

1. DESCRIPTION OF AUTHORIZED PROJECT

The CRTFAS Project, authorized by P.L. 100-581, as amended (see discussion beginning on Page 10), consists of acquisition, improvement, rehabilitation and transfer of thirty-one sites to the DOI-BIA. These sites are located in Oregon and Washington on the Bonneville, The Dalles and John Day pools. The project provides fishing access to the Columbia River for the four Treaty Tribes (Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation, Confederated Tribes and Bands of the Yakama Indian Nation). Improvements include, but are not limited to camping and park facilities to the same standards as those provided by the National Park Service; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing and ancillary fishing facilities; electrical and sewage facilities; and landscaping.

At the time this report was released, 28 of the 31 CRTFA sites have been completed. One site has been acquired on the Bonneville Pool, and design will be initiated in FY 04. Efforts to acquire the two final additional sites on the Bonneville Pool are underway, with the completion of these sites to be determined.

The intent of this PAC report is to recommend including the Celilo Village as part of the CRTFAS project. This report specifically addresses the infrastructure and residential improvement and operations and maintenance necessary to improve the Village.

2. JUSTIFICATION FOR CHANGE

This section presents the justification for adding Celilo Village to the CRTFAS project, the justification for Corps involvement, and the authorities for the proposed actions. A detailed presentation of the legislative history is provided in Appendix E.

2.1 Problems and Needs

The CRTFAS authorization recognized the need to provide adequate fishing access and associated facilities for the Treaty Tribes as mitigation for the Columbia River dams.

The Celilo Falls and associated area villages have long served as the center of Native American fishing in the Columbia River Basin. The ancient Village in the Celilo area was a year-round home for many Native Americans, a seasonal home during the salmon runs for others, and a trade center, sacred fishing ground, and gathering place for the Northwest Tribes. Several Federal projects severely impacted traditional subsistence fishing and trade, including construction of the Dalles-Celilo Canal and the Bonneville Dam, and climaxing with the elimination of Celilo Falls with the completion and filling of the Dalles Dam and reservoir in 1957. The Federal government built the existing Celilo Village as mitigation for these actions. The current state of the Village is deplorable and living conditions are such that health and safety are of major concern to the Village residents; Treaty Tribes; and the Federal, state and local governments.

2.2 Justification for Corps Involvement

The Corps contributed to the current problems at Celilo Village through Federal Columbia River dam development that resulted in incomplete relocation activities in 1948 and 1955. The Corps provided inadequate housing and infrastructure. These problems were exacerbated by the fact that no specific long-term governance structure or O&M funding were developed.

Through the creation of the CRTFAS project in Public Law 100-581, Congress directed and gave the Corps the authority to develop Treaty Fishing access and to fix much of the unfulfilled mitigation for damaging Tribal Treaty Fishing. Celilo Village has long served as the center of Treaty Fishing on the Columbia River. The Treaty Tribes and the BIA have requested the Corps undertake improvements at Celilo Village under the CRTFAS project. Appendix C (Public Involvement) provides statements of support for Corps of Engineers implementation provided by each of the four Treaty Tribes and the BIA. Before the Corps can undertake improvements at Celilo Village however, the agency must first receive authorization. Both the Corps and the Tribes are thus recommending that the Administration and Congress consider authorizing the Celilo Village Redevelopment project.

2.3 Authorization

2.3.1 Introduction.

The authorization for the ongoing CRTFAS Project is Section 401, Public Law 100-581, Columbia River Treaty Fishing Access Sites, signed into law on November 1, 1988. The House Bill number is HR2677. PL 100-581 identified 23 specific fishing access sites and directed the Secretary of the Army to identify, purchase and develop additional sites on the Bonneville Pool, as well as to make improvements to five existing in-lieu fishing sites. Congress has amended the original authorization three times to accomplish the following: transfer of O&M funds to BIA (subsection 401 (g)), adjustment of site boundaries (subsection 401 (a)(2)), and further appropriation of \$2 million dollars for acquiring additional lands in the Bonneville Pool (amended subsection 401 (d)).

P.L. 100-581, as amended, authorized the Corps to satisfy previous legal commitments to replace “usual and accustomed” fishing sites inundated by Federal Columbia River dam construction. Under the Treaty of 1855, Celilo Village is a well-established usual and accustomed site. The Corps’ construction of the Bonneville and The Dalles Dam projects directly impacted the Village. In conjunction with The Dalles project, the Flood Control Act of 1950 specifically authorized the Corps to construct “a new Village satisfactory to the Indians and Bureau of Indian Affairs”. Based on review of existing government records, it is clear that satisfactory compensation for the taking of the Tribal lands and impacts on fishing access was never fully provided, in terms of numbers of residences provided or the quality of their construction. P.L. 100-581, as amended, provides the Corps sufficient discretion to study and recommend congressional authorization to provide additional Treaty Fishing access and to meet Corps compensation responsibilities for previous Federal project impacts on Celilo Village. This action would ultimately

resolve a major legal gap in Corps compensation to the Tribes for the Dalles Dam construction.

P.L. 100-581, read in concert with the Columbia River basin authority under the Flood Control Act of 1950, provides sufficient reasons to recommend project changes including improvements at Celilo Village. The recommendation to improve the housing that was provided as compensation for The Dalles Dam impacts is also based on the fact that the Flood Control Act of 1950 was never fully satisfied to any reasonable standard.

In the spirit of the Indian Self-determination Act Amendments of 1994 (25 USC 450 ff, original act P.L. 93-638, Jan 4, 1975) the impetus for improvements to Celilo Village came from the Tribal governments. In September 1998, the CTUIR Planning Office released the “Celilo Village Redevelopment Study” outlining some alternative plans for Village improvement. The CTUIR study focused discussions and directed efforts to final plan development. The recommendations made in this PAC are to a very large extent consistent with the alternatives in the Umatilla study.

