tools For Self-Governance**

### 6.2.1 Education & Training

To have effective governance at Celilo, it is necessary to develop and nurture the leadership skills and abilities of the Wyam Board members. The Treaty Tribes have engaged in self-governance for a significant period of time, and their appointed representatives on the Wyam Board will likely bring considerable abilities and expertise to their positions. The BIA's designated advisors would have similar talents. The two Village residents elected to the Wyam Board should be provided with opportunities to develop these skills and expertise if they do not already possess them. All efforts should be made to take advantage of available resources in order to sharpen the skills of all those serving on the Wyam Board, and to improve the level of training of Village residents in general. This will result in more local leadership and responsibility for redevelopment, maintenance, operation, and decision-making affecting the health, welfare and community identity of the Village and its residents.

This education can be provided by several readily available sources. As stated, the Tribes have considerable experience with governance, and the lessons derived from this experience should be passed on to the residents of Celilo. This can be accomplished either through informal discussion with resident Wyam Board members, or through formalized training for Board members and Village residents.

Another option for training can be the utilization of programs available through local educational institutions. The Hatfield School of Government at Portland State University has recently created a Tribal Governance program that regularly schedules classes on such diverse topics as strategic planning, program evaluation and management, and grantwriting. The school has scholarship monies available that could defray the cost of education opportunities sought by the board and/or the residents. Additional funding could be available through state and federal programs focusing on tribal welfare and education.

### 6.2.2 Accessing Service Programs

The Wyam Board and the BIA should also network with other groups that could aid in improving the opportunities and benefits available to the residents, including partnerships with local businesses and associations with nonprofit organizations. An existing Celilo nonprofit organization provides residents with bottled water, and may be a useful springboard for providing other services. The BIA should make all efforts to coordinate with other agencies and entities so that it can best serve its trust responsibility regarding Celilo Village.

### 6.2.3 Authorization or Legislative Changes Required

Formal federal or state legislation is not needed to recreate the Wyam Board or to move toward self-governance at Celilo. What is needed for either step however is the concurrence of the Treaty Tribes involved with the Celilo Village Redevelopment Project. That concurrence is present, as evidenced by the steps already taken to resuscitate and re-create the Wyam Board. The Tribes have traditionally been opposed to

complete self-governance at Celilo, whether because of voting inequity among the Village population or to protect their individual Tribal interests in a location that has such spiritual, cultural, and historic value.

## **7. SUMMARY AND CONCLUSIONS**

Though the Tribes have asked the Corps to create a Governance Plan for Celilo Village, the reality is that the plan's success will ultimately be determined not by its design, but rather by the continued efforts of the other parties involved. After the initial planning phase, the Corps' role is limited to site rehabilitation and construction. When redevelopment is complete, the Corps is finished with the project. Actual implementation of any governance plan, from the re-creation of the Wyam Board, to an upgraded and continuous BIA presence at Celilo, is the responsibility of the Tribes and the BIA.

The important thing to note is that all sides seem to realize that this may well be the best opportunity to improve conditions at Celilo.

The Corps has the opportunity to meet its original commitment to provide a relocated Village as part of its Federal dam building responsibilities, and to rectify past errors regarding property reduction, inadequate building materials and construction, and lack of Treaty Fishing Access Sites.

The Tribes have the opportunity to see Celilo Village restored to some semblance of its past status as a cultural, economic, and spiritual gathering place.

The BIA has the opportunity to address Celilo's current lack of management and pattern of neglect, and point to a positive, highly visible, example of government-to-government cooperation.

The residents have the opportunity to realize advantages in housing, sanitation and health, and, perhaps, improved opportunities for the young to attend school and take their place in the world while still residing in a vital Indian community. There would be long-term benefits to the Indian residents, and the expense to the government would be less in the long run. An upgraded and more attractive Celilo Village would present improved opportunities for a successful economic and/or cultural enterprise of whatever sort the residents might choose to promote.

