



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
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WATER
DIVISION

May 4, 2021

Ms. Sharol McDade
Chief Executive Officer
Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
1245 Fulton Avenue
Coos Bay, Oregon 97420

Dear Ms. McDade:

It is my honor to inform the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of the U.S. Environmental Protection Agency's decision to approve the CTCLUSI Application for treatment in a similar manner as a state (TAS) for the implementation of Clean Water Act sections 303(c) and 401, water quality standards and certification programs. The enclosed decision document provides the basis and supporting information for EPA's TAS approval. EPA looks forward to working with the CTCLUSI on the implementation of these important water protection programs.

If you have questions regarding this letter, please feel free to contact me at (206) 553-1855, or your staff may contact Ted Yackulic, Assistant Regional Counsel, at (206) 553-1218 or yackulic.ted@epa.gov.

Sincerely,

/s/ 05-04-2021

Daniel D. Opalski
Director

Enclosure

cc: The Honorable Kate Brown, Governor, State of Oregon
Congressman Peter DeFazio, 4th Congressional District of Oregon
Mr. Dustin Buehler, Tribal Affairs Policy Advisor, Office of the Governor
Ms. Ellen F. Rosenblum, Attorney General, OR DOJ
Ms. Karen E. Clevering, Senior Assistant Attorney General, Tribal Key Contact, OR DOJ
Mr. Paul Garrahan, Attorney-in-Charge, Natural Resources Section, OR DOJ
Ms. Diane Lloyd, Assistant Attorney General, Natural Resources Section, OR DOJ
Mr. Richard Whitman, Director, OR DEQ
Mr. Justin Green, Water Quality Division Administrator, OR DEQ
Dr. Roselynn Lwenya, Director, CTCLUSI Department of Culture and Natural Resources
Mr. Carter Thomas, Air and Water Protection Specialist, CTCLUSI Water Quality Program

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

DECISION DOCUMENT:

**APPROVAL OF THE CONFEDERATED TRIBES OF COOS, LOWER
UMPQUA, AND SIUSLAW INDIANS APPLICATION FOR TREATMENT
IN A SIMILAR MANNER AS A STATE FOR
CLEAN WATER ACT SECTIONS 303(c) WATER QUALITY STANDARDS
AND 401 WATER QUALITY CERTIFICATION PROGRAMS**

May 4, 2021

Contents

I. INTRODUCTION AND INDEX TO DECISION	1
A. INTRODUCTION	1
B. INDEX TO DECISION	1
1) <i>Application Materials</i>	1
2) <i>Comments Regarding Tribal Authority</i>	2
3) <i>Statutory and Regulatory Provisions</i>	3
4) <i>Policy Statements</i>	3
II. REQUIREMENTS FOR APPROVAL	3
A. FEDERAL RECOGNITION.....	4
B. SUBSTANTIAL GOVERNMENTAL DUTIES AND POWERS	4
1) <i>Form of Government</i>	5
2) <i>Types of Government Functions</i>	5
3) <i>Source of the CTCLUSI Governmental Authority</i>	6
4) <i>Substantial Governmental Duties and Powers Conclusions</i>	7
C. JURISDICTION OVER WATERS WITHIN THE BORDERS OF THE CTCLUSI RESERVATION AND TRUST LANDS	7
1) <i>Map or Legal Description</i>	7
2) <i>Statement Describing the Basis for the CTCLUSI's Authority</i>	9
3) <i>Identification of the Surface Waters for which the CTCLUSI Propose to Establish Water Quality Standards</i>	9
4) <i>Conclusion Regarding Jurisdiction</i>	10
D. CAPABILITY	10
1) <i>Description of CTCLUSI's Prior Management Experience</i>	11
2) <i>List of Tribally Administered Environmental and Public Health Programs</i>	11
3) <i>Description of Entities which Exercise Executive, Legislative, and Judicial Functions</i>	11
4) <i>Description of the Agency of the Tribal Government which will Assume the Primary Responsibility for Establishing, Reviewing, Implementing, and Revising Water Quality Standards</i>	12
5) <i>Description of the Technical and Administrative Capabilities of the Staff to Administer and Manage an Effective Water Quality Standards Program</i>	12
III. EPA'S TAS DETERMINATION IS A SEPARATE PROCESS FROM AN EPA DECISION ON A TRIBE'S SUBMITTAL OF WATER QUALITY STANDARDS	13
IV. CONCLUSION	14
APPENDIX A: SUPPORTING INFORMATION.....	A-1
APPENDIX B: RESPONSE TO COMMENTS.....	B-1
APPENDIX C: MAPS OF CTCLUSI Reservation and Trust Lands.....	C-1

I. Introduction and Index to Decision

A. Introduction

This Decision Document provides the basis and supporting information for the U.S. Environmental Protection Agency's ("EPA" or "Agency") decision to approve the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians' ("CTCLUSI") application for treatment in a similar manner as a state ("TAS") for Clean Water Act ("CWA") section 303(c) water quality standards and section 401 water quality certification, pursuant to section 518(e) of the CWA and part 131 in Title 40 of the Code of Federal Regulations ("C.F.R."). Section 518(e) of the CWA authorizes EPA to treat an Indian tribe as a state to manage and protect water resources "within the borders of an Indian reservation," under certain CWA programs, including the section 303(c) water quality standards and section 401 certification programs.

EPA received the CTCLUSI TAS application on December 17, 2019. The CTCLUSI supplemented the application on June 12, 2020. In its supplement, the CTCLUSI clarified that their assertion of jurisdiction extends only to land within the CTCLUSI's Reservation and lands located outside of the CTCLUSI Reservation that are held in trust by the United States for the CTCLUSI (collectively referred to as the "Reservation and Trust Lands"). The information and materials that EPA received from the CTCLUSI on December 17, 2019 and June 12, 2020 are collectively referred to as the "CTCLUSI Application."

EPA regulations at 40 C.F.R. part 131 establish the process by which the Agency implements the water quality standards program and its authority to determine whether to approve a tribal TAS application for the purposes of administering programs under sections 303(c) and 401 of the CWA. *See* 56 Fed. Reg. 64876 (December 12, 1991), as amended by 59 Fed. Reg. 64339 (December 14, 1994).

This decision to approve the CTCLUSI's TAS Application does not constitute an approval of the CTCLUSI water quality standards. EPA's review and approval or disapproval of the CTCLUSI water quality standards is a separate Agency action under the CWA.

B. Index to Decision

The following documents constitute a portion of the full docket for this Agency decision, as detailed in Appendix A. All relevant materials in the docket are located in EPA's official file and in electronic storage systems.

1) Application Materials

The CTCLUSI's Application for TAS for the water quality standards and certification programs under CWA sections 303(c) and 401, respectively, includes the following documents:

- Letter dated December 17, 2019, from Alexis Barry, Chief Executive Officer of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, to Christopher Hladick, Regional Administrator, EPA Region 10, transmitting the Application for TAS to Administer Water Quality Standards and Certification Programs.
- CTCLUSI's Application for TAS to Administer Water Quality Standards and Certification Programs (December 17, 2019).

- Letter dated June 12, 2020, from Alexis Barry, Chief Executive Officer of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, to Christopher Hladick, Regional Administrator, EPA Region 10, transmitting the CTCLUSI’s supplement to the Application for TAS to Administer Water Quality Standards and Certification Programs with additional attachments.
- CTCLUSI’s Supplemented Application to Administer Water Quality Standards and Certification Programs (June 12, 2020).

2) Comments Regarding Tribal Authority

As provided at 40 C.F.R. § 131.8(c)(2) and noted in Appendix A, EPA, by letter dated September 15, 2020, provided notice to appropriate governmental entities¹ and an opportunity to comment on the substance and basis of the CTCLUSI’s assertion of authority in their Application to regulate under the CWA the quality of surface waters on the CTCLUSI Reservation and Trust Lands. In addition, EPA, by letters dated September 15, 2020, provided several proximately located local municipal and county governments with notice of the CTCLUSI’s Application and of the opportunity to comment on the CTCLUSI’s assertion of jurisdiction.² Due to the COVID-19 pandemic, all of these letters were sent electronically. The comment period started on September 16, 2020 and ended on October 16, 2020.

EPA also provided the public, including local governments, notice and an opportunity to comment on the assertion of authority in the CTCLUSI Application. A public notice was published in two newspapers—The Oregonian, a daily newspaper based in Portland, and The World, a biweekly regional newspaper which serves Oregon’s south coast, including the cities of Coos Bay and North Bend, among others. The published notices identified EPA’s website on which the CTCLUSI Application was posted and notified the public of the opportunity to review the CTCLUSI Application and to submit comments to EPA on the CTCLUSI’s assertion of authority by October 16, 2020.

EPA received requests to extend the public comment period from Coos County, the City of North Bend, the Oregon Farm Bureau, and the Oregon Forests and Industries Council at or near the end of the comment period.³ On November 6, 2020, in response to these requests, EPA reopened the public comment period, which occurred from November 9, 2020 to December 11, 2020.⁴

The complete CTCLUSI Application was posted on the EPA public notice webpage during the initial and extended comment periods.

As noted in Appendix B, EPA received several comments during both the initial and extended comment periods. EPA received comments both in support of and in opposition to EPA’s approval

¹ EPA defines the term “appropriate governmental entities” as “States, tribes, and other Federal entities located contiguous to the reservation of the tribe which is applying for treatment as a State.” 56 Fed. Reg. 64876, 64884 (Dec. 12, 1991). Consistent with EPA’s regulations, EPA provided notice to all appropriate governmental entities. In this instance, EPA provided notice to the State of Oregon.

² These letters were sent to representatives of Coos County, Curry County, Douglas County, Lane County, Lincoln County, the City of Coos Bay and the City of Florence.

³ The requests for extension were received on October 15, 16 and 19, 2021.

⁴ The November 6, 2020 email was sent by Dan Opalski, the Director of the EPA, Region 10 Office of Water and Watersheds to the representatives of the State of Oregon, Coos County, Curry County, Douglas County, Lane County, Lincoln County, the City of Coos Bay and the City of Florence.

of the CTCLUSI Application. None of the comments in opposition directly related to the four criteria at 40 C.F.R. § 131.8, which express the conditions for a tribe to be eligible for TAS (see section II, below). EPA’s responses to the comments received during both comment opportunities are included in the attached Responsiveness Summary (Appendix B).

3) Statutory and Regulatory Provisions

The following statutory and regulatory provisions govern this eligibility decision:

- Section 518 of the Clean Water Act, 33 U.S.C. § 1377, authorizes EPA to treat an Indian tribe in a similar manner as a state if it meets specified eligibility criteria; and
- 40 C.F.R. §§ 131.4(c) and 131.8 establish the regulatory requirements for a tribe to obtain eligibility approval and the procedures for EPA to process a tribe’s eligibility application. *See Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations*, 56 Fed. Reg. 64,876 (Dec. 12, 1991); 59 Fed. Reg. 64,339 (Dec. 14, 1994); and 81 Fed. Reg. 30183 (May 16, 2016).

4) Policy Statements⁵

The following policy statements and guidance are also relevant to this eligibility decision:

- EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984)
- EPA Memorandum titled “EPA/State/Tribal Relations,” by EPA Administrator Reilly (July 10, 1991)
- Memorandum titled “Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations,” by EPA Assistant Administrator Robert Perciasepe and General Counsel Jonathan Cannon (March 19, 1998)
- Memorandum titled “Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs,” by EPA Deputy Administrator Marcus Peacock (January 23, 2008)

II. Requirements for Approval

Under CWA section 518(e) and the implementing regulation at 40 C.F.R. § 131.8(a), four requirements must be satisfied before EPA can approve an Indian tribe’s application to administer a water quality standards program under section 303(c) and a water quality certification program under section 401. The requirements are:

- 1) The Indian tribe is recognized by the Secretary of the Interior and exercises authority over a reservation;
- 2) The Indian tribe has a governing body carrying out substantial governmental duties and powers;
- 3) The water quality standards program to be administered by the Indian tribe pertains to the management and protection of water resources which are within the borders of the Indian reservation and held by the Indian tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation

⁵ The referenced documents are included in the Supporting Information for this action.

- and held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation; and
- 4) The Indian tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the CWA and applicable regulations.

EPA's regulation at 40 C.F.R. § 131.8(b) identifies the information that must be included in an application by an Indian tribe to administer a water quality standards program. Consistent with the regulation at 40 C.F.R. § 131.8(b)(6), where an Indian tribe has previously qualified for TAS under a different CWA or Safe Drinking Water Act program, the tribe need only provide the required information which has not been submitted in a previous application. Where EPA determines that an Indian tribe is eligible to the same extent as a state for purposes of water quality standards, the tribe likewise is eligible to the same extent as a state for purposes of certifications conducted under CWA section 401. *See* 40 C.F.R. § 131.4(c). Tribes authorized to administer the CWA water quality standards program are also "affected states" under CWA §§ 402(b)(3) and (5), and 40 C.F.R. § 122.4(d). As "affected states," they receive notice and an opportunity to comment on certain permits issued under the National Pollutant Discharge Elimination System program.

A. Federal Recognition

Under CWA section 518(e) and its implementing regulation, EPA can approve an application from an eligible Indian tribe that meets the definitions set forth in CWA section 518(h) and 40 C.F.R. § 131.3(k) and (l). *See* 40 C.F.R. § 131.8(a)(1). The term "Indian tribe" is defined as "any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation." CWA section 518(h)(2), 40 C.F.R. § 131.3(l). The term "Federal Indian reservation" means "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." CWA section 518(h)(1), 40 C.F.R. § 131.3(k).

Consistent with 40 C.F.R. 131.8(b)(6), the CTCLUSI Application references EPA's 2002 approval of the CTCLUSI's TAS application for the CWA section 106 program, and EPA's 2003 approval of the CTCLUSI's TAS application for the CWA section 319 program. The CTCLUSI are included in the Department of the Interior's current list of federally recognized tribes as "Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians." *See* 86 Fed. Reg. 7554, 7555 (January 29, 2021). Furthermore, as discussed below, the CTCLUSI are exercising governmental authority over a reservation within the meaning of the CWA. Thus, EPA has determined that the CTCLUSI meet the requirements of 40 C.F.R. §§ 131.8(a)(1) and (b)(1).

B. Substantial Governmental Duties and Powers

To demonstrate that it has a governing body currently carrying out substantial governmental duties and powers over a defined area, 40 C.F.R. § 131.8(b)(2) requires that the tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of eminent domain; and (iii) identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

1) Form of Government

The CTCLUSI Application describes the form of the Tribal government. The CTCLUSI Constitution provides authorities to three governmental bodies. These include a General Council, a Tribal Council, and a Tribal Court.

2) Types of Government Functions

As provided for in Article V of the CTCLUSI Constitution, the CTCLUSI General Council consists of all enrolled CTCLUSI members who are eighteen years of age or older. Article V of the Constitution empowers the General Council with the authority to:

- Vote in Tribal elections;
- Elect Tribal Council members and approve or disapprove of any salary wages paid for performance of Tribal Council duties;
- Exercise the powers of initiative and referendum;
- Propose Constitutional amendments;
- Recall elected Tribal officials;
- Make advisory recommendations to the Tribal Council; and
- Approve any fundamental changes in the jurisdiction, Reservation lands, or rights.

The Tribal Council provides legislative and executive functions of the CTCLUSI Government. Article VI of the CTCLUSI Constitution describes the membership, authority, and procedures of the Tribal Council.

The Tribal Council consists of seven members elected by the CTCLUSI General Council. The members include a Tribal Chief, elected for ten-year terms, and six Council Members, elected for four-year terms. The Tribal Council elects, from amongst themselves, a Chair and Vice-Chair. The Chief is a voting member of the Tribal Council, opens and closes Tribal meetings, and oversees all Tribal ceremonies. The Tribal Council meets semi-monthly to conduct Tribal business.

Article VI, Section 2 of the CTCLUSI Constitution grants the Tribal Council the authority to exercise all legislative and executive authority that is not specifically vested in the General Council by the CTCLUSI Constitution.⁶ The broad grant of authority that the CTCLUSI Constitution provides empowers the Tribal Council to protect and maintain tribal natural resources and public health.⁷ Section 2 of the CTCLUSI Constitution also allows the Tribal Council to delegate such authorities as appropriate.⁸

Consistent with its authority, the Tribal Council has by ordinance delegated day-to-day executive function to the Chief Executive Officer, who in turn oversees several departments. The CTCLUSI maintain a website that includes links to their Tribal Code and governmental departments.⁹ The CTCLUSI Application lists the departments within the Tribal government that provide executive function; and the listed departments include the following entities:

⁶ CTCLUSI Application at 5 & Exhibit B, CTCLUSI Constitution at Art. VI, Sec. 2.