Each of the Treaty Tribes provided a letter or has signed a Tribal government resolution providing support for developing an improvement plan for Celilo Village, as have the BIA, Wasco County, the state of Oregon, and the Oregon congressional delegation (see Appendix C). The Treaty Tribes, in addition to providing letters supporting the development of an improvement plan for Celilo Village, have joined the Corps in actively pursuing authorization permitting the Corps to begin, engage in, and complete construction.

The following presents the legislative authority and history in several key areas that impact the project.

2.3.2 Project Authorization Statute.

The authorization for the CRTFAS project is Section 401, Public Law 100-581, November 1, 1988, 102 Stat. 2944. The text of the law, with amendments *italicized*, is as follows:

“Sec. 401(a) 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 Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakima Indian Nation.”

Sec. 512 of WRDA 1996, PL 104-304, Oct. 12, 1996, 110 Stat. 3762 replaced 401(a) as follows:

“ *Sec. 401:*

EXISTING FEDERAL LANDS –

IN GENERAL -- All Federal lands that are included within the 20 recommended treaty fishing access sites set forth in the publication of the Corps of Engineers entitled ‘Columbia River Treaty Fishing Access Sites Post Authorization Change Report, dated April 1995’; and

(2) BOUNDARY ADJUSTMENTS – The Secretary of the Army, in consultation with affected tribes, may make such minor boundary adjustments to the lands referred to in paragraph (1) as the Secretary determines are necessary to carry out this title.”

(b) Notwithstanding any other provision of law, the Secretary of the Army shall
(1) identify and acquire additional lands adjacent to the Bonneville Pool from willing sellers until such time that at least six sites have been acquired adjacent to the Bonneville Pool for the purpose of providing access and ancillary fishing facilities for the members of the Indian tribes referred to subsection (a); and

(2) improve the lands referred to in subsections (a) and paragraph (1) of subsection (b) and maintain such lands until such time as the lands are transferred to the Department of the Interior for the purpose of maintaining the sites. Such improvements shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park system; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping; and

(3) make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site at Cascade locks, Oregon.

(c) The Secretary of the Army shall treat the costs of implementation of paragraphs (2) and (3) of subsection (b) as project costs of the Army Corps of Engineers Columbia River projects, and such costs shall be allocated in accordance with existing principles of allocating Columbia River project costs. Funds heretofore and hereafter appropriated to the Secretary of the Army for maintenance and development of Columbia River projects may be used to defray the costs of accomplishing the purposes of this Act.

(d) There is hereby authorized to be appropriated a sum not to exceed \$2,000,000 to implement the purposes of subsection (b)(1).

WRDA 2000, PL 106-541, Dec. 11, 2000, amended the dollar amount in 401(d) to \$4,000,000.

(e) The Secretary of the Interior shall be vested with the right of first refusal, after consultation with the Indian entities in subsection (a), to accept any lands adjacent to the Columbia River within the Bonneville, Dalles, and John Day Pools now owned or subsequently acquired by any federal agency and declared to be excess lands or otherwise offered for sale or lease by such federal agency, and upon such acceptance, such federal

agency shall transfer such lands to the Secretary for the purpose of Indian treaty fishing: Provided however, that total acreage of sites provided under this section adjacent to Bonneville Pool of the Columbia River not exceed three hundred sixty acres.

(f) Nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive order pertaining to any Indian tribe, band, or community.”

Sec. 15, PL 104-109, Feb. 12, 1996, 102 Stat. 2944-2945, added subsection 401(g) to PL100-581:

(g) *“The Secretary of the Army is authorized to transfer funds to the Department of the Interior to be used for purposes of the continued operation and maintenance of sites improved or developed under this section.”*

Section 401(b)(3) included “existing sites” in the CRTFAS project site improvements. Congress directed specific improvements at two of the five in-lieu sites, but otherwise only broadly directed improvements at “existing sites”. During the initial CRTFAS Congressional hearings, the Tribes only sought improvements at the five run-down in-lieu sites, four of which are near Bonneville Dam, and the remaining fifth site, Lone Pine, downstream of The Dalles Dam. As noted herein, the Tribes now seek improvements at the “new” Celilo Village.

This site was authorized and constructed under the 1948 Interior Appropriations Act as an added area to the historical Celilo Village site. It was authorized as part of the series of congressional adjustments to Treaty Fishing sites. This was in response to Tribal needs for new fishing sites replacing those already flooded out by Bonneville Dam or about to be flooded out by The Dalles Dam, which was originally proposed to Congress in 1930 Corps study reports and finally authorized in the 1950 Flood Control Act.

The reasons for including Celilo Village in the CRTFAS project authorization include the following: (1) Celilo Village was created in 1948 for support of Treaty Fishing rights, just as the in lieu sites were created in 1945. (2) Celilo Village shares the same Treaty fishermen and uses, and substantially the same Treaty Fishing purposes as the in-lieu sites. (3) Celilo Village was created by Congress to deal with the same harm to historical fishing sites resulting from Corps dam flooding as the in-lieu sites. (4) In 1955, Congress authorized the Corps to make further major improvements at Celilo Village to accommodate the increase in Tribal fishing residents displaced by the construction of The Dalles Dam. (5) Including Celilo Village as part of the project is consistent with and furthers the remedial purposes of the CRTFAS Act, especially in light of the 1950 Flood Control Act authorization providing a replacement Village for the historical Celilo Village flooded by The Dalles Dam. (6) Not including Celilo Village in the CRTFAS project frustrates and obstructs the overall remedial purposes of the CRTFAS Act. An intent of the CRTFAS Act as stated by Congress was to remedy all of the old, unfulfilled Corps promises made in connection with the construction and operation of the

Bonneville, The Dalles, and John Day dams. Celilo Village is as much a part of the compensation program for the three dams as the in-lieu sites and the new CRTFA sites. The fact that the Corps provided substandard housing for the original 1948 Village and an insufficient capacity under the 1955 appropriations further ties the Corps to the problems at Celilo Village. The long Corps involvement with Celilo Village (1894 portage railway intrusions, 1902-1915 lock construction takings, 1929 land return, 1948 housing provisions, 1950 Village replacement authorization, 1955 improvements) sets this site peculiarly apart as a Corps responsibility; unlike other fishing site locations.