Through a collaborative effort, the Corps, the Tribes, the residents, and the BIA will be able to move beyond past differences and misunderstandings to create an environment promoting a positive future for Celilo Village.

**8. 23 June 1995 MOU between The Department of the Army and The Department of Interior**

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE DEPARTMENT OF INTERIOR

FOR THE

TRANSFER, OPERATION, MAINTENANCE, REPAIR, AND REHABILITATION OF  
THE COLUMBIA RIVER TREATY FISHING ACCESS SITES

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this 23rd day of June, 1995, by and between the U.S. DEPARTMENT OF THE ARMY, acting by and through the Acting Assistant Secretary of the Army (Civil Works), and the U.S. DEPARTMENT OF THE INTERIOR, acting by and through the Assistant Secretary of the Interior (Indian Affairs);

WITNESSETH, THAT:

WHEREAS, Public Law 100-581, Title IV, Columbia River Treaty Fishing Access Sites (102 Stat. 2944 (1988)) (the Fishing Sites Act) requires that certain designated Federal lands "be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities" for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation (the Tribes); and,

WHEREAS the Fishing Sites Act requires the Secretary of the Army to acquire and improve additional lands to accommodate "at least six sites . . . adjacent to the Bonneville Pool" and provides that the Army shall maintain the lands until they "are transferred to the Department of the Interior for the purpose of maintaining the sites"; and,

WHEREAS, the Department of the Army and the Department of the Interior (the parties) have agreed to seek legislation authorizing the Secretary of the Army to transfer funds to the Secretary of the Interior for Interior's use in operating and maintaining the sites after transfer; and,

WHEREAS, the parties recognize the Federal trust responsibility to Native Americans; and,

WHEREAS, nothing herein is intended to alter or affect any treaty right of any Native American Tribe or nation,

NOW THEREFORE, the parties agree as follows:

ARTICLE I - Definitions and General Provisions

a. The term "Project" shall mean lands identified in Section 401(a) of Public Law 100-581, which shall "be administered to provide access to usual and accustomed fishing areas and ancillary facilities" for the subject Tribes and additional lands acquired by the Army pursuant to Section 401(b)(1) of Public Law 101-581 plus such improvements to the lands as are described in Corps of Engineers design plans and/or construction documents jointly approved by the Army and DOI after consultation with the Tribes (See Appendix A).

b. The term "functional portion of the Project" shall mean one or more completed fishing access sites ready for beneficial occupancy as determined by the Corps of Engineers Contracting Officer to be suitable for tender to the U.S. Department of the Interior to operate and maintain in advance of completion of construction of the entire Project.

c. The term "DA" or "Army" shall mean the U.S. Department of the Army.

d. The term "COE" or "Corps" shall mean the U.S. Army Corps of Engineers, of the U.S. Department of the Army.

e. The term "DOI" or "Interior" shall mean the U.S. Department of the Interior.

f. The term "BIA" shall mean the U.S. Bureau of Indian Affairs, of the U.S. Department of the Interior.

g. The term "District Engineer" shall mean the U.S. Army Engineer for the Portland District or his or her designee.

ARTICLE II - Obligations of the Parties

a. The DA, acting by and through the COE, subject to and using funds appropriated by the Congress of the United States, shall expeditiously proceed with construction of the Project, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies and in accordance with any other agreements related thereto between the DA, DOI and/or the Tribes.

b. When the District Engineer determines that a functional portion of the Project is complete according to approved Army and DOI plans, the Army shall turn the completed portion over to the DOI, in accordance with the procedure set forth in Article III. DOI shall

accept the completed functional portion of the Project in accordance with Article III and after transfer, shall be solely responsible for operating, maintaining, repairing, and rehabilitating the Project or functional portion of the Project in accordance with Article IV hereof.

c. The DOI shall be responsible for the costs of O&M training, law enforcement, and for other maintenance needs of the fishing access sites. It is anticipated that the monetary value of the DOI contribution will exceed \$250,000 annually for the next eight years, beginning in Fiscal Year 1996.