⁷ *Id.*

⁸ *Id.*

⁹ See, the Government drop down option at <https://ctclusi.org/>

- Enrollment Office;
- Police Department;
- Planning Department;
- Realty and Land Use;
- Finance Department;
- Human Resources Department;
- Health Services Department;
- Family Support and Behavioral Health Services Department;
- Education Department;
- Housing Department;
- Management Information Systems Department; and
- Culture and Natural Resources.

The Tribal Constitution also established a Tribal Court to fulfill the government's judicial duties and functions. The Tribal Court facilitates resolution of conflicts in accordance with the Tribal Constitution and CTCLUSI Tribal Code. The Tribal Court includes trial and appellate divisions. The Tribal Court exercises jurisdiction over the following civil issues and claims:

- Adoptions;
- Arbitrations;
- Appeals on decisions of tribal committees and boards;
- Civil rights;
- Collections;
- Contract disputes;
- Domestic violence;
- Election appeals;
- Employee rights;
- Enrollment appeals;
- Eviction;
- Juvenile matters;
- Torts;
- Traditional alternative dispute resolutions (Peace giving);
- Tribal code violations;
- Small claims; and
- Substance abuse deferment proceedings (Healing to Wellness).

Finally, the CTCLUSI have a Tribal Police Department. The mission of the Tribal Police Department is to protect life and property and to enhance the quality of life for all persons residing upon or visiting CTCLUSI lands. Currently, all CTCLUSI lands held in federal reservation or trust status are protected by the Tribal Police Department.

3) Source of the CTCLUSI Governmental Authority

Consistent with 40 C.F.R. § 131.8(b)(6), the CTCLUSI's Application refers to the governmental description in the CWA section 106 TAS application, which describes the source of the CTCLUSI's government as well as the CTCLUSI's form of government and the significant governmental functions the CTCLUSI perform.

The CTCLUSI Application identifies the CTCLUSI Constitution as the source of CTCLUSI's governmental authority. The CTCLUSI adopted the Constitution on May 23, 1987 and the CTCLUSI Constitution was approved by the Bureau of Indian Affairs on June 23, 1987.¹⁰

4) Substantial Governmental Duties and Powers Conclusions

The above description of the bases of authority and of the functions carried by the CTCLUSI to regulate the conduct of their members, protect and maintain tribal resources and health, and control the disposition of the tribal property demonstrate that the CTCLUSI have met the requirements of 40 C.F.R. §§ 131.8(a)(2) and (b)(2).

C. Jurisdiction over Waters within the Borders of the CTCLUSI Reservation and Trust Lands

The CTCLUSI's Application includes all lands within the CTCLUSI Reservation as well as the CTCLUSI's trust lands located outside of the formal CTCLUSI Reservation. The trust lands outside the formal Reservation qualify as informal reservation land, as explained herein. The CTCLUSI Reservation and informal reservation lands (collectively referred to as the "Reservation and Trust Lands") are located on numerous non-contiguous parcels of land that cover approximately 14,800 acres of land located in southwest Oregon. The CTCLUSI's interest in the Reservation and Trust Lands was created through 28 realty transactions between the United States and the CTCLUSI. These transactions started in 1984 after the CTCLUSI's federal recognition was restored by Public Law 98-481, the Coos, Lower Umpqua and Siuslaw Restoration Act ("Restoration Act"). The Restoration Act restored all rights and privileges that were diminished by Public Law 588, the Western Oregon Tribal Termination Act, of 1984. The Restoration Act also placed approximately 8.5 acres of lands into trust by the United States and as part of the CTCLUSI Reservation. An additional 14,742 acres of land were placed into in trust by the United States for the benefit of the CTCLUSI and as part of the CTCLUSI Reservation in 2018 pursuant to Title II of the Western Oregon Tribal Fairness Act ("WOTFA"), P.L. 115-103 at § 201(3)(a)(1-2)(2018). Thus, approximately 14,800 acres of land subject to the CTCLUSI Application lie within the boundaries of the CTCLUSI's Reservation and Trust Lands.

Under 40 C.F.R. § 131.8(b)(3), a tribe is required to submit a statement of authority to regulate water quality. The statement should include: (i) a map or legal description of the area over which the Indian tribe asserts authority to regulate surface water quality; (ii) a statement by the tribe's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority and which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the tribe's assertion of authority; and (iii) an identification of the surface waters for which the tribe proposes to establish water quality standards.

1) Map or Legal Description

The CTCLUSI Application includes a map that shows the general location of the CTCLUSI Reservation and Trust Lands.¹¹ In addition, the CTCLUSI Application includes 19 maps that show the location of each parcel of Reservation and Trust Lands; and these maps include the locations of

¹⁰ Attachment B to the CTCLUSI Application.

¹¹ See, Appendix D of the CTCLUSI Application at p. 2

surface waters on each parcel.¹² As the maps indicate, the application covers all waters within the boundaries of the CTCLUSI's Reservation and Trust Lands.

The CTCLUSI Application includes 28 deed or title documents that provide legal descriptions for each parcel of Reservation and Trust Lands subject to the application.¹³ The deed and title descriptions describe the boundaries of each parcel of CTCLUSI Reservation and Trust Lands. Four of these parcels include portions of adjacent surface waters. The boundary for each of these parcels is described below:

- Parcel B of the Hatch Tract extends to and along the “apparent mean high-water line of the west bank of the North Fork of Siuslaw River.”¹⁴
- The Fossil Point Unit 1 tract extends to and along the “mean low water line of Coos Bay.”¹⁵
- The Fossil Point Unit 3 tracts to and along the “low water line of Coos Bay.”¹⁶
- Gregory Point includes the Pacific Ocean to the extent that the Pacific Ocean is located within the property boundaries for any of the 22 parcels described in the legal description of the Gregory Point land transfer.¹⁷

Additionally, the CTCLUSI Application includes information that identifies when CTCLUSI Reservation and Trust Lands were placed into trust by the United States on behalf of the CTCLUSI.¹⁸ This information also includes the United States Bureau of Indian Affairs (“BIA”) realty record identification number for each transaction that placed property into trust as well as the surface water bodies located on the property.¹⁹ As previously noted, the vast majority of the lands, 14,750.5 acres, subject to the CTCLUSI Application are located within the CTCLUSI's formal reservation, and the remainder are located on lands held entirely in trust by the United States for the benefit of the CTCLUSI. Tribal trust lands, like the CTCLUSI Trust Lands located outside the boundaries of its reservation, have the same status as formal reservations for purposes of EPA's programs. Some tribes may have tribal trust lands within the borders of a formal reservation, or in addition to, and separate from, a formal reservation. For other tribes, such tribal trust lands may constitute the tribe's entire reservation land base. In any case, tribal trust lands, wherever located, qualify as Indian reservation lands.²⁰ Therefore, all of the CTCLUSI Reservation and Trust Lands are eligible for inclusion in the CTCLUSI Application.

As discussed above, EPA provided appropriate governmental entities and the public, notice and the opportunity to comment on the substance and basis of the CTCLUSI's assertion of authority as part of the review process for the CTCLUSI Application. The CTCLUSI's TAS Application identifies the land and surface waters covered by the Application. No competing or conflicting jurisdictional

¹² See, *Id.* at pp. 3-19

¹³ See, Appendix C of the CTCLUSI Application.

¹⁴ See, Appendix D of the CTCLUSI Application at 35.

¹⁵ *Id.* at 48.

¹⁶ *Id.* at 58

¹⁷ *Id.* at 53-57.

¹⁸ CTCLUSI Applications at 7-14.

¹⁹ *Id.*

²⁰ For CWA purposes, Indian reservations include trust lands validly set aside for Indian tribes even if such lands have not formally been designated as an Indian Reservation. See 56 *Fed. Reg.* 64876, 64881 (December 12, 1991); see also, *Arizona Public Service Company v. EPA*, 211 F.3d 1280, 1292-94 (D.C. Cir. 2000); 81 *Fed. Reg.* 30183, 30192 (May 16, 2016), *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991).

claim regarding the identified Reservation boundaries or the area within the boundaries was made. In addition, the deed and title records included in the CTCLUSI's TAS Application are consistent with the realty records maintained by the BIA.²¹

EPA concludes that the CTCLUSI has satisfied 40 C.F.R. § 131.8(b)(3)(i) by providing maps and a legal description of the area over which the CTCLUSI assert authority to regulate surface water quality under the CWA.

2) Statement Describing the Basis for the CTCLUSI's Authority

The CTCLUSI rely on both their inherent authority and the express congressional delegation of civil authority that section 518 of the CWA provides as the basis for their authority to administer the CWA sections 303(c) and 401 programs.²²

The source of the CTCLUSI inherent authority is their Constitution. The CTCLUSI Constitution empowers the CTCLUSI with authority over their Reservation and Trust Lands.²³ Specifically, the Tribal Constitution affirms the Tribal Council's "jurisdiction...to the fullest extent permitted by law...over all lands [and] waters...located within the exterior boundaries of the tribal reservation, over any tribal land or land held by individual members in trust status, and over any 'Indian Country' of [CTCLUSI] as defined by federal law."²⁴

The CTCLUSI also rely on the congressional delegation of authority²⁵ in CWA section 518 in addition to their inherent authority presented in the original Application. EPA interprets section 518 as an express congressional delegation of authority of eligible tribes.²⁶ EPA received no comments challenging this assertion of the CTCLUSI's authority. EPA is not otherwise aware of any impediment limiting the CTCLUSI's ability to effectuate the congressionally delegated authority. EPA therefore concludes that the CTCLUSI can rely on the congressional delegation of authority to regulate surface water quality over their formal and informal Reservation lands, as described above, and that the CTCLUSI have satisfied the application requirement at 40 C.F.R. § 131.8(b)(3)(ii).

3) Identification of the Surface Waters for which the CTCLUSI Propose to Establish Water Quality Standards

The CTCLUSI's Application asserts authority over all surface waters within the areas covered by the Application, i.e. the CTCLUSI Reservation and Trust Lands. These waters are identified on pages 7-14 of the CTCLUSI's Application. The CTCLUSI specifically assert jurisdiction over the following waterbodies:

- On the Kentuck Slough Tract, wetlands immediately adjacent to Kentuck Slough.
- On the Sixes River Tract, wetlands immediately adjacent to the Sixes River.

²¹ On January 28, 2021, EPA received the BIA realty records for the CTCLUSI Reservation and Trust Lands from Courtney Kohler, Attorney Advisor, Regional Office of the Solicitor, Department of Interior. Ms. Kohler transferred the realty records to a shared OneDrive folder created by EPA for purposes of the file transfer.

²² See, the CTCLUSI Application at 14.

²³ See, Exhibit B to the CTCLUSI Application, Constitution of the CTCLUSI at Art. 1, §§ 1 & 2.

²⁴ *Id* at Art. 1, § 2.

²⁵ 81 *Fed. Reg.* 30183 (May 16, 2016).

²⁶ EPA's *Revised Interpretation of Clean Water Act Tribal Provision*, 81 *Fed. Reg.* 30183 (May 16, 2016) ("Interpretive Rule").

- On Hatch Tract, the North Fork Siuslaw River and immediately adjacent wetlands.
- On Fossil Point Unit 1, Coos River and Coos Bay and immediately adjacent wetlands.
- On Gregory Point, the Pacific Ocean and immediately adjacent wetlands.
- On Fossil Point Unit 3, Coos River and Coos Bay and immediately adjacent wetlands.
- On Umpqua Eden, streams and wetlands immediately adjacent to Umpqua River.
- On Macy Tract, streams and wetlands immediately adjacent to the Umpqua River.
- On Lower Smith Tract: Spencer Creek, Johnson Creek, Rachel Creek, Bear Creek, Cedar Creek, and Coon Creek.
- On the Upper Lake Creek Tract: Lake Creek and Pucker Creek.
- On the Tioga Tract: Tioga Creek, Gooseberry Creek, Burnt Tributary, Wilsons Folly Creek, and Bear Gulch.
- On the Talbot Tract, streams and wetlands immediately adjacent to Big Tributary.
- On the Coos Head Tract, wetlands immediately adjacent to the Pacific Ocean.

With the exception of the Gregory Point properties, the locations of surface waters within the boundaries of the parcels that constitute the CTCLUSI Reservation and Trust Lands are clearly described in the applicable legal descriptions. Gregory Point includes 22 parcels and each parcel is described in a separate legal description.²⁷ Each parcel borders the Pacific Ocean, and 21 of the parcels are islands surrounded by the Pacific Ocean.²⁸ None of the legal descriptions for the islands reference the tideland or areas within the Pacific Ocean. Instead, each provides longitude and latitude coordinates for the center of the island and a total acreage of the parcel.²⁹ To the extent that the referenced acreage surrounding the center of each of the islands includes tidelands or portions of the Pacific Ocean, such tidelands or portions are within the boundaries of the Gregory Point properties and the CTCLUSI Reservation and Trust Lands.

EPA concludes that the information the CTCLUSI submitted to identify the location of surface waters for which the CTCLUSI assert jurisdictions satisfies 40 C.F.R. § 131.8(b)(3)(iii).

4) Conclusion Regarding Jurisdiction

Based on the above discussion, EPA concludes that the CTCLUSI meet the requirements at 40 C.F.R. §§ 131.8(a)(3) and (b)(3).

D. Capability

To demonstrate that a tribe has the capability to administer an effective water quality standards program, 40 C.F.R. § 131.8(b)(4) requires that the tribe's application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the Indian tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act, the Indian Mineral Development Act or the Indian Sanitation Facility Construction Activity Act; (ii) a list of existing environmental and public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations; (iii) a description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description

²⁷ Exhibit C of the CTCLUSI Application at 53-57.

²⁸ *Id.*

²⁹ *Id.*

of the existing, or proposed, agency of the Indian tribe which will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; and, (v) a description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan which proposes how the tribe will acquire additional administrative and technical expertise. The plan must address how the tribe will obtain the funds to acquire the administrative and technical expertise.

1) Description of CTCLUSI's Prior Management Experience

The CTCLUSI Application describes a variety of public health, environmental, housing, education and other administrative programs the CTCLUSI administer. In addition, the CTCLUSI Application includes exhibits that demonstrate the CTCLUSI's prior management of its financial and administrative functions, water quality management program, and non-point source management program.³⁰

The CTCLUSI Application identifies the departments within the CTCLUSI's government that implement and oversee tribal programs.³¹ In addition, the CTCLUSI Application states that the CTCLUSI currently manage multiple programs, including Family Services, an Elders Program, a dental clinic, and several programs related to cultural and natural resources.³² These programs address Tribal environmental and public health concerns.

2) List of Tribally Administered Environmental and Public Health Programs

As previously noted, the CTCLUSI Application includes a list of administrative departments at page 6 of the Application. The departments include several that serve public health or environmental services. For example, the Department of Culture and Natural Resources (CNR) provides environmental services, and the Health Service Department and the Family Support and Behavioral Service Department provide public health services.³³

3) Description of Entities which Exercise Executive, Legislative, and Judicial Functions

As described in section B above, the CTCLUSI's government exercises executive, legislative and judicial authority. These functions are exercised by the Tribal Council and Tribal Court.

The Tribal Council is an elected body of six Council Members and the Tribal Chief. The Tribal Council exercises the CTCLUSI's executive and legislative powers.³⁴ The Tribal Council delegates the responsibility for day-to-day management of tribal affairs to the CTCLUSI's Chief Executive

³⁰ See, Exhibit F, Application for TAS pursuant to sections 105 and 505(a)(2) of the Clean Air Act (2009); Exhibit G, CTCLUSI FY 2021 and 2021 Clean Air Act Grant Proposal (2019); Exhibit H Tribal Water Quality Management Strategy (2015); Exhibit I, Tribal Integrated Water Quality Monitoring Program: Surface Water & Fixed Station Quality Assurance Plan Version 4.0(2016); and Nonpoint Source Management Plan

³¹ CTCLUSI Application at 5-6

³² *Id* at 15.

³³ EPA has reviewed the CTCLUSI Tribal Code which is available for public review at <https://ctclusi.org/tribalcode/>. The Tribal Code includes provision covering, among other thing, procedural rules for the Tribal Court and the Tribal Court of Appeal, civil rights, the Tribal Council, uniform commercial code, administrative procedures, domestic proceedings, regulations, corporations, property, and employment and contracting. *Id*.

³⁴ As noted at pages 5 above, the Tribal Council is elected by the CTCLUSI General Council which is made up of all enrolled CTCLUSI members who are at least 18 years old.