This unique legal history also makes Celilo Village the only “existing site” with congressionally mandated Tribal residential housing – furnished both by the DOI and the Corps. Thus the lengthy and unique legislative history justifies and authorizes unique treatment of Celilo Village under the CRTFAS program.

2.3.3 Infrastructure Improvements.

The legislation authorizes the Corps to build and improve the type of infrastructure measures proposed for Celilo Village. Improvements designated in PL 105-581 “shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park system; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping.” All the land-based measures discussed in the Act are recommended for Celilo Village, but none of the water-based infrastructure is included. Once Celilo Village is included in the CRTFAS project, the numerous infrastructure needs of the Village are authorized and can be met under the project.

2.3.4 Residential Improvements.

The recommendation in this PAC is to replace the current 14 substandard residential units provided by the Corps in 1948 and 1955 with manufactured homes of sufficient size to accommodate the portion of the current population having a legal right to reside in Celilo Village. The existing residential homes contain health hazards such as asbestos and lead paint, along with substandard plumbing and electrical facilities. (See Figures 4 and 5). The replacement homes will eliminate the hazards and meet current building standards, resulting in a safer and healthier Village.

Generally, with the exception of housing, all of the improvements at Celilo Village are similar to improvements discussed by Morgan Rees [staff ASA (CW)] when testifying to Congress in support of the original CRTFAS statute, and to improvements constructed at other CRTFA sites. Thus there is no authority issue involved with the non-housing improvements, provided the Corps receives congressional authorization to add Celilo Village to the CRTFAS project.

The housing improvements proposed at Celilo Village are supported by a variety of authorizations discussed in Appendix E (Legal).

The 1947 and 1950 authorizations discussed in Appendix E of this PAC authorized Celilo Village and the Corps to provide a replacement Village. The 1955 Corps authorization specifically authorized the Corps to provide much of the actual housing that needs replacement.

The Corps itself has an unmet authorization from the 1950 Flood Control Act to provide a replacement Indian Village for the Celilo Falls residential areas inundated by The Dalles Dam. Moreover when Morgan Rees (ASA (CW)) and Brigadier General Kelly (HQUSACE) testified to Congress on the CRTFAS project, they were not aware of the 1929, 1947, 1950, and 1955 authorizations at Celilo Village. These old authorizations and unfinished work had been forgotten until after CRTFAS was wholly authorized in 1988 and work began on planning and creating/restoring individual sites.

The Uniform Relocation Assistance Act requires some residential benefits simply to carry out the other required construction activities at the site. These requirements are still being reviewed in concert with BIA, to determine who are the eligible recipients of relocation assistance.

These authorities provide ample justification to recommend that the agency carry out the proposed residential measures, provided the overall Celilo Village Redevelopment receives authorization

2.3.5 BIA Operation and Maintenance Responsibility.

Upon completion of the Celilo Village improvements, the BIA will assume O&M responsibility for Village infrastructure and common areas. This section summarizes the BIA's maintenance authority, and Appendix D provides the draft Operations, Maintenance and Governance Plan.

The CRTFAS Act as amended and the legislative history of sections 401(b)(2) and 401(e) direct site transfer upon completed construction to BIA for O&M.

Section 401(g) (added in 1996) authorizes the transfer of Corps funding to BIA for use in O&M payment. The legislative history of Section 401(b)(2), states:

“This section also provides that the Federal agency currently owning the lands may negotiate an agreement concerning operation and maintenance costs with the Department of the Interior to transfer the sites, after improvements have been made, to the Department of Interior for maintenance and Management purposes.” (Senate Report 100-577 at p. 31)

With regard to Section 401(e), after the Corps has improved such sites, the sites are to be

“transferred to and maintained by the Department of the Interior.”

In light of these statutes and legislative history, there is no question that the Corps can make the improvements once Celilo Village is added to the CRTFAS list and that BIA can then operate and maintain these improvements.

This transfer will be accomplished by adding Celilo Village to the existing 23 June 1995 Memorandum of Understanding between The Department of the Army and Department of Interior for the Transfer, Operation, Maintenance, Repair, and Rehabilitation of the Columbia River Treaty Fishing Access Sites. This MOU is included in Appendix D. The BIA has the further to delegate their responsibility to Tribal Governments under the Indian Self Determination Act.

FIGURE 4. Typical Residential Structures



FIGURE 5. Interior Conditions of Inhabited Residence



3. FUNDING SINCE AUTHORIZATION

The CRTFAS project, from its authorization through fiscal year 1994, was funded with General Investigation appropriations. For fiscal years 1994 to date, funding has primarily been from Construction General with some adjustments to General Investigation. Funds have been allocated for Treaty Site design and construction and have also been transferred in lump sums to BIA for site O&M. This has been done under the 23 June 1995 MOU, and authorized by PL 104-46, 109 Stat. 402 (Title 1), dated 13 November 1995. The following table shows the breakdown of funding by allotment for each fiscal year.