#### ARTICLE III - Transfer of Administrative Jurisdiction

a. Documentation, transfer of administrative jurisdiction, and acceptance of the Project for operation, maintenance, rehabilitation, and repair by the DOI shall be accomplished in accordance with the following procedures:

1. After notification by the District Engineer of the completion of a functional portion of the Project, the DA shall sign and transmit a transfer letter (of the fishing access sites) to DOI.

2. Within sixty (60) days from receipt of the transfer letter from DA, the DOI shall evaluate the proposed transfer and, by letter to the COE, either acknowledge preliminary acceptance of the functional portion of the Project, or notify the COE that DOI believes the site(s) do not conform to the approved construction plans. The District Engineer shall, in good faith, consider DOI's assertion regarding nonconformity and shall expeditiously notify DOI, in writing, of whether he determines that the functional portion of the Project conforms or, alternatively, identify the measures that would make it conform. If the parties are unable to resolve this disagreement at the local level, the issue will be raised to the Director of Civil Works for the COE for resolution. The Director of Civil Works shall consult with the Assistant Secretary of Interior (Indian Affairs) or the Assistant Secretary's designee concerning the alleged nonconformity and shall promptly notify the DOI of the COE's final decision.

3. When DOI notifies the Corps of its preliminary acceptance or when the Director of Civil Works notifies DOI of his determination that the sites do, in fact, conform to the approved construction plans, the Portland District, COE shall prepare a Property Disposition Voucher (Engineering Form 3061) for physical transfer of administrative jurisdiction of land and improvements and send it to the Area Director of the BIA. The Area Director of the BIA shall sign the Property Disposition Voucher and within sixty (60) days from receipt of the form, shall return it to Portland District, COE to complete the transfer process. Lands and improvements constituting the fishing access sites will thereupon be under the administrative jurisdiction of the Secretary of the Interior, acting by and through the BIA.

4. The transfer process shall be conducted in accordance with COE Engineering Regulation 405-1-12, Chapter 11, paragraphs 11-100, 101 and 102, which is applicable to transfer of COE administered lands to other Federal agencies.

ARTICLE IV - Operation, Maintenance, Repair, and Rehabilitation

a. After the DA has transferred a functional portion of the Project to the DOI in accordance with the procedures described in Article III herein, the DOI shall operate, maintain, repair, and rehabilitate the completed functional portion of the Project in accordance with regulations prescribed by the Secretary of the Interior. In carrying out these responsibilities, DOI shall use its own funds and any funds provided to it from the DA for this purpose under Article VI of this Agreement.

b. The DOI shall establish use rules specifically applicable to the Tribes' future utilization of the Project after transfer of administrative jurisdiction to the DOI.

ARTICLE V - Project Operational Guidelines

After the Army transfers a functional portion of the Project to DOI, DOI shall operate and maintain the sites in a manner not inconsistent with the legislatively authorized purposes of the adjacent Bonneville and Dalles-John Day Corps Project facilities, and in accordance with Public Law 100-581.

ARTICLE VI - Funding Transfer

a. The parties agree that the Army will seek legislation necessary to authorize the Army to pay DOI capitalized O&M of the Project or any functional portion of the Project proposed for transfer to DOI. Capitalized O&M for the Project is currently estimated to be \$6,300,000.

b. Once Congress has authorized the Army to transfer funds to DOI and has provided such funding, the Army will transfer the funds as follows: Upon receipt of a signed ENG Form 3061 by the COE, the COE will, within 60 days, transfer to BIA such sum of money as has been allocated for capitalized O&M of that particular functional portion of the Project.

c. The parties acknowledge that funding and completion of the Project depend upon actions of Congress and other circumstances not within the control of the parties, and no claim shall result from delays in funding and completion of the Project or changes in the Project or funding caused by Congress, the federal courts, or other circumstances beyond the control of the parties.