Officer. The Chief Executive Officer oversees the management of the CTCLUSI's twelve executive branches.

The Tribal Court carries out the judicial functions of the CTCLUSI Tribal Constitution and Tribal Code. The Tribal Court exercises jurisdiction over the civil matters and claims identified at page 6 of the CTCLUSI Application.

4) Description of the Agency of the Tribal Government which will Assume the Primary Responsibility for Establishing, Reviewing, Implementing, and Revising Water Quality Standards

The CTCLUSI Application identifies the CNR as the administrative entity which will be responsible for establishing, reviewing, implementing and revising water quality standards as well as implementing the CTCLUSI's water quality certification program.³⁵ The CNR will assign these responsibilities to the Water Quality Program, which was created by the CTCLUSI in 2003 and operates within the CNR.³⁶ The Water Quality Program currently implements the CTCLUSI's CWA section 106 and CWA section 319 programs pursuant to an EPA approved workplan.³⁷ The Water Quality Program has been implementing its water quality management strategy and nonpoint source management plans since early 2004.³⁸

The Water Quality Program staff includes four specialists who have demonstrated experience implementing the responsibilities of the Water Quality Program. The four staff members have obtained degrees from accredited universities and relevant work experiences through various environmental and cultural resource protection programs. EPA's experience of working with the Water Quality Program has led EPA to conclude that the staff includes the appropriate administrative and technical expertise necessary to administer the CWA sections 303(c) and 401 programs, as discussed in further detail in the following section.³⁹

5) Description of the Technical and Administrative Capabilities of the Staff to Administer and Manage an Effective Water Quality Standards Program.

The four specialists who comprise the Water Quality Program staff include a water protection specialist, a biologist and water protection specialist, an air and water protection specialist, and a tribal resource response specialist.⁴⁰ The CTCLUSI Application describes the responsibilities for each of the specialists working within the Water Quality Program.⁴¹

The water protection specialist manages the CTCLUSI water quality monitoring program and the non-point pollution management plan.⁴² The water protection specialist is also responsible for

³⁵ CTCLUSI Application at 15-16.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See, Exhibit H of the CTCLUSI Application at 4; and Exhibit J at 5.

³⁹ See, EPA Memorandum entitled "Review of Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' Application for Treatment in a Similar Manner as a State for Purposes of Administering the Water Quality Standards Program: Demonstration of Capabilities" by Rachael Renkens, Water Quality Standards Coordinator, through Hanh Shaw, Manager, Standards and Assessment Section, to Ted Yackulic, Office of Regional Counsel (March 16, 2021).

⁴⁰ CTCLUSI Application at 16-17.

⁴¹ *Id.* at 16-17.

⁴² *Id.*

monitoring water quality on Reservation and Trust Lands and coordinates restoration activities.⁴³ This specialist participates in several regional watershed and restoration management entities.⁴⁴

The biologist and water protection specialist monitors water quality, coordinates restoration projects, and reviews permits and environmental policy.⁴⁵ This specialist's responsibilities also include participating in the Tenmile Lakes Basin Partnership as well as monitoring wildlife populations, invasive species and habitat conditions.⁴⁶

The air and water quality specialist oversees the ambient air and meteorological station, conducts indoor and outdoor air quality outreach, is responsible for water monitoring data quality and reporting, and assists the water protection specialist.⁴⁷ This specialist is also responsible for engaging with a number of community stakeholders and partners.⁴⁸

The tribal resource response specialist is responsible for implementing resource protection within Tribal Ancestral Lands.⁴⁹ This position overlaps with air and water quality programs for natural and cultural resource protection from pollutants, and in building laboratory capacity to monitor for pollutants.⁵⁰ This position is active in many emergency response coalitions, partnering with the United States Coast Guard, National Oceanic and Atmospheric Administration, EPA, Oregon Department of Environmental Quality, and many other federal and state agencies.⁵¹ The tribal resource specialist also reviews permits, environmental policy, and assists in ensuring project compliance to environmental regulation.⁵²

Based on the information provided by the CTCLUSI that describes their capability to administer effective water quality standards and certification programs under the CWA, and based on the CTCLUSI Application's description of work undertaken by the Water Quality Program as well as EPA's experience working with the CTCLUSI Water Quality Program, EPA concludes that the CTCLUSI have met the requirements at 40 C.F.R. §§ 131.8(a)(4) and (b)(4).

III. EPA's TAS Determination is a Separate Process from an EPA Decision on a Tribe's Submittal of Water Quality Standards

As described above in section B.2, pursuant to EPA's TAS regulations at 40 C.F.R. § 131.8(c)(2), EPA provided notices and opportunities to comment on the CTCLUSI's assertion of authority to regulate the quality of surface waters on the CTCLUSI Reservation and Trust Lands. Any comments addressing the substance of the water quality standards that an eligible tribe may develop and submit to EPA in the future for review under CWA section 303(c) are beyond the scope of the TAS review process.

⁴³⁴³ *Id* at 17.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

This TAS decision does not constitute an approval of any CTCLUSI water quality standards. EPA's review and approval or disapproval of new or revised water quality standards is a separate Agency action under the CWA, distinct from EPA's decision on the CTCLUSI Application for eligibility to administer CWA sections 303(c) and 401 programs. Under the CWA, a tribe must first be approved for TAS before submitting water quality standards under CWA section 303(c) for EPA review and action. If EPA approves a tribe's water quality standards, those standards then become federally applicable water quality standards for CWA purposes over those waters of the United States that are within the scope of the TAS approval.

Any water quality standards adopted by the CTCLUSI and submitted to EPA for review and action under the CWA must satisfy all CWA and regulatory requirements, including requirements for public involvement in the adoption process. For example, before adopting final standards, the CTCLUSI must hold a well-publicized public hearing on a draft proposal, notify the public and affected parties, and provide copies of relevant materials in advance, and for final rulemaking provide a responsiveness summary to the tribal decision-maker and the public. See 40 C.F.R. § 131.20(b) and 40 C.F.R. part 25. These requirements will ensure an appropriate opportunity for interested entities to provide input on the CTCLUSI's proposed water quality standards, and any concerns regarding the standards proposed by the CTCLUSI would be appropriately raised and addressed as part of the public participation process.

EPA also notes that section 518(e) of the CWA addresses the possibility that disputes may arise between a state and an eligible Indian tribe as a result of differing federally approved water quality standards on shared water bodies. This provision directs EPA to promulgate regulations that provide a mechanism for resolving any unreasonable consequences that may arise as a result of differing state and tribal water quality standards. The dispute resolution mechanism regulations at 40 C.F.R. § 131.7 authorize the Regional Administrator to attempt to resolve (and provide a detailed process for resolving) such disputes between a state and a tribe with TAS approval in certain circumstances.⁵³

IV. Conclusion

EPA has reviewed the CTCLUSI's Application for TAS for purposes of CWA sections 303(c) and 401. EPA has assessed whether the application from the CTCLUSI meets the eligibility criteria established by CWA section 518(e) and the applicable regulations. Based upon this review, EPA concludes that the CTCLUSI have made the required demonstration to meet the eligibility and application requirements at 40 C.F.R. §§ 131.8(a)(1)-(4) and (b)(1)-(6) to administer the water quality standards program for surface waters of the Reservation and Trust Lands. Pursuant to 40 C.F.R. 131.4(c), the CTCLUSI are also eligible to the same extent as a state for purposes of the water quality certification program under CWA section 401.

⁵³ Where disputes between states and Indian tribes arise as a result of differing water quality standards on common bodies of water, the Regional Administrator shall attempt to resolve such disputes where: (1) the difference in water quality standards results in unreasonable consequences; (2) the dispute is between a state and a tribe which EPA has determined is eligible to the same extent as a state for purposes of water quality standards; (3) a reasonable effort to resolve the dispute without EPA involvement has been made; (4) the requested relief is consistent with the provisions of the CWA and other relevant law; (5) the differing state and tribal water quality standards have been adopted pursuant to state and tribal law and approved by EPA; and (6) a valid written request has been submitted by either the tribe or the state. 40 C.F.R. § 131.7.

_____/s/ 05-04-2021_____

Daniel D. Opalski, Director
Water Division
EPA Region 10

Date

Appendix A: Supporting Information

The following documents constitute a portion of the full docket for this decision. All relevant materials in the docket associated with the application for Treatment in a Similar Manner as a State, and EPA’s review and decision are in the Supporting Information for this action.

Application and Supporting Materials	
<p>Letter dated December 17, 2019, from Alexis Barry, Chief Executive Officer, The Confederate Tribes of Coos, Lower Umpqua, and Siuslaw Indians, to Christopher Hladick, Regional Administrator, US EPA Region 10, transmitting Application for Treatment in the Same Manner as a State under the Clean Water Act</p> <ul style="list-style-type: none"> • Original Application for Treatment as a State to Administer a Water Quality Standards Program <ul style="list-style-type: none"> ○ Exhibit A: “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” at 83 Fed. Reg. 4235 (Jan. 30, 2018) ○ Exhibit B: CTCLUSI Constitution ○ Exhibit C: Legal Descriptions of the Tribal trust land areas for which the Applicant is seeking authority to administer the water quality standards and water quality certification programs ○ Exhibit D: Maps of the Tribal trust land areas for which the Applicant is seeking authority to administer the water quality standards and water quality certification programs ○ Exhibit E: Western Oregon Tribal Fairness Act (WOTFA) ○ Exhibit F: Application for Treatment Similar to a State Pursuant to Section 105 and 505(A)(2) of the Clean Air Act ○ Exhibit G: Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians FY20 & FY21 Clean Air Act Section 105 Grant Proposal ○ Exhibit H: Tribal Water Quality Monitoring Strategy (2008-2016) ○ Exhibit I: Tribal Integrated Water Quality Monitoring Program: Surface Water & Fixed Station Quality Assurance Project Plan Version 4.0 ○ Exhibit J: Nonpoint Source Pollution Management Plan ○ Exhibit K: Tribal Integrated Waste Management Plan ○ Exhibit L: CTCLUSI Tribal Estuary Response Plan 	December 17, 2019
<p>Letter dated June 12, 2020, from Alexis Barry, Chief Executive Officer, The Confederate Tribes of Coos, Lower Umpqua, and Siuslaw Indians, to Christopher Hladick, Regional Administrator, US EPA Region 10, transmitting a supplement to the Tribe’s application for TAS for water quality standards</p> <ul style="list-style-type: none"> • Amended Application for Treatment as a State to Administer a Water Quality Standards Program and Request Approval of Water Quality Standards 	June 12, 2020
<p>https://ctclusi.org/ is a link to a publicly available website maintained by the CTCLUSI. The website includes a Government down drop menu that provides</p>	

links to, among other things, the Government & Facilities, the Tribal Court & Peacekeeping, the Tribal Code, and the Department of Natural Resources.	
https://ctclusi.org/tribalcode/ is a link to the CTCLUSI Tribal Code.	
Email transmitting the resumes of the CTCLUSI Water Quality Program staff from Dr. Roselynn Lwenya, Director, CTCLUSI CNR to Kristine Carre, Tribal Coordinator, Tribal Trust and Assistance Branch, EPA Region 10 <ul style="list-style-type: none"> • Janet C. Niessner, Tribal Resource Response Specialist • Ashley Russell, Water Protection Specialist • John Schaefer, Biologist and Water Protection Specialist • Carter Thomas, Air and Water Protection Specialist 	March 6, 2021
Letters and Related Documents from EPA	
Eight letters from Chris Hladick, Regional Administrator, EPA Region 10, to the State of Oregon and appropriate local governmental entities providing notice of an opportunity to comment on the substance and basis of CTCLUSI's assertion of authority in the amended TAS application (Initial comment opportunity from September 16, 2020 to October 16, 2020) <ul style="list-style-type: none"> • The Honorable Kate Brown, Governor, State of Oregon • Commissioner Robert Main, Commissioner, Coos County • Commissioner Chris Paasch, Commissioner, Curry County • Commissioner Chris Boice, Chair Commissioner, Douglas County • Commissioner Heather Buch, Chair Commissioner, Lane County • Commissioner Kaety Jacobson, Chair Commissioner, Lincoln County • The Honorable Joe Henry, Mayor, City of Florence • The Honorable Joe Benetti, Mayor, City of Coos Bay <ul style="list-style-type: none"> ○ Mr. Rodger Craddock, City Manager, City of Coos Bay 	September 15, 2020
Eight emails from Dan Opalski, Director, Water Division, EPA Region 10, transmitting the eight letters from Chris Hladick, Regional Administrator, EPA Region 10 regarding the notice and opportunity for comment, addressed to the following recipients: <ul style="list-style-type: none"> • The Honorable Kate Brown, Governor, State of Oregon • Commissioner Robert Main, Commissioner, Coos County • Commissioner Chris Paasch, Commissioner, Curry County • Commissioner Chris Boice, Chair Commissioner, Douglas County • Commissioner Heather Buch, Chair Commissioner, Lane County • Commissioner Kaety Jacobson, Chair Commissioner, Lincoln County • The Honorable Joe Henry, Mayor, City of Florence • The Honorable Joe Benetti, Mayor, City of Coos Bay <ul style="list-style-type: none"> ○ Mr. Rodger Craddock, City Manager, City of Coos Bay 	September 15, 2020
Email from Dan Opalski, Director, Water Division, announcing the reopening of the public comment period and the opportunity to attend webinar about the TAS process and the CTCLUSI's application, to the following recipients: 'rian.hooff@state.or.us'; 'maryanne@oregonfb.org'; 'mike@ofic.com'; 'mccarthy1979@aol.com'; 'watermanranch@frontier.com'; 'jburns@portofcoosbay.com'; 'bbrooks@co.coos.or.us'; 'mcribbins@co.coos.or.us'; 'rdunham@northbendcity.org'; 'cthomas@ctclusi.org'; 'rlwenya@ctclusi.org'; 'swatkins@ctclusihr.org'; 'bmain@co.coos.or.us'; 'kjacobson@co.lincoln.or.us'; 'boice@co.douglas.or.us';	November 6, 2020

<p>'Heather.Buch@lanecountyor.gov'; 'paaschc@co.curry.or.us'; 'jbenetti@coosbay.org'; 'joe.henry@ci.florence.or.us'; Shaw, Hanh; Yackulic, Ted; Eberhardt, Maja; Renkens, Rachael; 'rcraddock@coosbay.org'; 'woody.woodbury@ci.florence.or.us'; 'ron.preisler@ci.florence.or.us'; 'joshua.greene@ci.florence.or.us'; 'boicec@co.curry.or.us'; 'gold@co.curry.or.us'; 'office@co.curry.or.us'; 'Jay.Bozievich@lanecountyor.gov'; 'Pat.Farr@lanecountyor.gov'; 'Joe.Berney@lanecountyor.gov'; 'kress@co.douglas.or.us'; 'freeman@co.douglas.or.us'; 'boc.assistants@co.douglas.or.us'; 'dhunt@co.lincoln.or.us'; 'cehall@co.lincoln.or.us'; 'jsweet@co.coos.or.us'; 'pete.sorenson@co.lane.or.us'; 'Connie.Dou@state.or.us'; 'Justin.B.Green@state.or.us'; 'Jennifer.Wigal@state.or.us'</p>	
<p>Public notice providing an opportunity to comment on the substance and basis of the CTCLUSI's assertion of authority, published in:</p> <ul style="list-style-type: none"> • <i>The World</i> (southwest Oregon, regional newspaper) <ul style="list-style-type: none"> ○ Receipt of payment for the legal notice • <i>The Oregonian</i> <ul style="list-style-type: none"> ○ The notice was posted on OregonLive (<i>The Oregonian</i> online) from September 16-23, 2020. ○ Receipt of payment for the legal notice 	<p>Published on</p> <p>September 15, 2020 September 16, 2020</p>
<p>The opportunity to comment was posted on EPA's Public Notice webpage https://www.epa.gov/publicnotices/application-treatment-similar-manner-state-confederated-tribes-coos-lower-umpqua-and</p> <ul style="list-style-type: none"> • Update to the Public Notice webpage announcing the reopening of the public comment period and registration information for a public EPA-led webinar discussion the TAS process • Update to the Public Notice webpage including instructions for accessing the webinar's recording 	<p>Posted on</p> <p>September 16, 2020</p> <p>November 6, 2020</p> <p>December 4, 2020</p>
<p>EPA Informational Webinar</p>	
<p>EPA Public Webinar</p> <ul style="list-style-type: none"> • Presentation for the TAS webinar • Webinar Recording 	<p>December 2, 2020</p>
<p>Email from Rachael Renkens, Water Quality Standards Coordinator, EPA Region 10 transmitting the presentation from the webinar and a link to the FTP site to download the webinar recording, to the following recipients:</p> <ul style="list-style-type: none"> • watermanranch@frontier.com; ChristineMoffitt@outlook.com; Tami Applebee; swatkins@ctclusihr.org; Mike Dunning; Margaret Barber; Connie Dou; maryannecooper@oregonfb.org; rick@wheatlawoffices.com; njohnson@co.coos.or.us; Roselynn Lwenya; ashley@rogueclimate.org; duggan.bryan@deq.state.or.us; Mike Eliason; Rachel Hill; anu@crag.org; cschnabel@northbendcity.org; dslyter@ctclusi.com; megan.tuttle@weyerhaeuser.com; Zack Demars; cthomas@ctclusi.org 	<p>December 4, 2020</p>
<p>Webinar Registration and Attendance sheet</p>	<p>December 2, 2020</p>
<p>EPA Memorandums referenced in the Decision Document</p>	
<ul style="list-style-type: none"> • EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984) • EPA Memorandum titled "EPA/State/Tribal Relations," by EPA Administrator Reilly (July 10, 1991) • Memorandum titled "Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations," by EPA Assistant 	