Figure 6. CRTFAS Allotment History
Record of Civil Allotments – Portland District
Columbia River Treaty Fishing Access Sites

Fiscal Year	Program	Allotment Amount (\$1000) 1/	Total to Date (\$1000) 1/
1991	GI (PED)	368.0	368.0
1992	GI (PED)	695.0	1063.0
1993	GI (PED)	294.0	1,357.0
1994	GI (PED)	778.0	2,135.0
1995	GI (PED)	(50.0)	2,085.0
1996	GI (PED)	-	2,085.0
1997	GI (PED)	(3.0)	2,082.0
1994	CG	3,360.0	5,442.0
1995	CG	(593.0)	4,849.0
1996	CG	2,970.0	7,819.0
1997	CG	2,729.0	10,548.0
1998	CG	7,460.1	18,008.1
1999	CG	7,774.4	25,782.5
2000	CG	6,717.0	32,499.5
2001	CG	7,775.5	40,275.0
2002	CG	2,114.8	42,389.8
2003	CG	5,829.0	48,218.8
Totals			

1/ Does not include payments to BIA for O&M of CRTFAS. Amount transferred to BIA to date is \$7 million.

4. CHANGES IN SCOPE OF AUTHORIZED PROJECT

The Planning Guidance Notebook, ER 1105-2-100 states that changes in scope are “increases or decreases in the outputs for the authorized purposes of a project. Outputs are the project’s physical effects which (usually) have associated benefits (hence, project purpose).” The authorizing document, Phase II Evaluation Report, April 1995, defines outputs as “river access” and “land-based activities”. River access is defined as the movement of people, equipment and boats from land to water. Land-based fishing activities are defined as cultural, religious, or commercial activities, such as cleaning, drying, smoking, or other fish processing activities; and trading and selling of fish. Also included are camping, and support facilities for preparation, maintenance and repair of nets and other fishing gear. If camping is provided, more land-based facilities are included, such as potable water and restroom and shower buildings.

Celilo Village supports all types of land-based activities and outputs identified in the planning report, including residential use. The anticipated improvements would support all associated activities except river access. If, for purposes of analysis, the number of sites is used to index land-based outputs; the authorized project includes 31 sites. Expanding outputs at one site would not constitute a 20 percent increase. If acreage is used to index land-based outputs; the authorized project includes at least 400 acres. Addition of 34 acres at Celilo does not constitute a 20 percent increase. Even if the output analysis were taken further than it was taken for formulation purposes in the planning report, to an analysis of fully developed upland sites with similar infrastructure (i.e. water, power, and sewer systems beyond vault toilets), addition of Celilo Village would not constitute a 20 percent increase. Twelve such sites were included in the current approved plan.

Based on even the most critical analysis, it is clear that additional improvements at levels anticipated at Celilo fall well within the discretionary 20 percent increase in land-based outputs normally delegated to the Division Engineer.

5. CHANGES IN PROJECT PURPOSE

There is no change to the existing CRTFAS project purpose of providing replacement lands and facilities for usual and accustomed Treaty Fishing sites destroyed by the construction and operation of the Bonneville, The Dalles, and the John Day Dams, that have not been replaced previously. The authorized purpose of the CRTFAS project is mitigation for impacts of Federal water project development on the Treaty Fishing rights of four Northwest Indian Tribes. All planning reports, budget documents, and previously approved Post-Authorization Change reports have consistently identified mitigation as the project purpose.

Although the CRTFAS authorization relies heavily on the impact of Bonneville Dam and the unmet commitments outlined in the 1939 agreement for its impetus, it also makes several references to the cumulative impacts of Federal water project development on the Treaty Fishery. Celilo Village improvements would be consistent with that purpose even

if it were assumed that the project purpose was only to mitigate for Bonneville impacts. The authorizing legislation incorporates improvements to 19 sites on The Dalles and John Day pools intended to mitigate for Bonneville impacts. Improvements at Celilo also mitigate for Bonneville losses by providing land-based outputs on property purchased and developed for, and currently used by, Tribal fishermen impacted by Bonneville, The Dalles, and John Day projects.

6. CHANGES IN LOCAL COOPERATION REQUIREMENTS

There are no local cooperation requirements as such in this authorized project.

7. CHANGES IN LOCATION OF PROJECT

The location of the authorized project is the Columbia River between Bonneville Dam and McNary Dam. There are 31 sites within this project location on the Bonneville, The Dalles, and John Day pools. The recommended action requires the addition of one, estimated 34 acre, site. The proposed site is located on land within DOI jurisdiction immediately adjacent to the Celilo CRTFA site, separated only by the railroad line and Oregon I-84.

8. DESIGN CHANGES

There are no recommended changes in the proposed design of other CRTFA sites resulting from this report. The design of the Celilo site will include the infrastructure facilities and residential redevelopment in Celilo Village.

This PAC includes a conceptual plan for Celilo Village that has been prepared in coordination with Celilo Village residents, the BIA, Tribal councils of each of the four Treaty Tribes and other interested groups and individuals. This conceptual plan is provided in Appendix A and is shown graphically in Figure 3. The design is largely based on the 1998 CTUIR Tribal Planning Office report and was further developed in Engineering Design Report DACW-01-C-0022 (19 December 2001). Meetings have been held with Celilo Village residents, the BIA, the 4 Treaty Tribes, and a variety of other stakeholders to obtain their input for this conceptual design. The final design will be developed and Tribal concurrence will be obtained at the 60% design stage.

The design that was significantly developed in Engineering Design Report DACW-01-C-0022, and summed up in Appendix A is of sufficient detail to establish the baseline cost estimate for Celilo redevelopment. Appendix B (Real Estate) defines the steps needed to accomplish the residential relocation and re-establishment of Village residents. Figures 6 through 8 show some of the existing Village facilities the recommended plan will improve.