ARTICLE VII - Contingency

No transfer of any functional portion of the Project will occur until the necessary authorities and appropriations are obtained or the parties agree on a substitute Article VI. If transfer still does not occur, the Army and DOI have no obligations under this MOU, except those discussed in Article III; however, the parties recognize their continuing statutory obligations under Public Law 100-581.

ARTICLE VIII - Notices

a. Notices and communications regarding implementation of this MOU shall be sent to the following personnel:

1. If to the COE:

Timothy L. Wood, Colonel, CE  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 2946  
Portland, Oregon 97208-2946

2. If to the BIA:

Mr. Stanley Speaks  
Area Director-Portland Area Office  
U.S. Department of Interior  
Bureau of Indian Affairs  
Holladay Federal Building  
911 N.E. 11th Avenue  
Portland, Oregon 97232

b. A party may change the address to which such communications are to be directed by giving 30 days written notice to the other party.

ARTICLE IX - Miscellaneous Provisions

Either party may seek to modify this MOU upon 30 days written notice to the other party. The MOU will not be modified unless both parties consent in writing.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first written above.

DEPARTMENT OF THE ARMY

BY: 

John H. Zirschky  
Acting Assistant Secretary  
(Civil Works)

DEPARTMENT OF THE INTERIOR

BY: 

Ada E. Deer  
Assistant Secretary  
(Indian Affairs)

## APPENDIX A

### ESTIMATED FISHING ACCESS SITES AS OF JUNE 21, 1995

Alder Creek Treaty Fishing Access Site, Washington  
Alderdale Treaty Fishing Access Site, Washington  
Avery Treaty Fishing Access Site, Washington  
Bingen Boat Channel Treaty Fishing Access Site, Washington  
Bonneville Area Office Treaty Fishing Access Site, Washington  
Cascade Locks In-Lieu Fishing Site, Oregon  
Celilo Treaty Fishing Access Site, Oregon  
Cooks In-lieu Fishing Site, Oregon  
Crow Butte Treaty Fishing Access, Washington  
Dallesport Treaty Fishing Access Site, Washington  
Faler Road Treaty Fishing Access Site, Oregon  
Goodnoe Treaty Fishing Access Site, Washington  
LePage Treaty Fishing Access Site, Oregon  
Lone Pine In-lieu Fishing Site, Oregon  
Lyle Treaty Fishing Access Site, Washington  
Maryhill Treaty Fishing Access Site, Washington  
Moonay Treaty Fishing Access Site, Washington  
North Shore Treaty Fishing Access Site, Washington  
Pasture Point Treaty Fishing Access Site, Washington  
Pine Creek Treaty Fishing Access Site, Washington  
Preachers Eddy Treaty Fishing Access Site, Oregon  
Rock Creek Treaty Fishing Access Site, Washington  
Roosevelt Treaty Fishing Access Site, Washington  
Rufus Treaty Fishing Access Site, Oregon  
Stanley Rock Treaty Fishing Access Site, Oregon  
Sundale Treaty Fishing Access Site, Washington