<p>Administrator Robert Perciasepe and General Counsel Jonathan Cannon (March 19, 1998)</p> <ul style="list-style-type: none"> Memorandum titled Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs, by EPA Deputy Administrator Marcus Peacock (January 23, 2008) 	
Comments Received by EPA	
Letter from Richard Whitman, Director, Oregon State Department of Environmental Quality, to Christopher Hladick, Regional Administrator, EPA Region 10	October 16, 2020
Letter from Commissioner Melissa Cribbins, Coos County, to Chief Slyter, CTCLUSI	October 16, 2020
Letter from Melissa Cribbins, Rober Main, and John Sweet, Coos County Board of Commissioners, to Ted Yackulic, EPA Region 10	December 4, 2020
Letter from John Burns, CEO, Oregon International Port of Coos Bay, addressed to Chief Slyter, CTCLUSI, and sent to EPA	October 15, 2020
Letter from John Burns, CEO, Oregon Internation Port of Coos Bay, to Ted Yackulic, EPA Region 10	December 8, 2020
Letter from Ralph Dunham, Public Works Director, City of North Bend to Chief Slyter, CTCLUSI	October 16, 2020
Two letters from Ryan McCarthy, President, Coos-Curry County Farm Bureau, to Ted Yackulic, EPA Region 10 and Richard Whitman, Director, Oregon State Department of Environmental Quality	October 15, 2020 December 8, 2020
Two joint letters from Mary Anne Cooper, Vice President of Public Policy, Oregon Farm Bureau (OFB), and Mike Eliason, Oregon Forest and Industries Council (OFIC), to Ted Yackulic, EPA Region 10	October 16, 2020 December 11, 2020
Joint letter from Phillip Johnson, Executive Director, Oregon Shores Conservation Coalition (includes the Citizens for Renewables, Coast Range Forest Watch, Rogue Climate, and the Surfrider Foundation), to Christopher Hladick, Regional Administrator, EPA Region 10	December 10, 2020
Letter from Christine Moffitt, President, and Todd Buchholz, Vice President, Friends of the South Slough Reserve, Inc (FOSS), to EPA Region 10 and Oregon Department of Environmental Quality	December 11, 2020
Email from Dr. Jan Hodder, Oregon Institute of Marine Biology to EPA Region 10	December 8, 2020
Email from Natalie Ranker, President, Citizens for Renewables to EPA Region 10 and Oregon Department of Environmental Quality	December 11, 2020
Response to Comment Letters from the CTCLUSI	
Letter from Debbie Bossley, Chair, CTCLUSI to Richard Whitman, Director, Oregon Department of Environmental Quality	January 22, 2021
Letter from Debbie Bossley, Chair, CTCLUSI to Melissa Cribbins, Chair, Board of Commissioners, Coos County	January 11, 2021
Letter from Debbie Bossley, Chair, CTCLUSI to Ralph Dunham, Public Works Director, City of North Bend	January 11, 2021
Letter from Debbie Bossley, Chair, CTCLUSI to John Burns, CEO, Oregon International Port of Coos Bay	January 11, 2021
Letter from Debbie Bossley, Chair, CTCLUSI to Mary Anne Cooper, Oregon Farm Bureau (OFB), and Mike Eliason, Oregon Forest and Industries Council (OFIC)	January 11, 2021

Letter from Debbie Bossley, Chair, CTCLUSI to Ryan McCarthy, President, Coos-Curry County Farm Bureau	January 15, 2021
Land Record documents from the U.S. Department of the Interior	
Email exchange with Courtney Kohler, Attorney Advisor, DOI, MaryAnne Kenworthy, DOI, Ted Yackulic, Assistant Regional Counsel, EPA Region 10, and Rachael Renkens, Water Quality Standards Coordinator, EPA Region 10 setting up a shared OneDrive folder to obtain BIA Land Records for the CTCLUSI's Reservation and Trust Lands	January 28, 2021
<p>The following documents were shared by the DOI, Office of the Regional Solicitor with EPA Region 10 via a shared OneDrive folder:</p> <ul style="list-style-type: none"> • BIA Information Response Chart – a list of the CTCLUSI's parcels • BIA Legal Descriptions for Non-WOTFA Parcels (Consolidated List of Title Status Report Info) • U.S. Department of the Interior, Bureau of Indian Affairs, Title Status Reports <ul style="list-style-type: none"> ○ Alishanee Unit 1 & 2, 149 T 1116 ○ California, 149 T 1070 ○ Connecticut, 149 T 1063 ○ Elks Unit 1, 149 T 1062 ○ Elks Unit 2, 149 T 1074 ○ Fossil Point Unit 1, 149 T 1108 ○ Gregory Point, 152 T 1010 ○ Hatch Tract, 149 T 1060 ○ Kentuck Slough, 152 T 1000 ○ Peterman Tract, 152 T 1007 ○ Sixes River, 152 T 1006 ○ Springfield House, 149 T 1088 ○ Tribal Hall Unit 1, 151 T 1001 ○ Tribal Hall Unit 8 & 9, 152 T 1005 ○ Tribal Hall Unit 10, 152 T 1004 ○ Tribal Hall Unit 11, 149 T 1068 ○ Tribal Hall Unit 12, 149 T 1061 ○ Tribal Hall Units 2-7, 152 T 1002 ○ Wu-a-lach Unit 2, 152 T 1003 • Surveys of Non-WOTFA Lands <ul style="list-style-type: none"> ○ Kentuck Slough Survey, BIA No. 152 T100, t250s120w_007 ○ Sixes River Survey, BIA No. 152 T1006, T32SR15WSec11 • Historical Surveys of WOTFA Lands File names indicate, Township N°# South, Range N°# West, of the Willamette Meridian, Oregon (filename.jpg) <ul style="list-style-type: none"> ○ t150s070w_002 ○ t200s090w_003 ○ t200s090w_004 ○ t200s100w_005 ○ t210s110w_006 ○ t260s140w_003 ○ t260s140w_009 ○ t260s140w_010 	Shared with EPA January 28, 2021

<ul style="list-style-type: none">○ t260s140w_011○ t260s140w_012○ t270s090w_001○ t270s090w_008○ t270s090w_011○ t270s090w_012○ Umpqua Eden M51-65.pdf● BLM Legal Description Review Certification<ul style="list-style-type: none">○ Fossil Point Unit 3 LDR BLM Certification	
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Appendix B: Response to Comments

CTCLUSI submitted an application to EPA for treatment in a similar manner as a state for purposes of administering the water quality standards and water quality certification programs under Clean Water Act sections 303(c) and 401, respectively.

In accordance with EPA practice and pursuant to 40 C.F.R. 131.8(c), EPA notified appropriate governmental entities and the general public of, and provided opportunities to comment on, “the substance and basis of the [CTCLUSI’s] assertion of authority to regulate the quality of reservation waters.”

EPA also held a public informational webinar for commenters from the initial public comment period and other interested parties. The webinar took place on December 2, 2020, during the reopened public comment period.

During the initial comment period, which occurred from September 16 to October 16, 2020, EPA received comments from the following:

- Richard Whitman, Director, Oregon Department of Environmental Quality, on October 16, 2020;
- Melissa Cribbins, Chair Commissioner, Coos County, on October 16, 2020;
- John Burns, CEO, International Port of Coos Bay, on October 15, 2020;
- Ralph Dunham, Public Works Director, City of North Bend, on October 16, 2020;
- Ryan McCarthy, President, Coos-Curry County Farm Bureau, on October 15, 2020;
- Joint letter from Mary Anne Cooper, Oregon Farm Bureau, and Mike Eliason, Oregon Forest and Industries Council, on October 16, 2020.

During the reopened comment period, held from November 9 to December 11, 2020, EPA received comments from the following:

- Coos County Board of Commissioners, on December 4, 2020;
- John Burns, CEO, International Port of Coos Bay, on December 8, 2020;
- Ryan McCarthy, President, Coos-Curry County Farm Bureau, on December 8, 2020;
- Joint letter from Mary Anne Cooper, Oregon Farm Bureau, and Mike Eliason, Oregon Forest and Industries Council, on December 11, 2020;
- Dr. Jan Hodder, Oregon Institute of Marine Biology, on December 8, 2020;
- Joint letter from the Phillip Johnson, Executive Director, Oregon Shores Conservation Coalition (Citizens for Renewables, Coast Range Forest Watch, Rogue Climate, and the Surfrider Foundation), on December 10, 2020;
- Christine Moffitt, President, and Todd Buchholz, Vice President, Friends of the South Slough Reserve, Inc (FOSS), on December 11, 2020; and
- Natalie Ranker, President, Citizens for Renewables, on December 11, 2020.

On January 19, 2021, CTCLUSI shared with EPA copies of the responses to comments they had provided to following commenters:

- Ralph Dunham, City of North Bend, on January 11, 2021;
- Melissa Cribbins, Chair, Coos County Board of Commissioners, on January 11, 2021;
- Mary Anne Cooper, Oregon Farm Bureau, and Mike Eliason, Oregon Forest and Industries Council by joint letter, on January 11, 2021;

- John Burns, CEO, International Port of Coos Bay, on January 11, 2021; and
- Ryan McCarthy, President, Coos-Curry County Farm Bureau, on January 15, 2021.

Below is a summary of the substantive comments received and EPA's responses to those comments. Since a number of comments contained the same theme or addressed similar issues, they are categorized together and paraphrased in this document.

No.	Comment Summary	EPA Response
Requests for Extension of the Comment Period		
1	<p>Several commenters raised concerns regarding insufficient notice of the opportunity for comment [during the initial comment period] and requested additional time to review the TAS application materials and consult with the CTCLUSI, EPA, the State, and other interested parties regarding the potential implications of the application. Commenters also requested more information regarding the TAS process.</p>	<p>EPA provided an opportunity to comment on the subject decision that complies with the applicable regulatory requirements.</p> <p>As provided at 40 C.F.R. § 131.8(c)(2) and noted in Appendix A, EPA, by letter dated September 15, 2020, provided notice to appropriate governmental entities and an opportunity to comment on the substance and basis of the CTCLUSI’s assertion of authority in their application to regulate under the CWA the quality of surface waters on the CTCLUSI Reservation and Trust Lands. In addition, EPA, by letters dated September 15, 2020, provided several proximately located local municipal and county governments with notice of the CTCLUSI’s Application and of the opportunity to comment on the Tribes’ assertion of jurisdiction.² Due to the COVID-19 pandemic, all of these letters were sent-electronically. The initial comment period started on September 16, 2020 and ended on October 16, 2020.</p> <p>Consistent with Agency practice, EPA also provided the public, including local governments, notice and an opportunity to comment on the assertion of authority in the Tribes’ Application. A public notice was published in two newspapers—The Oregonian, a daily newspaper based in Portland, and The World, a biweekly regional newspaper which serves Oregon’s south coast, including the cities of Coos Bay and North Bend, among others. The published notices identified EPA’s website on which the Tribes’ Application was posted and notified the public of the opportunity to review the Tribes’ Application and to submit comments to EPA on the Tribes’ assertion of authority to EPA by October 16, 2020.</p> <p>EPA received several requests to extend the comment period. EPA responded to these requests by reopening the comment period from November 9, 2020 to December 11, 2020 and held an informational webinar for interested parties and the public on December 2, 2020. The topics covered during the webinar included: (1) the authorities provided to tribes and EPA under CWA Section 518(e), (2) the criteria established by the CWA and applied by EPA when evaluating a TAS application, (3) the lands the CTCLUSI assert jurisdiction over, and (4) an overview of the state/tribal water quality</p>

		standards development process, opportunities for public involvement, and EPA review and action under CWA section 303(c). There was also a question and answer period during the webinar.
Tribal Jurisdictional Boundaries		
2	Commenters requested EPA fully evaluate each specific parcel and water body identified by the TAS application to confirm the Tribes' assertion of authority.	<p>EPA appreciates the concern that it should carefully evaluate the Tribes' assertion of authority for each of the parcels included in the CTCLUSI TAS Application.</p> <p>Tribes can seek TAS with respect to water resources located within a tribe's formal reservation as well as on lands held in trust for the benefit of the tribe that are located outside of the tribe's formal reservation. EPA evaluated each of the maps and title/deed descriptions that the CTCLUSI provided in their application. EPA also evaluated the United State Bureau of Indian Affairs (BIA) realty records that EPA had received from the United States Department of Interior (DOI). Based on this evaluation, EPA determined that all of the lands subject to the CTCLUSI application were located within the CTCLUSI Reservation or on lands held in trust for the CTCLUSI. Thus, EPA concluded the CTCLUSI's assertion of authority is correct.</p> <p>As noted in EPA's decision to approve the CTCLUSI Application, EPA determined that the following properties include portions of surface water bodies:</p> <ul style="list-style-type: none"> • Parcel B of the Hatch Tract extends to and along the "apparent mean high water line of the west bank of the North Fork of Siuslaw River." • The Fossil Point Unit 1 tract extends to and along the "mean low water line of Coos Bay." • The Fossil Point Unit 3 tracts to and along the "low water line of Coos Bay." • Gregory Point includes the Pacific Ocean to the extent that the Pacific Ocean is located within the property boundaries for any of the 22 parcels described in the legal description of the Gregory Point land transfer.
3	Commenters expressed concerns that EPA's approval of the CTCLUSI TAS Application will allow the CTCLUSI to develop water quality standards that regulate activities on surface waters located outside of its Reservation and Trust Lands.	EPA acknowledges the commenters' interest in water quality standards that may be established by the CTCLUSI for waters within the CTCLUSI Reservation and Trust Lands, and concerns regarding the potential application of the Tribes' water quality standards outside of the CTCLUSI Reservation and Trust Lands. However, the approval of the TAS application does not constitute approval of water quality standards for the CTCLUSI Reservation and Trust Lands.