FIGURE 6. Existing Railroad Crossing (Note no lights or signal arms)



FIGURE 7. Existing Sewage Lagoons With Village in the Background
(These will be moved further away from Village and water well)



The conceptual plan for improvement of Celilo Village includes the following general features:

Infrastructure and Common Areas:

- New water well and pumphouse of sufficient size to provide all residential and fire protection needs.
- New sewage lagoon facilities to be designed by the Indian Health Services (IHS).
- Two restroom and shower facilities similar to those provided at other CRTFAS sites.
- Two fish cleaning facilities similar to those provided at other CRTFAS sites.
- Two net repair areas with sufficient off-season storage space.
- Two drying sheds similar to those provided at other CRTFAS sites.
- Perimeter fencing around site, along railroad, and around sewage lagoons.
- Minor landscaping around longhouse.
- Roadway around the two main Village loops and access area.
- Parking areas with some overflow areas for peak use times.
- Longhouse repairs to bring it to current health and safety standards.
- Camping sites (8 to 12) similar to those provided at other CRTFAS sites.
- Improved railroad crossing.

FIGURE 8. Existing Storage Areas for Fishing Equipment (Designated storage areas will be provided in proposed plan)



Housing Improvements:

- Manufactured home units of appropriate size to be temporarily located while demolition of existing structures and infrastructure improvements are made. The modular units will later be placed permanently on the improved sites.
- After demolition of existing homes, new mainline and secondary water and sewer lines will be constructed.
- Foundations for modular units will be placed.
- Electrical and telephone upgrade, line and pole placements.

9. HISTORY OF PROJECT

9.1 Columbia River Treaty Fishing Access Sites

Native Americans of the Pacific Northwest have a long tradition of fishing on the Columbia River. Through treaties signed with the United States in the 1850s, the Tribes reserved the right to fish at usual and accustomed fishing locations along the Columbia River. In 1905, and again in 1919, the United States Supreme Court upheld these fishing rights and Tribal rights of access.

In 1855, the four Tribes entered into treaties with the Federal government, which were later ratified in 1859. Under these treaties, the Tribes ceded to the Federal government all Indian title to the non-reservation lands in the Columbia River Basin, reserving for themselves the right to fish the banks of the lower Columbia River.

In the 1930s, Congress directed the Secretary of War to study the feasibility of constructing and operating dams on the Columbia River. The Corps completed studies and, in 1933, began construction of Bonneville Dam. The Bonneville pool inundated approximately 40 usual and accustomed fishing sites between the dam and The Dalles, Oregon. The Federal government, through the Corps, has constructed four multi-purpose dams on the mainstem of the lower Columbia River in Oregon and Washington since the time the treaties were approved. The four dams on the Columbia River mainstem generate 6,946 megawatts of peaking capacity hydroelectric power and provide navigation facilities to carry between 7 and 9 million tons of cargo annually. Portland District recreation sites on the Columbia provided over 7.4 million recreation user days in 1997. The U.S. Bureau of Reclamation, the Corps, and several private and public utility districts have constructed numerous additional power generation projects on the main stem of the Columbia and Snake Rivers and other tributary streams.

There are two agreements: one reached in 1939 and another in settlement of a lawsuit in 1972, which affect the provisions of what are commonly referred to as in-lieu sites. In addition, the 1945 River and Harbor Act authorized acquisition of unspecified sites and facilities, subject to certain fiscal limitations.

An agreement was negotiated with the Tribes for inundation of their accustomed fishing sites in 1939 and approved in 1940 by the Secretary of War. The agreement called for the government to acquire more than 400 acres of land at six described sites to serve as “in-lieu” fishing sites. The Corps was to make certain improvements, and then turn the sites over to the BIA, to be administered for the permanent use and enjoyment of the tribes.

Section 2 of the 1945 River and Harbor Act was the congressional implementation of the agreement. Congress authorized the Secretary of War “...to acquire lands and provide facilities...to replace Indian fishing grounds submerged or destroyed as a result of the construction of Bonneville Dam...” Funds not to exceed \$50,000 were authorized to be expended for this purpose. This amount proved inadequate for acquisition, and was subsequently raised by Congress to \$185,000 in 1955. The Act did not specify the number, location, or size of the sites to be acquired however.

Because of disagreements among the various parties to the 1939 agreements, not all the sites outlined were acquired and some sites were substituted. In all, five tracts, totaling 40 acres, were purchased for the use and benefit of the Treaty Tribes. Decisions concerning acquisition of the sixth site and the disposition of the balance of the funds for improvement of the sites authorized by the 1945 River and Harbor Act were approved by the Nez Perce, Umatilla, Warm Springs, and Yakama governing bodies.

Based on the original authorization for construction of Bonneville Dam, the Bonneville Power Administration and the Corps began studies to enlarge existing Bonneville power generating capability in the late 1960s and early 1970s. This was accomplished by raising the water levels behind the dam to generate additional power at peak loads to help meet the Pacific Northwest Power requirements. This proposal was the subject of a lawsuit, Confederated Tribes of the Umatilla Indian Reservation v. Callaway, in the United States District Court in Oregon. At issue were the effects of changing Bonneville pool levels on certain in-lieu sites and on salmonid migration.

The Executive Branch of the Federal government and the Indian Tribes settled the Confederated Tribes of the Umatilla Indian Reservation v. Callaway lawsuit in 1972. The Executive Branch agreed to pursue obtaining additional congressional authority for acquiring additional in-lieu fishing sites replacing those lost in the Bonneville, the Dalles, and John Day pools, and to improve facilities at the existing Bonneville pool in-lieu fishing sites. The original 1945 authorization was limited to the Bonneville pool.

The District Court Decision in the Confederated case, filed in 1973 and based on these negotiations, recognized that Federal agencies had no authority to acquire additional in-lieu sites. The decision noted that the agencies were recommending legislation for the acquisition of additional in-lieu fishing sites on the lower Columbia River and for construction of improvements and facilities on the existing sites to the Office of Management and Budget. Such facilities would include access roads, boat ramps, sanitation, fish cleaning, curing, and other ancillary facilities with electrical service and landscaping.