Three Mile Canyon Treaty Fishing Access Site, Oregon

Underwood In-lieu Fishing Site, Washington

White Salmon Treaty Fishing Access Site, Washington

Wind River In-lieu Fishing Site, Washington

Wind River Treaty Fishing Access Site, Washington

Figure D-1: Planning Stage Roles and Responsibilities

<u>ROLES AND RESPONSIBILITIES MATRIX: CELILO VILLAGE, PLANNING STAGE</u>						
Party Responsibility						
<u>Project Activity</u>	<u>(COE)</u>	<u>(BIA)</u>	<u>Wyam</u>	<u>Reside nts</u>	<u>Tribes</u>	<u>Other</u>
Upkeep of Residences*	N	S	N/A	P/L	N	
Upkeep of Common Buildings #	N	P/L	N/A	S	A	
Upkeep of Common Areas Operations/Maintenance #	N	P/L	N/A	S	A	
Sewer Facilities	N	P/L	N/A	N	N	
Water Systems	N	P/L	N/A	N	N	
Roads	N	P/L	N/A	N	N	
Planning and Development	P/L	P	N/A	P	P	
Code of Regulations	N/A	N/A	N/A	N/A	N/A	
Security	N	N	N	S	N	State
Re-creation of the Wyam Board	S	P	N/A	P	P	
Advisory Committees	N/A	N/A	N/A	N/A	N/A	
Site Cleanup	N	P/L	N/A	S	N	
Site Preparation and Relocations	P/L	P	N/A	A	A	
Construction	N/A	N/A	N/A	N/A	N/A	
KEY: P – Primary P/L - Primary/Lead S – Support A – Advisory N – No Role						
* - The definition of “upkeep” and individual roles are provided in the residency permits						
# - The maintenance schedules are defined in the Operation Plan.						

Figure D-2: Implementation Stage Roles and Responsibilities

<u>ROLES AND RESPONSIBILITIES MATRIX: CELILO VILLAGE, IMPLEMENTATION STAGE</u>						
Party Responsibility						
<u>Project Activity</u>	<u>(COE)</u>	<u>(BIA)</u>	<u>Wyam</u>	<u>Reside nts</u>	<u>Tribes</u>	<u>Other</u>
Upkeep of Residences*	N	S	N	P/L	N	
Upkeep of Common Buildings #	N	P/L	A	S	A	
Upkeep of Common Areas#	N	P/L	A	S	A	
Operations/Maintenance #						
Sewer Facilities	N	P/L	A	N	N	
Water Systems	N	P/L	A	N	N	
Roads	N	P/L	A	N	N	
Planning and Development	A	P	P/L	A	P	
Code of Regulations	N	N	P/L	N	P	
Security	N	N	A	S	N	State
Re-creation of the Wyam Board	N/A	N/A	N/A	N/A	N/A	
Advisory Committees	N	A	P/L	P	A	
Site Cleanup	N	P/L	N/A	S	N	
Site Preparation and Relocations	P/L	P	A	A	A	
Construction	P/L	A	A	A	A	
KEY: P – Primary    P/L - Primary/Lead    S – Support    A – Advisory    N – No Role						
* - The definition of “upkeep” and individual roles are provided in the residency permits						
# - The maintenance schedules are defined in the Operation Plan.						

Figure D-3: Project Stage Roles and Responsibilities

<u>ROLES AND RESPONSIBILITIES MATRIX: CELILO VILLAGE, POST PROJECT STAGE</u>						
Party Responsibility						
<u>Project Activity</u>	<u>(COE)</u>	<u>(BIA)</u>	<u>Wyam</u>	<u>Residents</u>	<u>Tribes</u>	<u>Other</u>
Upkeep of Residences*	N	S	N	P/L	N	
Upkeep of Common Buildings #	N	P/L	A	S	A	
Upkeep of Common Areas#	N	P/L	A	S	A	
Operations/Maintenance #						
Sewer Facilities	N	P/L	A	N	N	
Water Systems	N	P/L	A	N	N	
Roads	N	P/L	A	N	N	
Planning and Development	N	A	P/L	A	P	
Code of Regulations	N	N	P/L	N	P	
Security	N	N	A	S	N	State
Re-creation of the Wyam Board	N/A	N/A	N/A	N/A	N/A	
Advisory Committees	N	A	P/L	P	A	
Site Cleanup	N/A	N/A	N/A	N/A	N/A	
Site Prep and Relocations	N/A	N/A	N/A	N/A	N/A	
Construction	N/A	N/A	N/A	N/A	N/A	
KEY: P – Primary    P/L - Primary/Lead    S – Support    A – Advisory    N – No Role						
* - The definition of “upkeep” and individual roles are provided in the residency permits						
# - The maintenance schedules are defined in the Operation Plan.						