		<p>EPA understands that the CTCLUSI are in the process of developing water quality standards for their reservation. EPA will not conduct a formal review of these standards until the CTCLUSI have completed the water quality standards development, provided the public with an opportunity to review and comment on the proposed standards, finalized and adopted the standards in accordance with Tribal Law, and submitted the standards to EPA for review and action under the CWA. 40 C.F.R., Subpart C, §§ 131.20 and 131.21 articulate the process for the subsequent development, public participation, submittal and review of tribal water quality standards. EPA’s CWA review will be the subject of a separate agency action. In addition, any future EPA approval will be limited to an approval of water quality standard for surface waters located within the boundaries of the Tribes’ Reservation and Trust Lands. However, section 401 of the CWA will provide the CTCLUSI with the authority to grant or deny certification for federally permitted or licensed activities that may result in a discharge to waters of the United States. The decision to grant or deny certification would be based on the CTCLUSI’s determination regarding whether the proposed activity will comply with, among other things, tribal water quality standards approved by EPA under CWA section 303(c).</p>
4	<p>Commenters also noted that the diversity of tribal land holdings and non-contiguous jurisdiction poses particular challenges for cooperative management of the boundary areas and shared resources.</p>	<p>EPA appreciates this concern. The CTCLUSI Reservation and Trust lands are described in 28 separate legal/title descriptions and are identified in 19 maps that the CTCLUSI included in the TAS Application. The detail of the submitted materials provides a clear representation of the location and extent of the CTCLUSI’s jurisdiction. The CTCLUSI noted in their response to the State of Oregon’s letter that the CTCLUSI looks forward to working with the State and the federal government to avoid jurisdictional ambiguities and hopes to develop a clear and shared understanding of jurisdictional boundaries.</p>
5	<p>The commenters requested clarity surrounding language in the TAS application that appears to assert jurisdiction over streams and wetlands “immediately adjacent to” trust lands.</p>	<p>As noted above in the response to comment #2, EPA approval is limited to those lands and surface waters within the boundaries of the CTCLUSI Reservation and Trust Lands. EPA’s approval does not extend to lands or surface water bodies immediately adjacent to, nor to those not within the Reservation and Trust Lands. EPA notes that the CTCLUSI TAS Application and the CTCLUSI letter of response to the Coos-Curry County Farm Bureau expressly represent that the Tribes are not seeking TAS approval for surface water bodies</p>

		or lands located outside the boundaries of the CTCLUSI Reservation and Trust Lands.
6	A commenter noted that the TAS application lacked definition of boundaries and clarity of mapping to allow a citizen to discern the locations of properties and the extent of impacts to adjoining properties. Furthermore, the properties showed subtidal/tidally influenced lands in the Pacific Ocean, Coos River, and Coos Bay and the commenter expressed concerns regarding how and what regulations are proposed for these zones. The commenter also stated that the Tribes included non-Tribal lands within the City of North Bend in the TAS application.	<p>EPA has determined that the combination of maps and deed/title descriptions that EPA has reviewed and included in the information supporting this decision provide sufficient clarity to define the boundaries of the CTCLUSI Reservation and Trust Lands. EPA also notes that some of the tribal maps also identified lands owned in fee by the CTCLUSI. The CTCLUSI did not seek TAS approval for such fee lands and EPA does not include the Tribes' fee lands in this decision.</p> <p>The CTCLUSI TAS Application includes two parcels that are located within the City of North Bend. Both of these parcels are held in trust by the United States for the benefit of the CTCLUSI, and as such, are appropriately included in the Tribes' TAS application and EPA's approval. These parcels are identified as the Connecticut parcel (BIA #149T1063) and the California parcel (BIA #149T1070 and described in Exhibit C of the CTCLUSI TAS Application at pages 38 through 40, and pages 41 and 42, respectively.</p>
7	Commenters requested that EPA require the Tribes to revise the TAS application to ensure it does not infringe on Oregon State's jurisdiction over private landowners, or provide a clear delineation of the land and water boundaries of the Tribes' jurisdiction for any approval of TAS authority.	EPA's approval of the CTCLUSI TAS application does not include lands that are subject to the state of Oregon's federal CWA sections 303(c) and 401 programs. As noted in response to comment #2, EPA's approval includes four properties with boundaries located within a surface water body. The boundary delineates those portions of the shared surface water body subject to the CTCLUSI's and state of Oregon's authority.
Inconsistent/Competing Water Quality Standards in Shared Waterbodies		
8	Several commenters expressed concerns regarding the Tribes seeking to regulate upstream discharges/sources and impose additional water quality regulations. Commenters noted that TAS designation would add another layer to the permitting processes and expressed a desire for regulatory certainty without competing and inconsistent laws.	<p>While EPA appreciates the commenters' concerns, the comments are outside the scope of the TAS comment process, which focused on "the substance and basis of the Tribes' assertion of authority to regulate the quality of reservation waters," contained in the CTCLUSI's TAS Application. See 40 C.F.R. §131.8(b)(3).</p> <p>Additionally, the CTCLUSI's TAS Application and EPA's approval is limited to surface waters located within the CTCLUSI Reservation and Trust Lands, and EPA's decision to approve the CTCLUSI TAS Application does not provide the Tribes with regulatory authority for areas outside of the CTCLUSI Reservation and Trust Lands.</p>

		As discussed in the response to comment #3. EPA's approval of the CTCLUSI TAS Application does not include review or approval of water quality standards under section 303(c) of the CWA. A decision to approve (or disapprove) a water quality standards submittal would occur in a separate EPA decision. In addition, the CTCLUSI TAS Application does not seek approval of any permitting authority which, if sought, would also be subject to a separate EPA decision-making process.
Intergovernmental Collaboration and Coordination		
9	Several commenters noted an interest in participating in intergovernmental efforts with the Tribes, federal and state agencies to ensure coordinated, effective, and responsive environmental protection for the CTCLUSI lands and members, and the residents of the Oregon State.	EPA appreciates the commenters' interest in participating in intergovernmental efforts with the CTCLUSI, federal and state agencies to ensure coordinated, effective, and responsive environmental protection for the CTCLUSI lands and members, and residents of the state of Oregon. EPA encourages the commenters to pursue this interest and notes that the CTCLUSI have demonstrated a commitment to such intergovernmental efforts and responded to the commenters by articulating the Tribes' willingness to meet with the commenters to discuss the Tribes' TAS Application and water quality standard goals. In addition, before adapting final water quality standards, the Tribes must hold a well-publicized public hearing on the proposed standards, notify the public of an opportunity to community on the proposed standard, and provide a written responsiveness summary to the comments received.
10	Several commenters expressed an interest in participating in the coordination, review and comment process on the Tribes' development of water quality standards.	Any water quality standards adopted by the Tribes and submitted to the EPA for review and action under the CWA would need to satisfy all CWA and regulatory requirements, including requirements for public involvement in the adoption process. For example, before adopting final standards, the Tribes must hold a well-publicized public hearing on the proposal, notify the public and affected parties and provide copies of relevant materials in advance; and for final rulemaking provide a responsiveness summary to the tribal decision-maker and the public. See 40 C.F.R. § 131.8 and 40 C.F.R. part 25. These requirements will ensure an appropriate opportunity for interested entities to provide input on the Tribes' proposed water quality standards, and any concerns regarding the standards proposed by the Tribes would be appropriately raised and addressed as part of that public participation process. In addition, as noted in response to comment #9, the CTCLUSI have articulated a willingness to meet with the commenters to discuss its water quality goals.

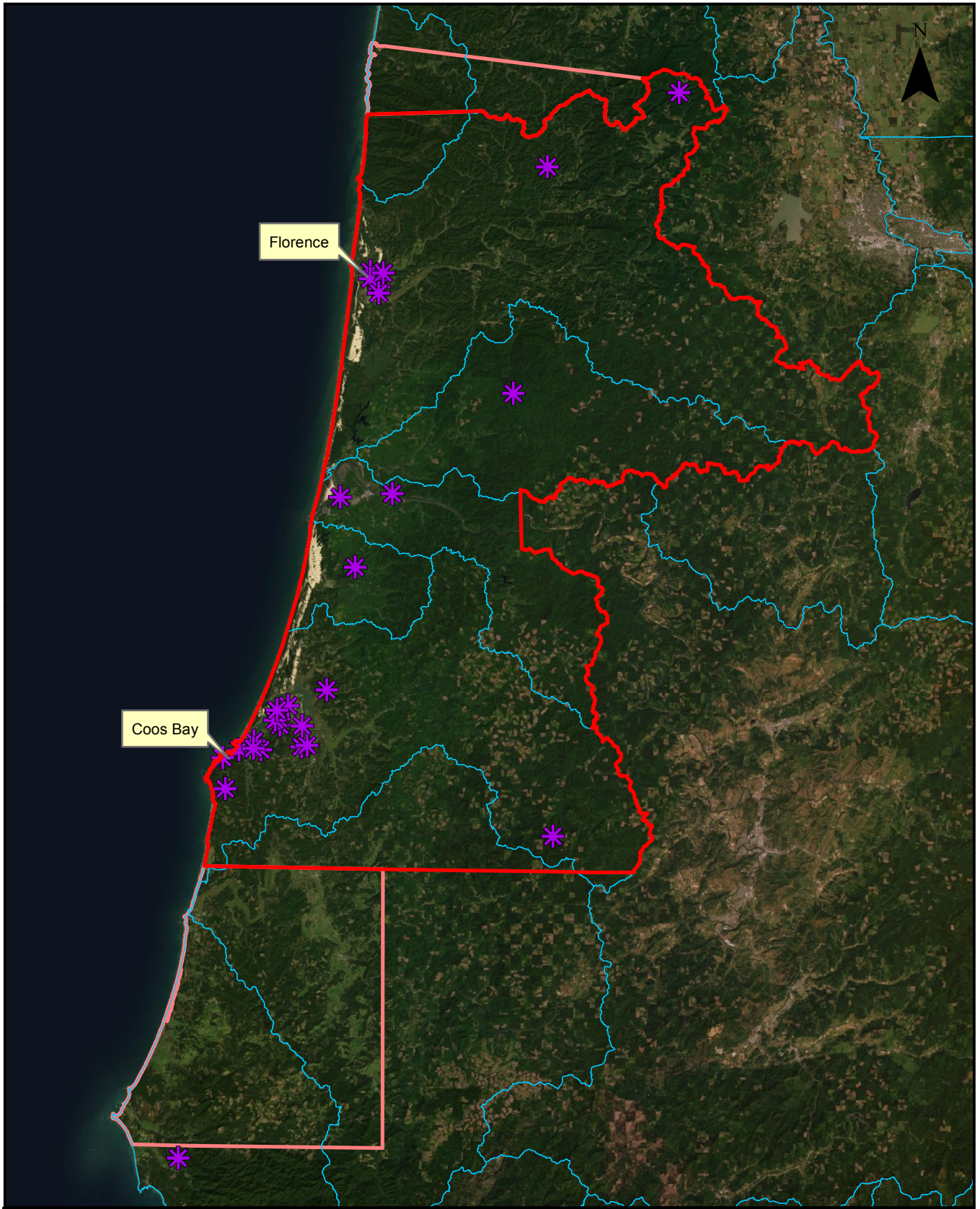
		EPA encourages all interested parties to engage in the public participation process on the CTCLUSI's proposed water quality standards when the opportunity becomes available.
Nonpoint Source Management Plan		
11	Several commenters objected to the inclusion of Exhibit J, the CTCLUSI Nonpoint Source Management Plan, in the Tribes' TAS application. Commenters expressed concerns that the Tribes are using this management plan to impose additional regulations on private agricultural and forest lands and that agricultural/forestry operations are presupposed to be the cause of any water quality impairment in the area.	<p>This comment does not address the Tribes' assertion of authority to manage and protect reservation water resources contained in the CTCLUSI's TAS Application and is outside the scope of the TAS comment process.</p> <p>EPA considered Exhibit J, and any other submitted materials discussing activities or water quality conditions outside of the CTCLUSI Reservation and Trust Lands as information that demonstrated the CTCLUSI's capability to administer an effective water quality standards program.</p>
12	Commenters also raised concerns that the Tribes intend to apply their water quality standards outside of Tribal lands, compel upstream compliance, and use the nonpoint source plan to override the existing water quality programs. Commenters request that EPA not approve any sections of the Tribes' application or nonpoint source management plan that seek to impact or regulate lands outside the Tribes' jurisdiction.	<p>This comment does not address the Tribes' assertion of authority to manage and protect reservation water resources contained in the CTCLUSI's TAS Application and is outside the scope of the TAS comment process.</p> <p>EPA's decision to approve the CTCLUSI TAS Application does not include a decision to approve the Tribes' nonpoint source management plan. The Tribes' TAS application and EPA's approval only apply to waters within the boundaries of CTCLUSI Reservation and Trust Lands.</p>
Comments in Support of the TAS Application		
13	<p>Commenters respect the Tribes' sovereignty and understand the desire of the Tribes to develop and administer their own water quality program for tribal waters and lands.</p> <p>Several commenters wrote in strong support of the CTCLUSI's request to be treated in a similar manner as a state for matters regarding water quality standards for surface waters. These commenters noted the Tribes' past and current involvement in conservation activities and</p>	EPA appreciates the comments.

	<p>capabilities to implement natural resource programs. The commenters noted the Tribes' leadership and expertise of both traditional and contemporary environmental science. The commenters support the CTCLUSI's effort to take a stronger role in management of water quality on their lands. The commenters noted that the Tribes have met the requirements under CWA section 518(e) and EPA approval would reinforce tribal sovereignty consistent with Congressional intent.</p>	
<p>Comments in Opposition of the TAS Application</p>		
<p>14</p>	<p>One commenter expressed general opposition and questioned the benefits of the Tribes obtaining TAS and saw no reason to approve the application. The commenter requested that lands outside the Tribes' jurisdiction be deleted throughout all documents relating to the application should the TAS process moves forward.</p>	<p>This comment does not address the Tribes' assertion of authority to manage and protect reservation water resources contained in the CTCLUSI's TAS Application and is outside the scope of the TAS comment process.</p> <p>EPA does not believe that removal of references to lands located outside of the Tribes' Reservation and Trust Lands from the CTCLUSI TAS Application is justified. By their application, the CTCLUSI seeks the authority to implement a CWA section 303(c) water quality standards program and a CWA section 401 water quality certification program over surface waters within the boundaries of the CTCLUSI Reservation and Trust Lands, and the Tribes' June 2020 Supplemental Application expressly clarifies that the Tribes do not seek such authority for surface waters located outside the boundaries of the CTCLUSI Reservation and Trust Lands. As noted in response to comment #11, EPA considered the CTCLUSI TAS Application information that discussed CTCLUSI water quality related activities and water quality conditions located outside of the CTCLUSI Reservation and Trust Lands as information that demonstrated the Tribes' understanding of water quality-related issues and ability to administer a water quality standards program.</p>
<p>15</p>	<p>One commenter recommended that the CTCLUSI TAS Application be denied and posited that approval of the application would not result in any benefit.</p>	<p>This comment does not address the Tribes' assertion of authority to manage and protect reservation water resources contained in the CTCLUSI's TAS Application and is outside the scope of the TAS comment process.</p>




	<p>EPA evaluated the CTCLUSI TAS Application under the four requirements for TAS determinations established at 40 C.F.R. § 131.8(a). These requirements are as follows: (1) the Indian tribe is recognized by the Secretary of the Interior and exercises authority over a reservation; (2) the Indian tribe has a governing body carrying out substantial governmental duties and powers; (3) the water quality standards program to be administered by the Indian tribe pertains to the management and protection of water resources that are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and (4) the Indian tribe is reasonably expected to be capable, in the Regional Administrator’s judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the CWA and applicable regulations. Based on its evaluation of the information supporting this decision, EPA concludes that the CTCLUSI have satisfied the four requirements, and thus, EPA has approved the CTCLUSI TAS Application.</p> <p>EPA believes this approval will result in benefits to water quality within the CTCLUSI Reservation and Trust Lands since it will allow the CTCLUSI to develop and propose water quality standards for surface water bodies that currently lack any standards. In addition, and as noted by the CTCLUSI in its letter of response to the comment, approval will benefit the tribal sovereignty by empowering the Tribes with the authority to implement the water quality standards and water quality certification programs.</p>
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Appendix C: Maps of CTCLUSI Reservation and Trust Lands

[Exhibit D: Maps from the CTCLUSI TAS Application]

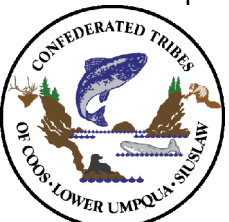


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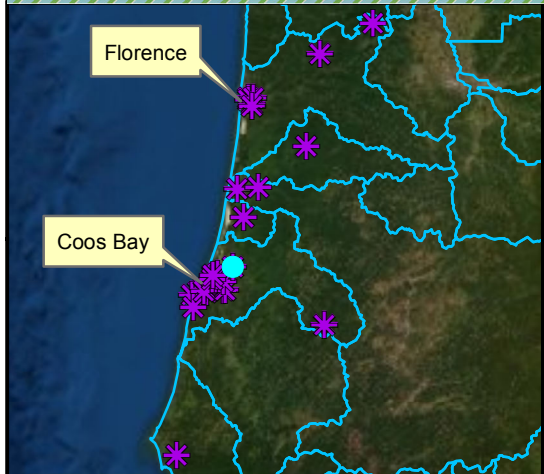
-  CTCLUSI Property Locations
-  CTCLUSI_ANCESTRAL_TERRITORY
-  CTCLUSI_Peripheral_AOI
-  Watershed Council Boundaries

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Kentuck Slough BIA No. 152T1000



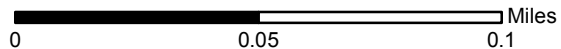
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- Trust