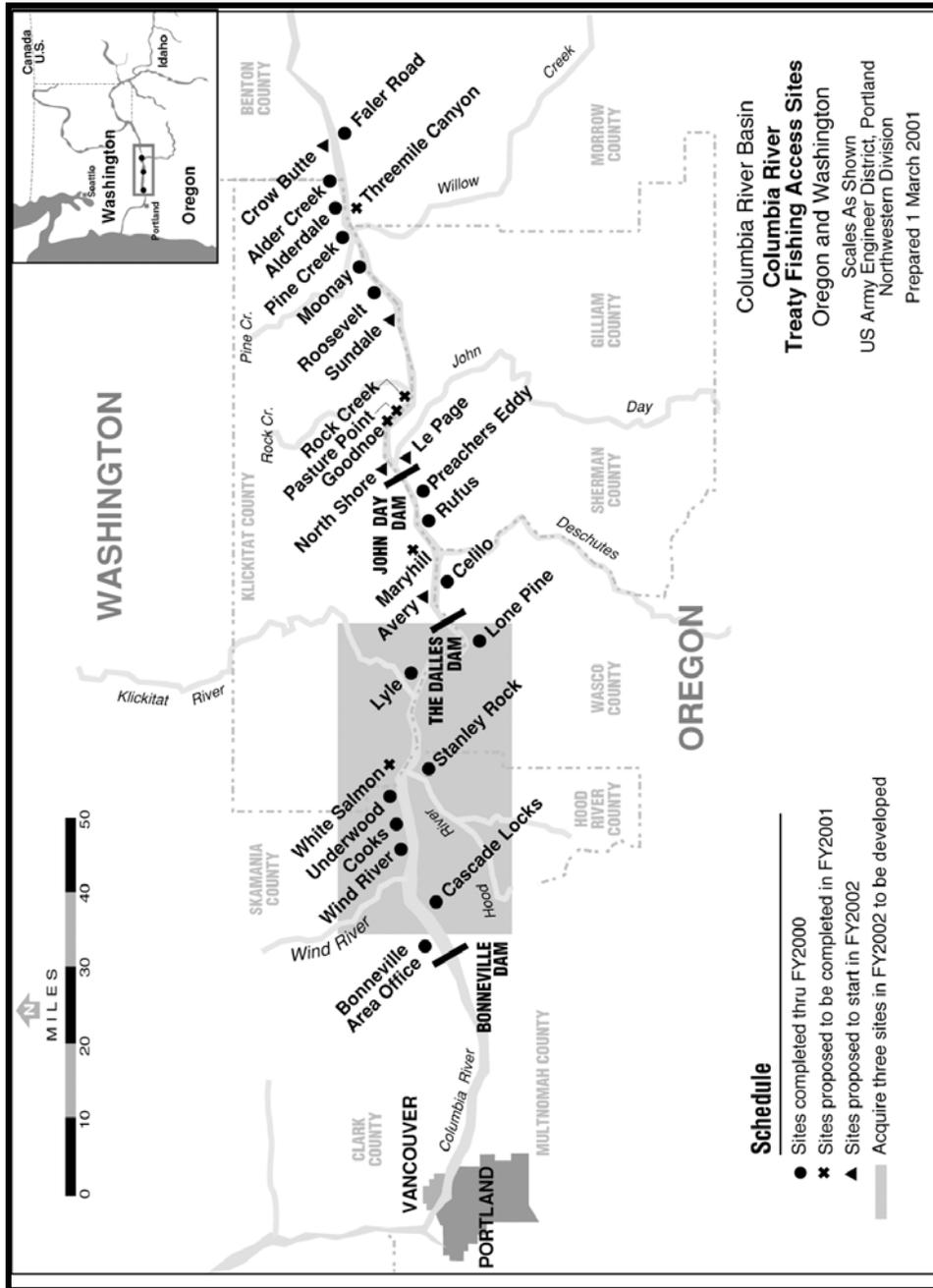
To fulfill the 1972 negotiated settlement, the Corps constructed additional improvements to the in-lieu sites. In addition, proposed legislation was submitted to Congress in 1974 under the signature of the Secretary of the Army, Howard H. Callaway, to authorize the acquisition of additional in-lieu sites at Bonneville, the Dalles, and John Day Dams. The legislation was never enacted however. In summary, the Corps exhausted all authority to acquire in-lieu sites under the 1945 River and Harbor Act, as amended.

In the 1970s and 1980s, the pressures on existing treaty fishing sites increased in response to improving Columbia River fish runs. Public use of the river also rose, and competition for the limited available river access increased as the Columbia River Gorge's popularity grew for windsurfing, fishing and other recreation. National attention focused on the area as the Columbia River Gorge National Scenic Area Act legislation passed and was signed into law. Further, a lawsuit in the U.S. District Court of Oregon (October 1987, Sohappy v. Hodel.) highlighted issues pertaining to Tribal requests for additional lands to replace those submerged by the construction of Bonneville Dam and the issue of regulation of use at the existing in-lieu fishing sites. This well publicized case and other attention focused on the Columbia River heightened congressional interest in these issues.

During 1987 and 1988, the four Tribes identified suitable sites on the Columbia River for additional fishing access and support. During this same period, the United States Senate Select Committee on Indian Affairs called the Secretary of the Army to appear, and testify that transfer of additional lands to the four Tribes for fishing access could not be accomplished without congressional authorization. The Senate Select Committee on Indian Affairs' staff then drafted legislation authorizing the transfer of a portion of the lands previously identified by the four Tribes to the Secretary of the Interior for administration as Treaty Fishing Access Sites. Congress directed the Secretary of the Interior to administer the new law upon its passage.

The CRTFAS Project consists of thirty-one individual sites located on Oregon and Washington shore lands of the Columbia River, from river mile (RM) 146 to RM 268. In Section (a) there are twenty (20) sites that are Federally owned and administered by the Corps that need to have site improvements and then to be transferred to the BIA. In-Lieu Sites: Five (5) sites with improvements located on the Bonneville Pool have been upgraded and transferred to BIA. Six (6) new sites on the Bonneville Pool are to be acquired, improved and transferred to BIA.