Hydrologic

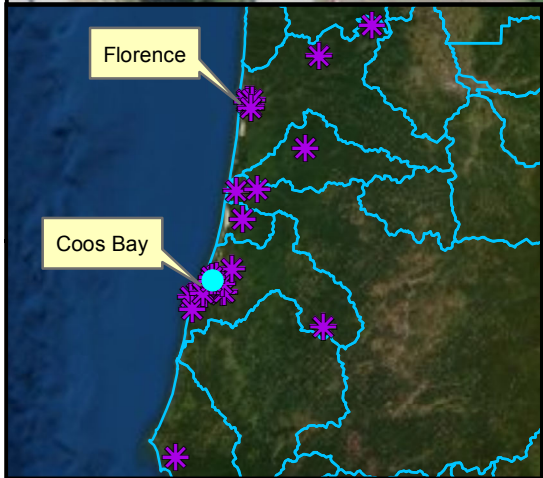
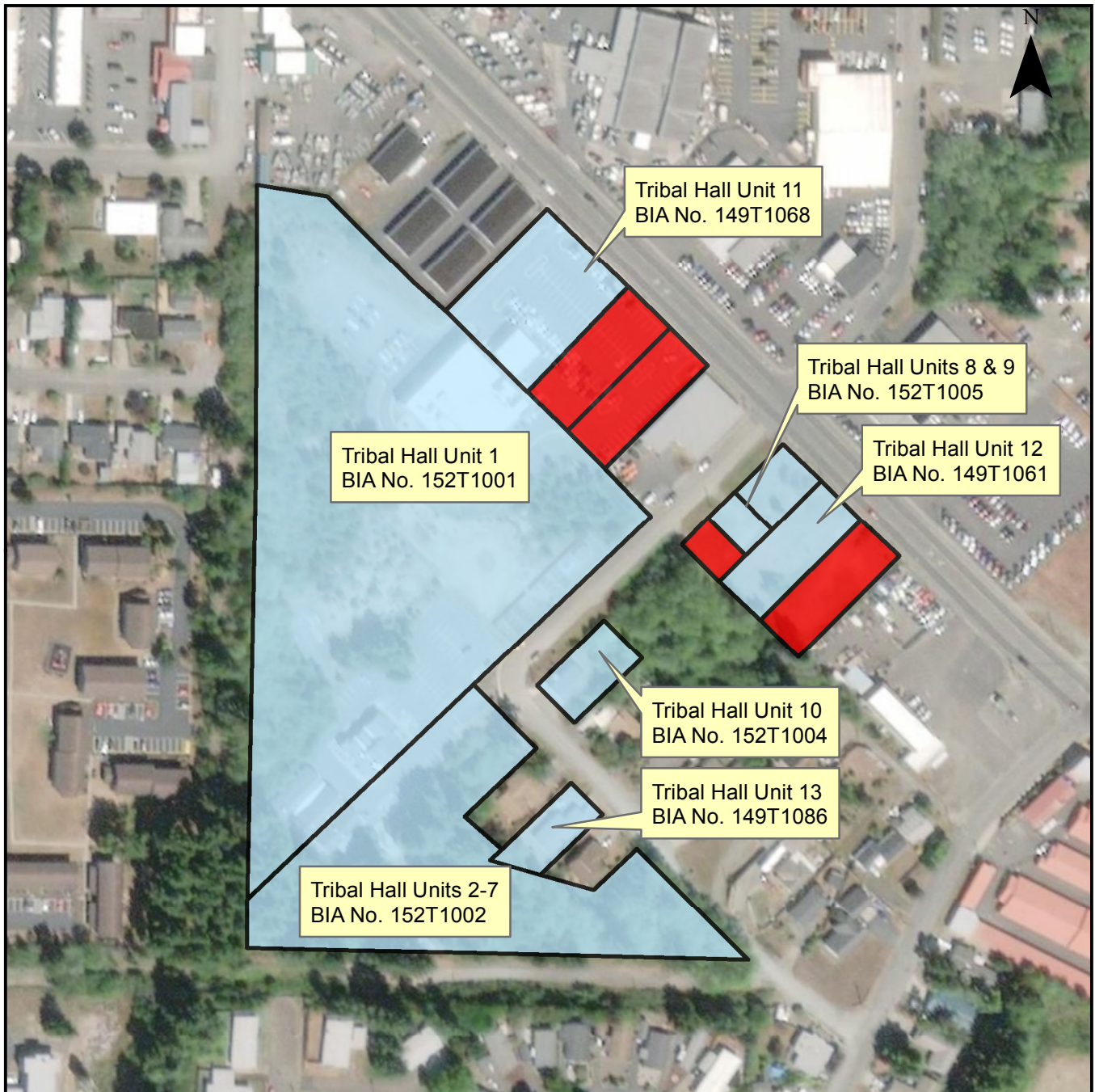
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- Perennial Stream
- Wetland
- CTCLUSI Property Locations
- Watershed Council Boundaries



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Tribal Hall Units



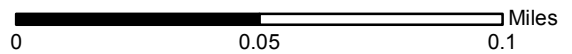
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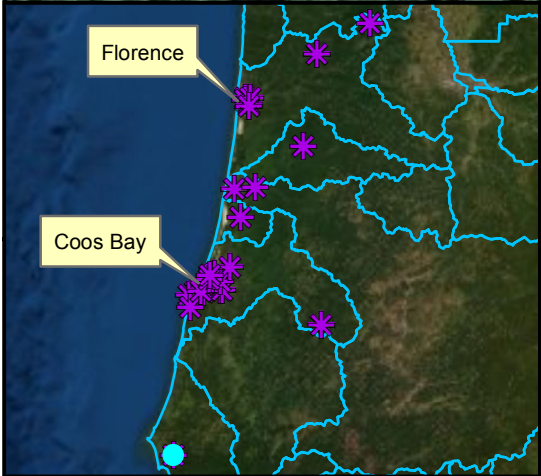
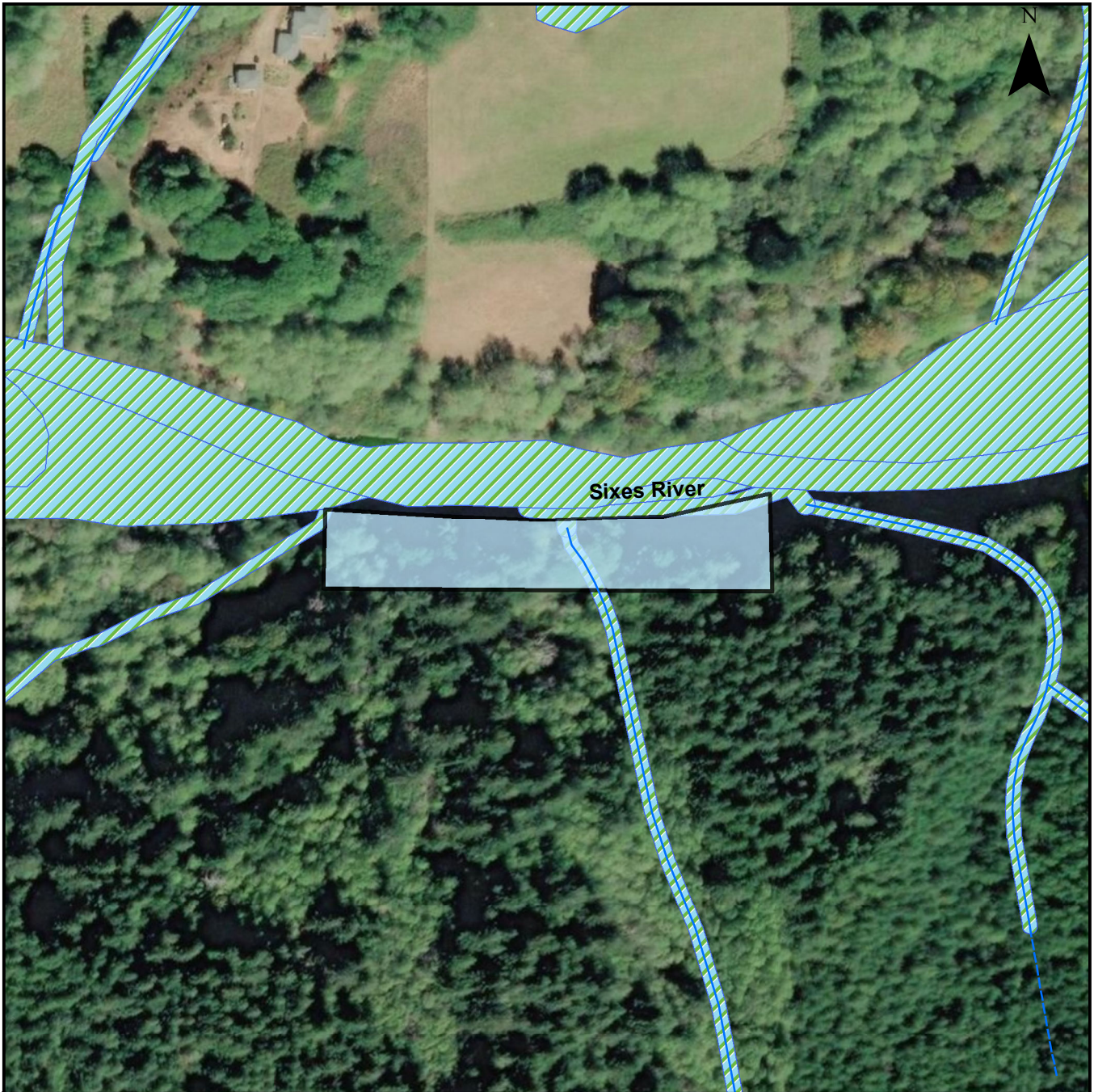
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- Intermittent Stream
- Perennial Stream
- Wetland
- CTCLUSI Property Locations
- Watershed Council Boundaries



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Sixes River BIA No. 152T1006



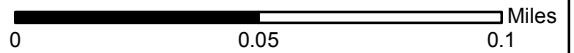
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Land Status

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Hydrologic

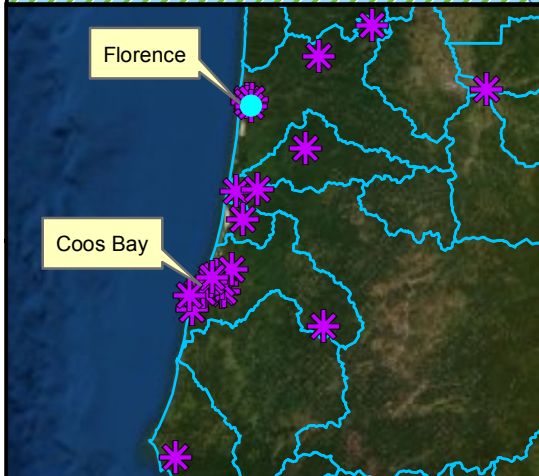
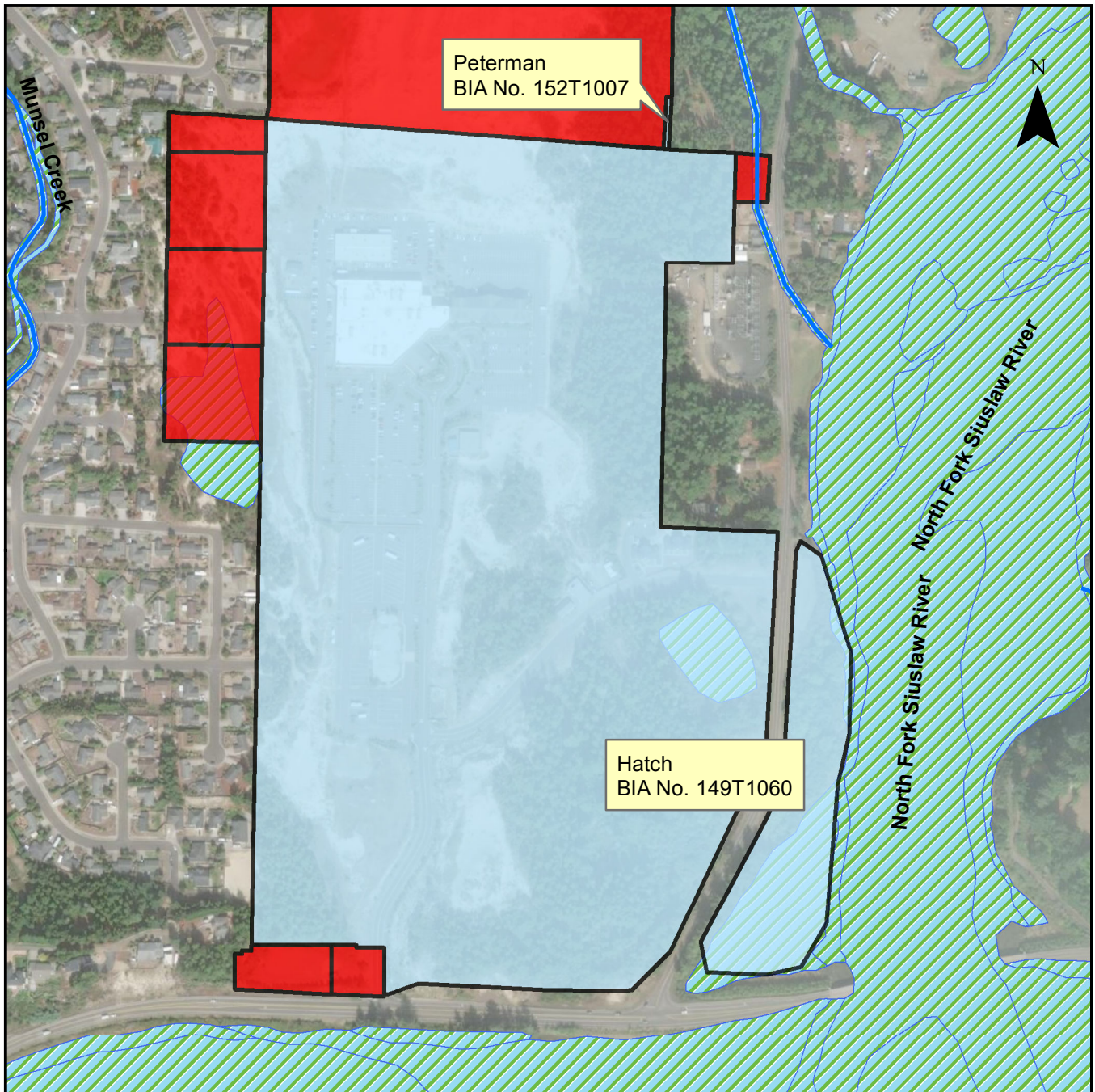
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- Intermittent Stream
- Perennial Stream
- Wetland
- ✱ CTCLUSI Property Locations
- Watershed Council Boundaries



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Hatch and Peterman



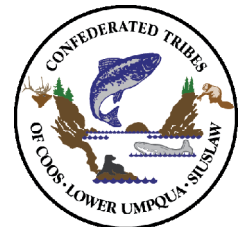
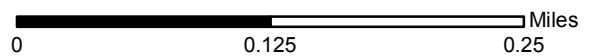
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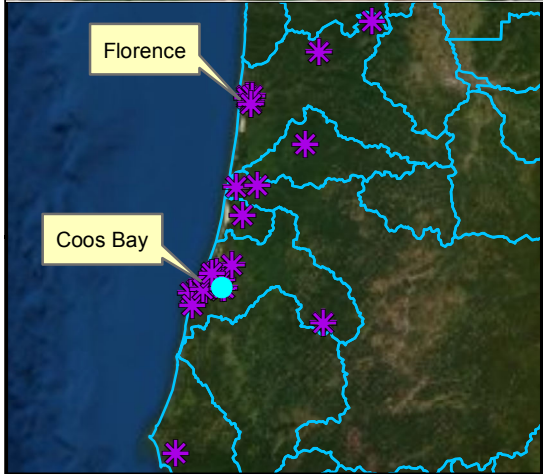
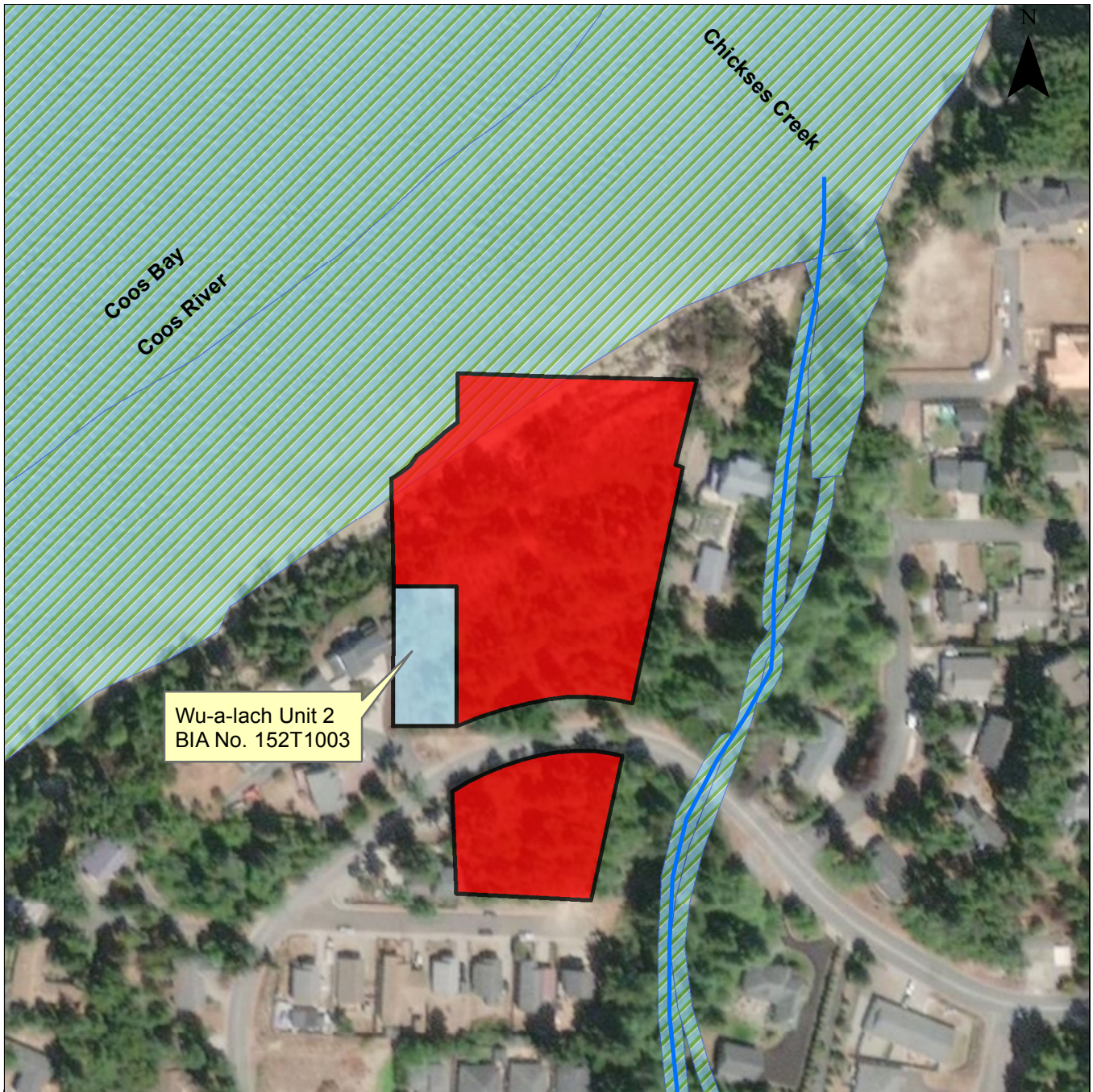
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- CTCLUSI Property Locations
- Watershed Council Boundaries



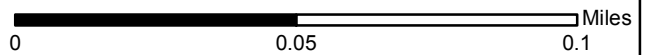
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Wu-a-lach BIA No. 152T1003



Legend



Land Status

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- Trust

Hydrologic

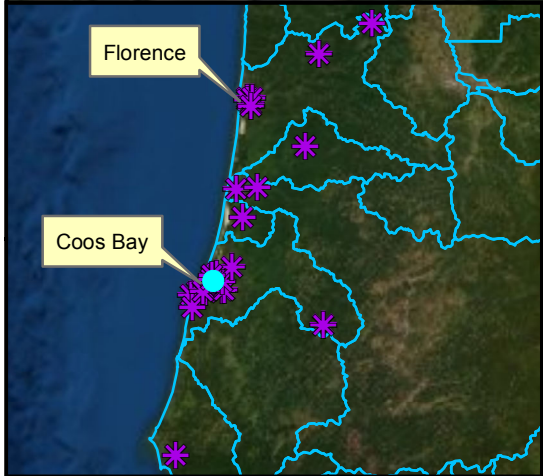
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- Perennial Stream
- Wetland
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- Watershed Council Boundaries



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Elks Units



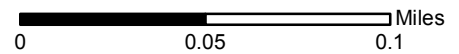
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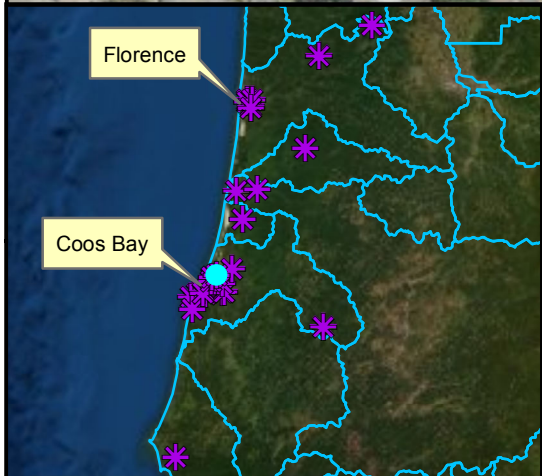
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- Intermittent Stream
- Perennial Stream
- Wetland
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- Watershed Council Boundaries



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Connecticut and California




Legend

Land Status


 Fee

 Trust

Hydrologic


 Ephemeral Stream

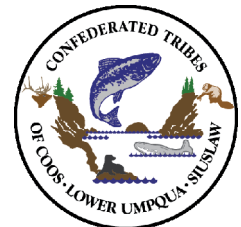
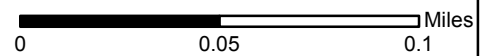
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 CTCLUSI Property Locations

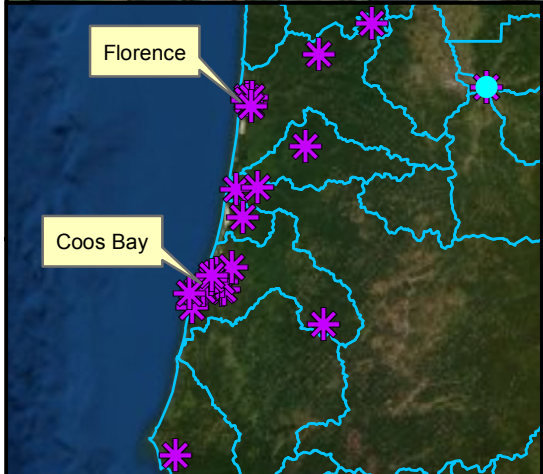
 Watershed Council Boundaries



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Springfield House BIA No. 149T1088



Legend

Land Status

- Fee
- Trust

Hydrologic

- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- ✱ CTCLUSI Property Locations
- Watershed Council Boundaries

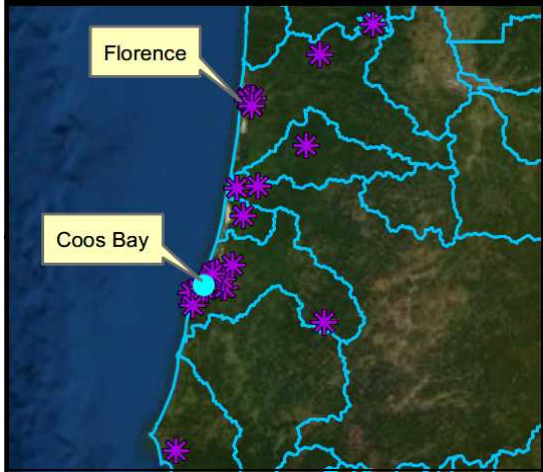
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CONFEDERATED TRIBES
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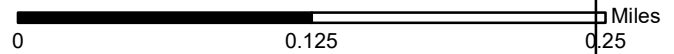
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Fossil Point Unit 1

BIA No. 149T1108



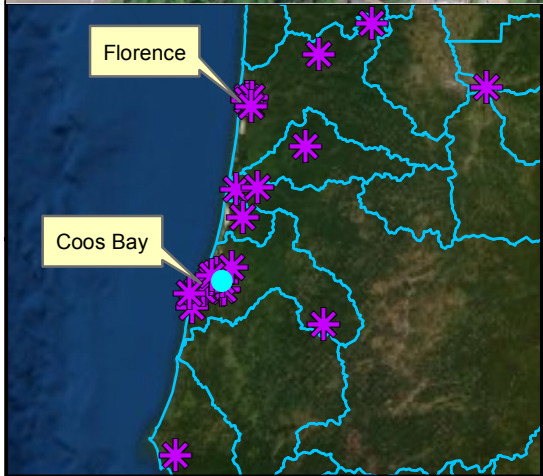
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 - Intermittent Stream
 - Perennial Stream
 - Wetland
 - CTCLUSI Property Locations
 - Watershed Council Boundaries



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Alishanee Units 1 & 2

BIA No. 149T1116



Legend

Land Status


- Fee
- Trust

Hydrologic

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- Intermittent Stream
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- CTCLUSI Property Locations
- Watershed Council Boundaries

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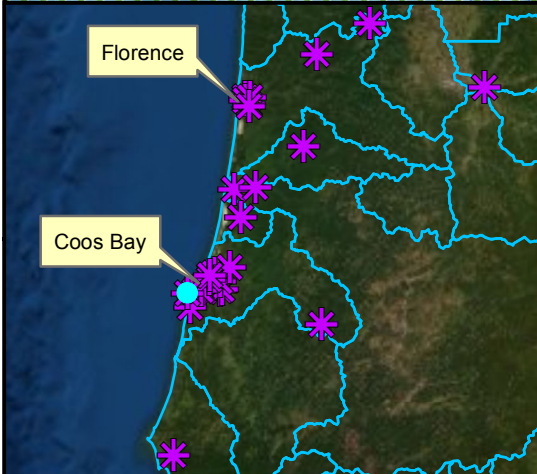
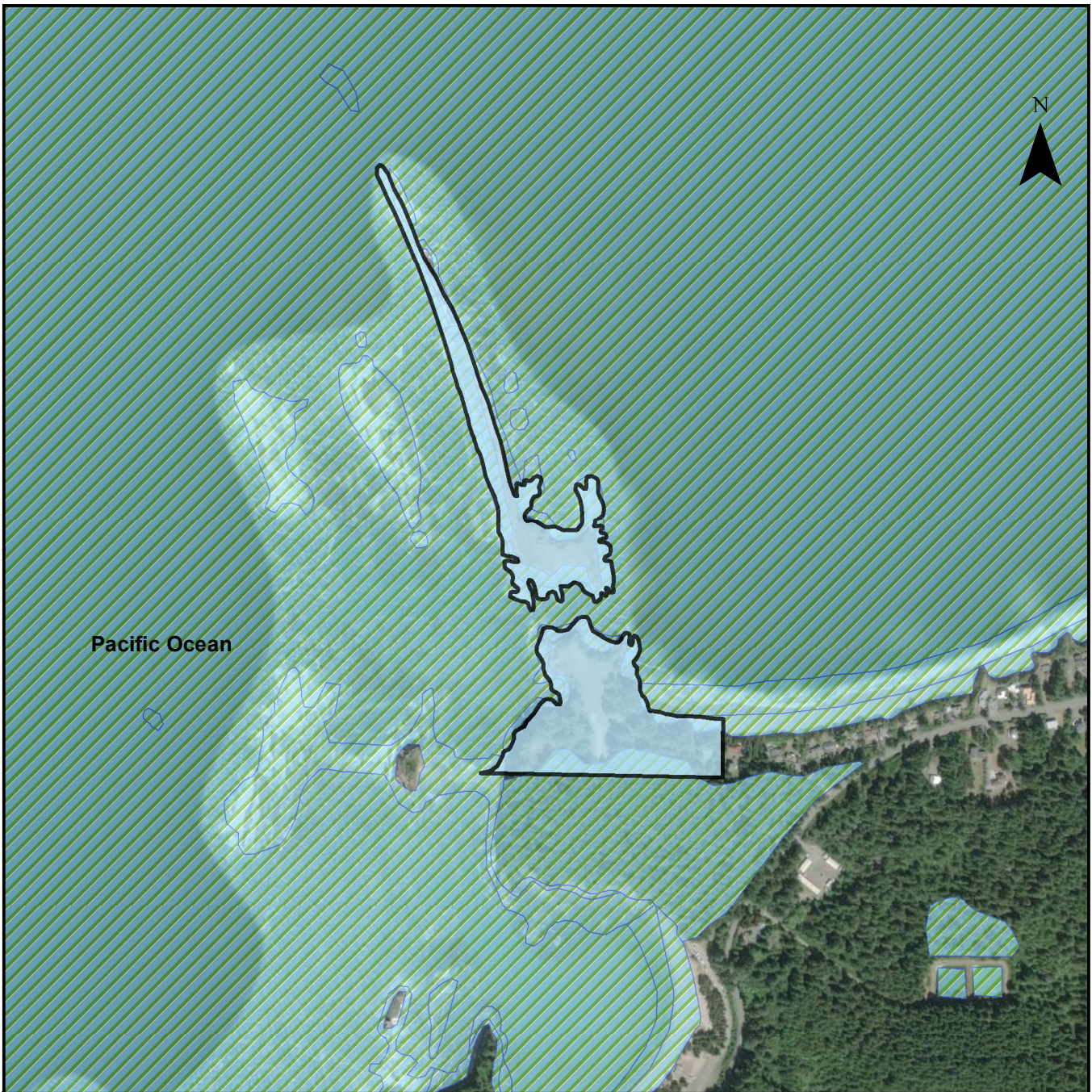
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Gregory Point BIA No. 152T1010




Legend

Land Status


 Fee

 Trust

Hydrologic

 Ephemeral Stream

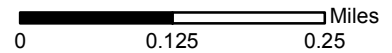
 Intermittent Stream

 Perennial Stream

 Wetland

 CTCLUSI Property Locations

 Watershed Council Boundaries

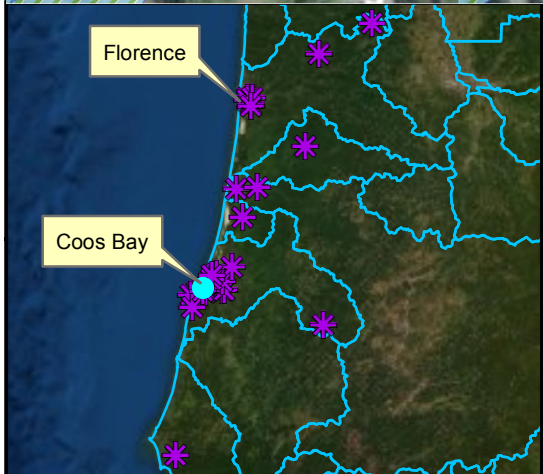
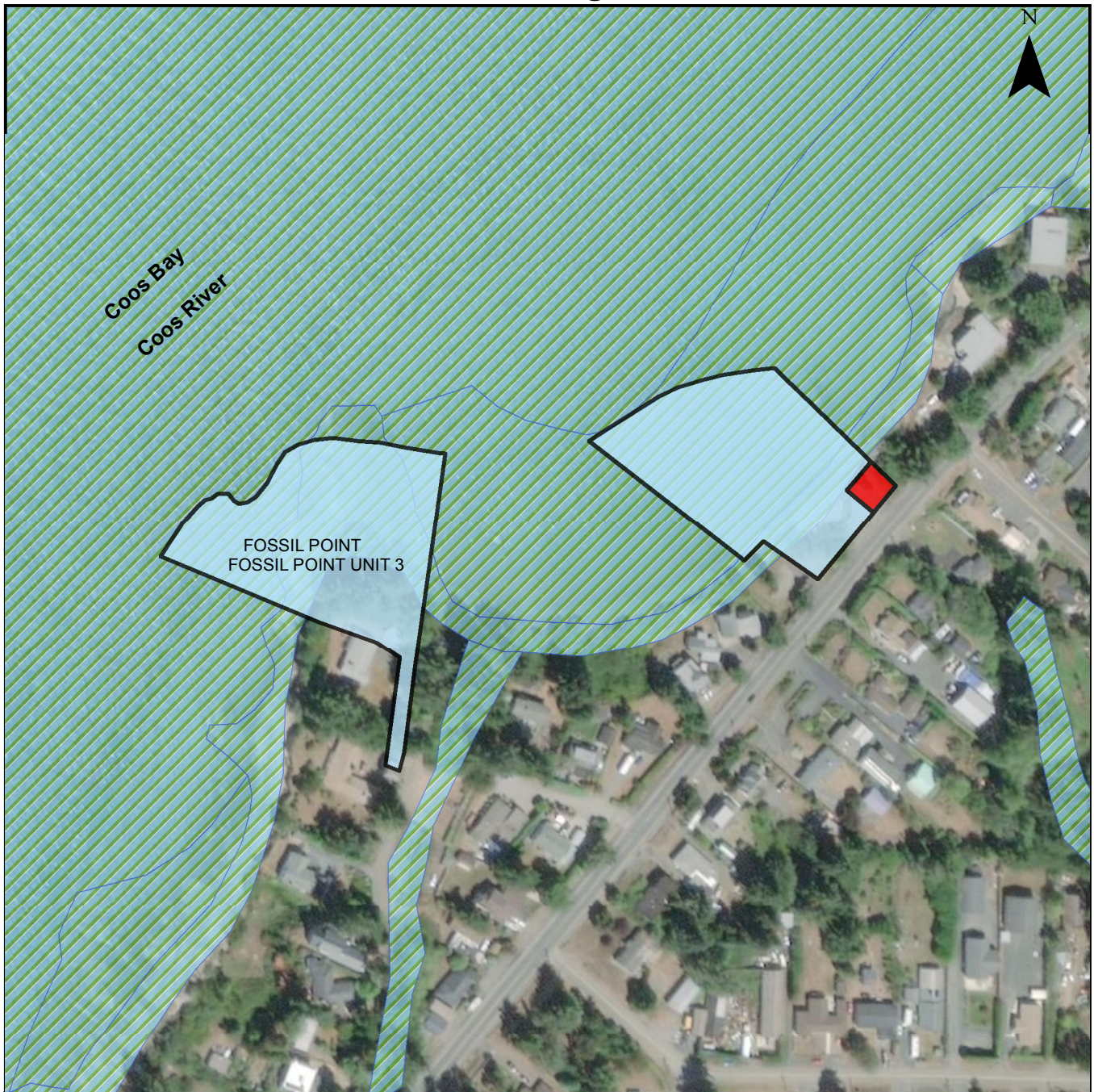