FIGURE 9. Treaty Fishing Access Sites Map.



9.2 Celilo Village.

The Celilo Falls and associated villages in the area have long served as the center of Native American fishing in the Columbia River Basin. The ancient Village in the Celilo area was a year-round home for many Native Americans, a seasonal home during the salmon runs for others, and a trade center, sacred fishing ground, and gathering place for the Northwest Tribes. The Federal Government severely impacted the long history of subsistence fishing and trade with several projects, including construction of the Dalles-Celilo Canal and the Bonneville Dam, climaxing with the elimination of Celilo Falls with the completion and filling of the Dalles Dam and reservoir in 1957. As mitigation for these actions the Federal Government built the existing Celilo Village. The establishment of the current Village has a complicated, controversial past that has resulted in very poor living conditions for the several established residents and the large number of Native Americans that visit and live temporarily at this location during different times of the year. The legal opinion that is provided in Appendix E describes the long history of legal and legislative history that has led to the current conditions.

In recognition of the impending construction of The Dalles Dam, Congress appropriated funds (Act of June 29, 1948, 62 Stat. 1120) to construct, repair or rehabilitate the buildings and utilities on this land and to hold them in trust for the benefit and use of the four Tribes and the other Columbia River Indians. Pursuant to this, 10 homes were constructed and the occupancy of each assigned to designated beneficiaries of the trust. The BIA granted permits to original assignees that contained language regarding maintenance obligations and revocation for non-compliance. By the Act of July 15, 1955, 69 Stat. 361, Congress appropriated funds to relocate the permanent resident Celilo Indian families who were in the project area. The Act authorized the acquisition of lands as necessary, title to be acquired in the “name of the United States in trust for individual Indian for whose benefit it is acquired.” Several families were relocated to neighboring communities, while five families were relocated to Celilo Village. Four additional homes were provided, and one family moved into house #7, which the BIA owned and had previously provided in 1948.

Celilo Village consists of approximately 34 acres of land, held in trust for the Tribes and the other Columbia River Indians by the United States of America, and is currently under jurisdiction of the Bureau of Indian Affairs. The Village currently supports 13 dwellings and approximately 50 people, most of whom live at or below poverty levels. The residents’ primary, if not only, source of subsistence is derived from the Treaty Fishery. The Village lacks adequate sanitary and water systems, which result in public health and safety problems that concern Federal, state and local health officials. To further complicate the problem, the Village supports a large seasonal influx of Treaty Fishermen during the spring and fall. Despite these problems, the Village remains a central cultural and religious gathering place for Northwest Indian tribes exercising Treaty Fishing rights on the Columbia River.

The CTUIR study provided an accurate description of the poor living conditions that currently exist in Celilo Village. CTUIR Facility Maintenance staff thoroughly inspected

the 13 residential structures and concluded that only the two newer modular dwellings should not be removed and replaced. The residences were run down and presented health hazards, with many testing positive for asbestos and lead paint and some without water or sewer service. The community facilities were also in major disrepair. The longhouse has structural damage, electrical system problems, and no smoke alarms, sprinkler systems, or restroom facilities. The Indian Health Service (IHS) completed a needs assessment of the water and sewer facilities in October 1997. IHS concluded there is no storage system for fire protection or contact time for chlorine disinfecting of well water, and inadequate metering. IHS also found problems with the sewer system that consists of a gravity collection system, lift station and force main, and two-cell lagoon. There are problems with the roads and the railroad crossing; sanitation concerns with stacks of garbage in several locations; and the absence of parks or playgrounds for Village children.

The lack of Village governance has contributed to some of the existing living conditions by poorly defining roles and responsibilities, laws and appropriate conflict resolution. As part of the recommended actions, a draft governance plan was prepared to help facilitate a suitable long-term plan that assuring better conditions once the Village is improved. This plan clearly defines O&M responsibilities for the community infrastructure and common buildings. It is recognized that many revisions to this draft plan will occur before all parties agree to a new government structure. However, this draft, provided in Appendix D, can serve as a skeletal structure on which the final comprehensive governance plan can be fleshed out. This report also calls for an advance transfer of capitalized O&M dollars to the BIA to be used for developing and adopting such a plan.

10. CHANGES IN TOTAL PROJECT FIRST COSTS

The total project first costs were developed in the April 1995 Phase II Evaluation Report, and will not change substantially as a result of the Celilo Village Redevelopment project. The current cost estimate for the Celilo Village Redevelopment project is \$13.238 million dollars – See Table A-1 in Appendix A (Engineering Plan and Cost Estimate). Based on actual and projected efficiencies at the current substantial completion of 28 of 31 sites, the project is carrying sufficient contingency to complete Celilo Village Redevelopment within the authorized cost for the CRTFAS project.

11. CHANGES IN PROJECT BENEFITS

Since project economic benefits have never been quantified for the Columbia River Treaty Fishing Access Sites, there are no changes in the project economic benefits for this report.

12. BENEFIT-COST RATIO

A benefit-to-cost ratio has not been developed; therefore there is no change.

13. CHANGES IN COST ALLOCATION

There are no changes in cost allocation.

14. CHANGES IN COST APPORTIONMENTS

There are no changes in the cost apportionment.

15. ENVIRONMENTAL CONSIDERATIONS IN RECOMMENDED CHANGES

A FONSI has been signed for the Celilo Village Redevelopment project. An Environmental Assessment (EA) was prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) for the Celilo Village Redevelopment Project and is included in Appendix F. The EA addressed the potential impacts of project construction to threatened and endangered fish and wildlife, cultural resources, and impacts to recreation and social resources. Since there is no in-water work proposed for the project, there will be no effect on anadromous and resident fish species nor will there be permitting requirements under Section 404 the Clean Water Act. A species list was requested from the U.S. Fish and Wildlife Service (USFWS) that identifies threatened and endangered species in the project area. A biological assessment documenting potential impacts to the species was prepared and sent to the USFWS for review and concurrence of finding. A “no effect” determination was made. A Coordination Act Report (CAR) from USFWS was not required.

Under section 106 of the National Historic Preservation Act (NHPA), Federal agencies are required to take into consideration the affects of their undertakings on historic properties that are included in, or eligible for, the National Register of Historic Places (Register). Consultation regarding cultural resources in the proposed project area with affected Indian tribes and interested parties will continue throughout the compliance process. A cultural resources survey of the Area of Potential Effect (APE) will be conducted prior to any land altering activities and the results will be coordinated with the Oregon State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO) as appropriate. It is known from previous studies that locations within the APE contain some cultural resources, and the proximity to the Columbia River and areas of prehistoric and historic occupation makes it probable that there are more present. It is also known that there are human remains located within the APE. Therefore, a Memorandum of Understanding (MOU) covering cultural resources will need to be developed and signed between the U.S. Army Corps of Engineers (USACE), the Bureau of Indian Affairs (BIA), the Oregon SHPO, tribal THPO, and the Advisory Council on Historic Preservation (ACHP). The MOU should contain clauses addressing all cultural resources related matters for the project, including, avoidance of impacts to eligible properties through design changes, principles to be followed in formulating any impact

mitigation plans, and inadvertent discovery protocols. The Corps, the BIA and the contractors will work with the four Tribes and the residents to insure that any disturbed cultural resources are dealt with according to existing policy and regulations, recognizing the significant historical, cultural, and religious value of the resources.

The public, Tribes, and resource agencies had the ability to review the draft EA for 30 days. For the reasons stated above, no significant impacts were identified during the public review process. Since no significant impact was identified during the public review process, an Environmental Impact Statement (EIS) was not required. Since an EIS was not required, full compliance with NEPA was achieved when the FONSI was signed.

16. PUBLIC INVOLVEMENT

The development of a comprehensive redevelopment plan for Celilo Village was not possible without extensive coordination and the cooperation of all entities associated with this unique location. The Village residents have been actively involved in planning development, proposed plan implementation, and the design of a long-term management plan. Figures A-2 & A-3, contained in Appendix A, show alternative site plans that were considered and ultimately discarded due to public preference of the recommended plan, while Appendix C provides a summary of the public cooperation program. Included are the letters of support provided by the four Tribal governments, the Regional Director of the BIA, Wasco County, the Oregon State Legislature, and Oregon congressional delegation members. A draft Celilo Village Operation, Maintenance and Governance Plan is contained in Appendix D, outlining methods for public involvement in structuring the future of the Village. Appendix F includes comments gathered at the public meeting held in The Dalles, Oregon, and the Corps' responses to these comments, while Appendix H is the transcript of this public meeting.

17. RECOMMENDATIONS

The recommendations contained in this PAC report are restated as follows.

First, it is recommended that the Tribes and the Corps seek the simplest acceptable legislative solution, specifically adding "Celilo Village" as a named site for improvement under Sec. 401(b)(3) as follows:

"(3) make improvements at existing sites, including but not limited to *rehabilitating Celilo Village as proposed by the 2002 Post-Authorization Change Report*, to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site in Cascade Locks, Oregon."

Second, it is recommended that the Corps implement the infrastructure improvements presented in this report. These will include: improvements and additions to the existing

sewage system; new water source and storage facilities; reconfiguration of existing roadways to allow access for emergency vehicles, including fire protection; addition of facilities for Tribal Fishing use (i.e. secured storage area, restroom/shower building, net repair area, camp pads); and improvements to existing cultural facilities (longhouse, health, and safety improvements).

Third, it is recommended that the Corps provide “decent, safe and sanitary” housing to the residents that have a legal right to reside in the Village. It is recommended that new modular homes be provided as replacement for the existing substandard homes. In conjunction with infrastructure improvements the Corps of Engineers will be required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646). The redevelopment activities associated with the infrastructure improvements and the Celilo Village Redevelopment Study will displace the current residents from their current dwellings on either a temporary or permanent basis. Said activities may necessitate acquiring privately owned dwellings, replacing impacted Federally owned facilities (dwellings), compensation payments and relocation benefits payments. There are currently 8 private and 5 Federally owned dwellings in the Village. There originally were 14 Federally-provided homes, but some became uninhabitable and were replaced with modular units. The BIA will determine which residents can legally reside in the Village, which will affect the final design. Cost estimates were based on 20 units, composed of 14 newly-constructed units, plus the assumption that for equity reasons some heirs would be compensated for inadequate original units at the value of the new units (up to a total of six additional units). Because the United States owns all the land in Celilo Village under the jurisdiction of the BIA, no land acquisition is required.

Fourth, it is recommended, as with other CRTFA sites, that the Corps transfer adequate Operation and Maintenance funds to the Department of Interior (BIA) for the specific purpose of O&M of the Celilo Village. This will be accomplished by adding Celilo Village to the existing MOU 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.” The Corps will make an advance O&M transfer of \$150,000 to be used for the development and adoption of a Celilo Village governance plan. This sum will be deducted from the total O&M funds the Corps will transfer to the BIA after construction.

Implementing these recommendations will serve a number of important purposes, including meeting both the Corps’ legal responsibilities and the expectations of the Tribal governments that have been active participants in the genesis and refining of this redevelopment plan. Implementing the recommendations will also resolve major on-the-ground problems, including providing acceptable housing facilities and decent, safe, and sanitary water and sewage systems. Finally, it should be noted that implementing these recommendations will accomplish these purposes in a manner that is consistent with the spirit of the project authorization.