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Fossil Point Unit 3

BIA No. In Progress



Legend

0 0.05 0.1 Miles

Land Status

- Fee
- Trust

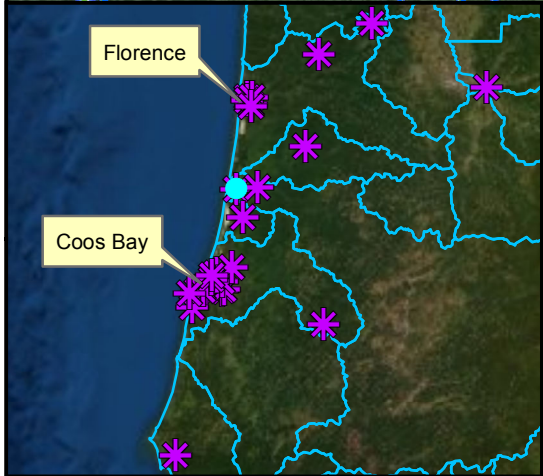
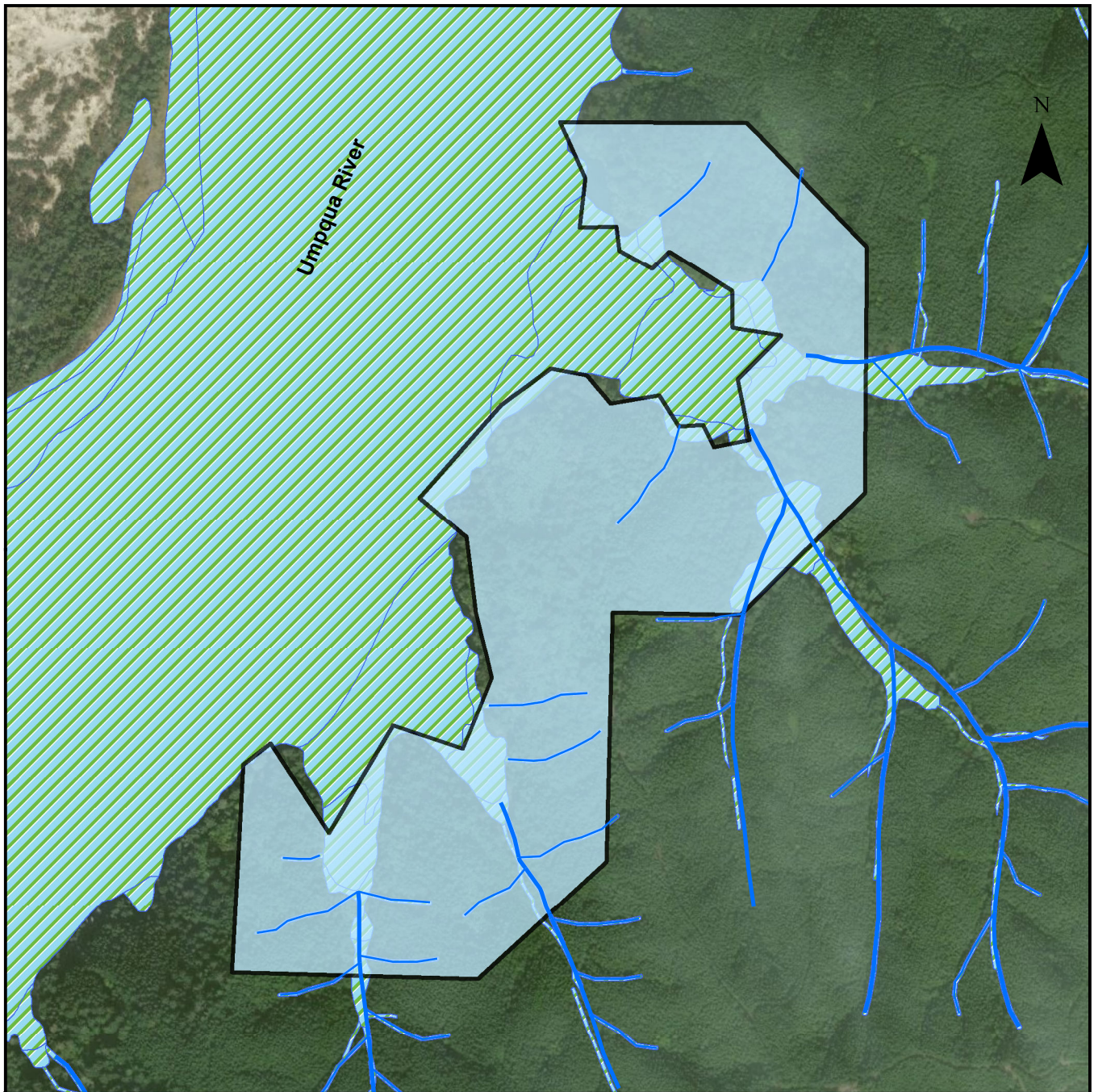
Hydrologic

- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- CTCLUSI Property Locations
- Watershed Council Boundaries

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Umpqua Eden BIA No. In Progress



Legend


Land Status

- Fee
- Trust

Hydrologic

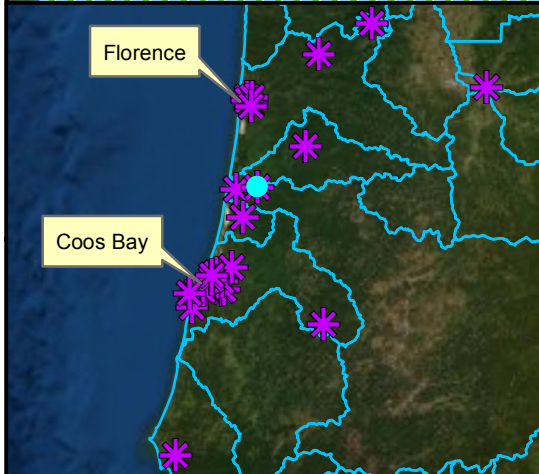
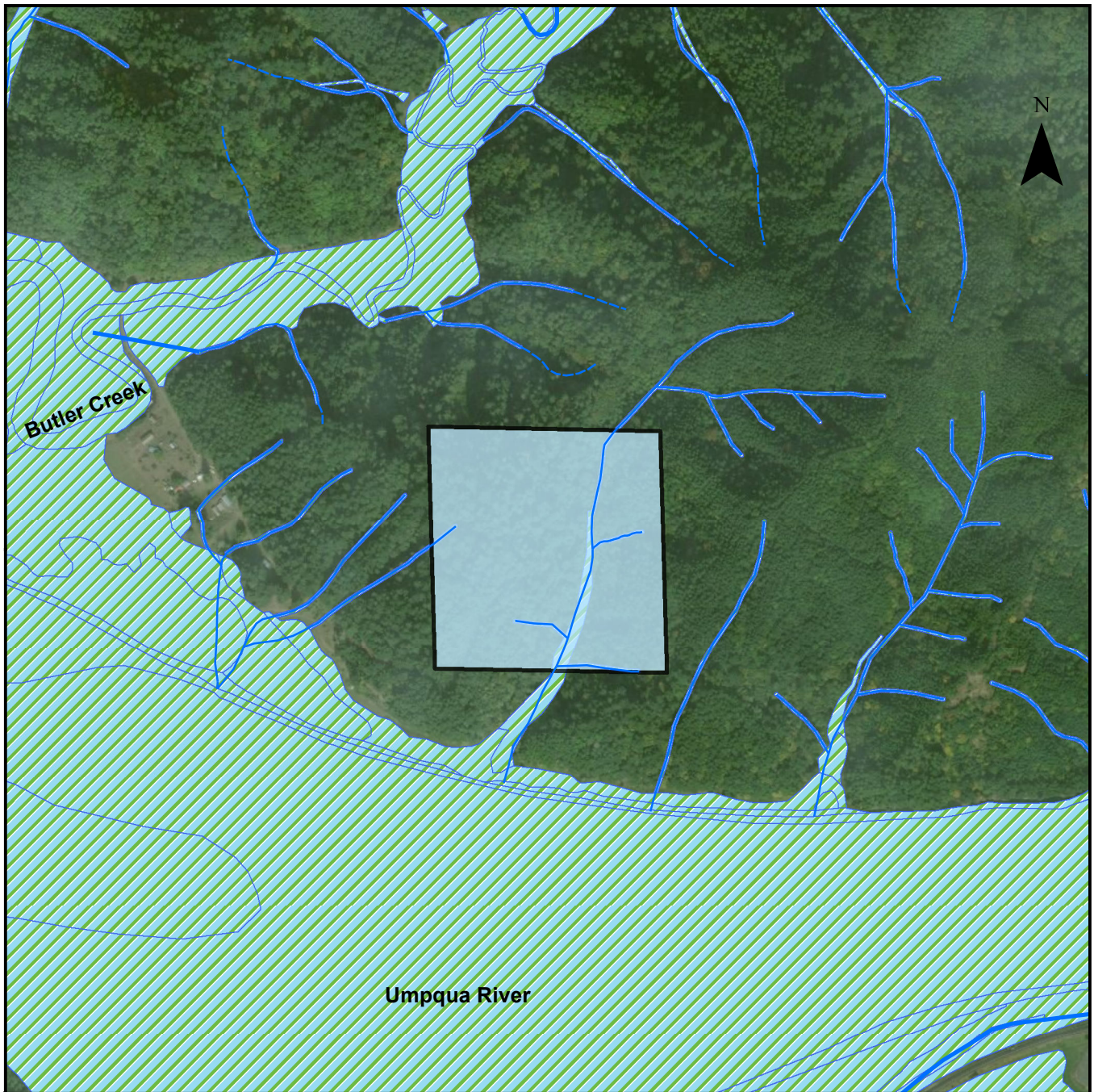
- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- CTCLUSI Property Locations
- Watershed Council Boundaries

0 0.125 0.25 Miles



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Macy BIA No. In Progress



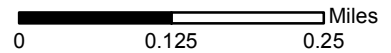
Legend

Land Status

- Fee
- Trust

Hydrologic

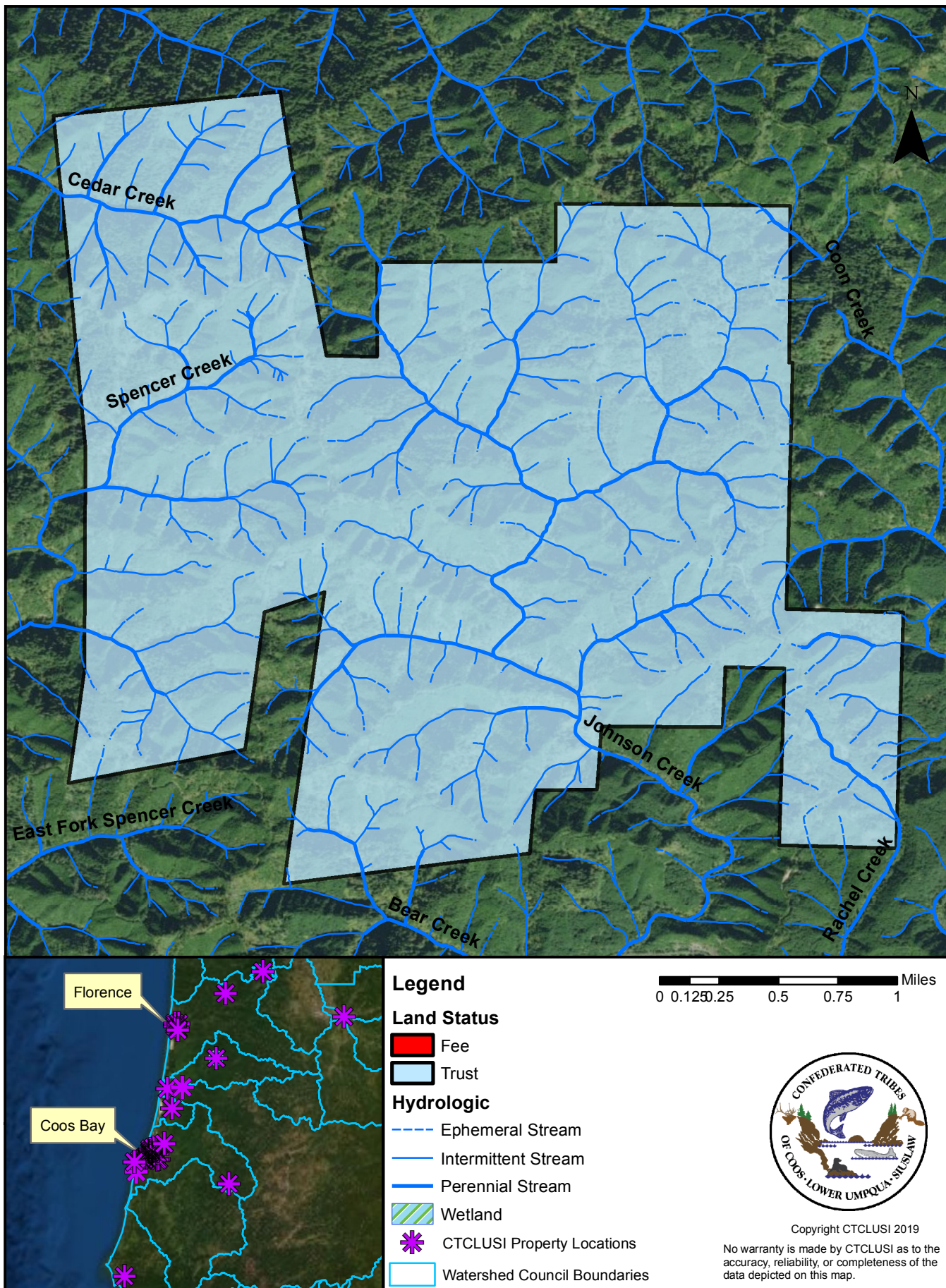
- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- CTCLUSI Property Locations
- Watershed Council Boundaries



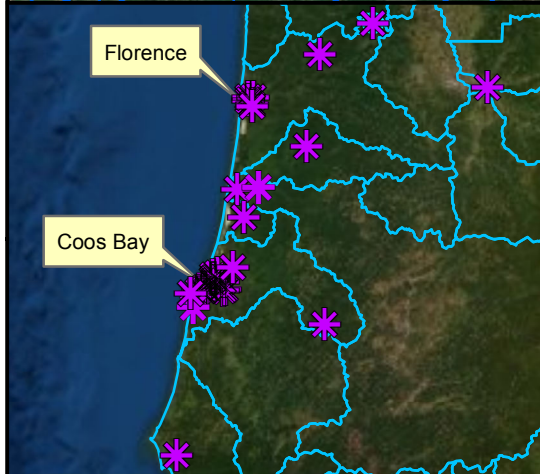
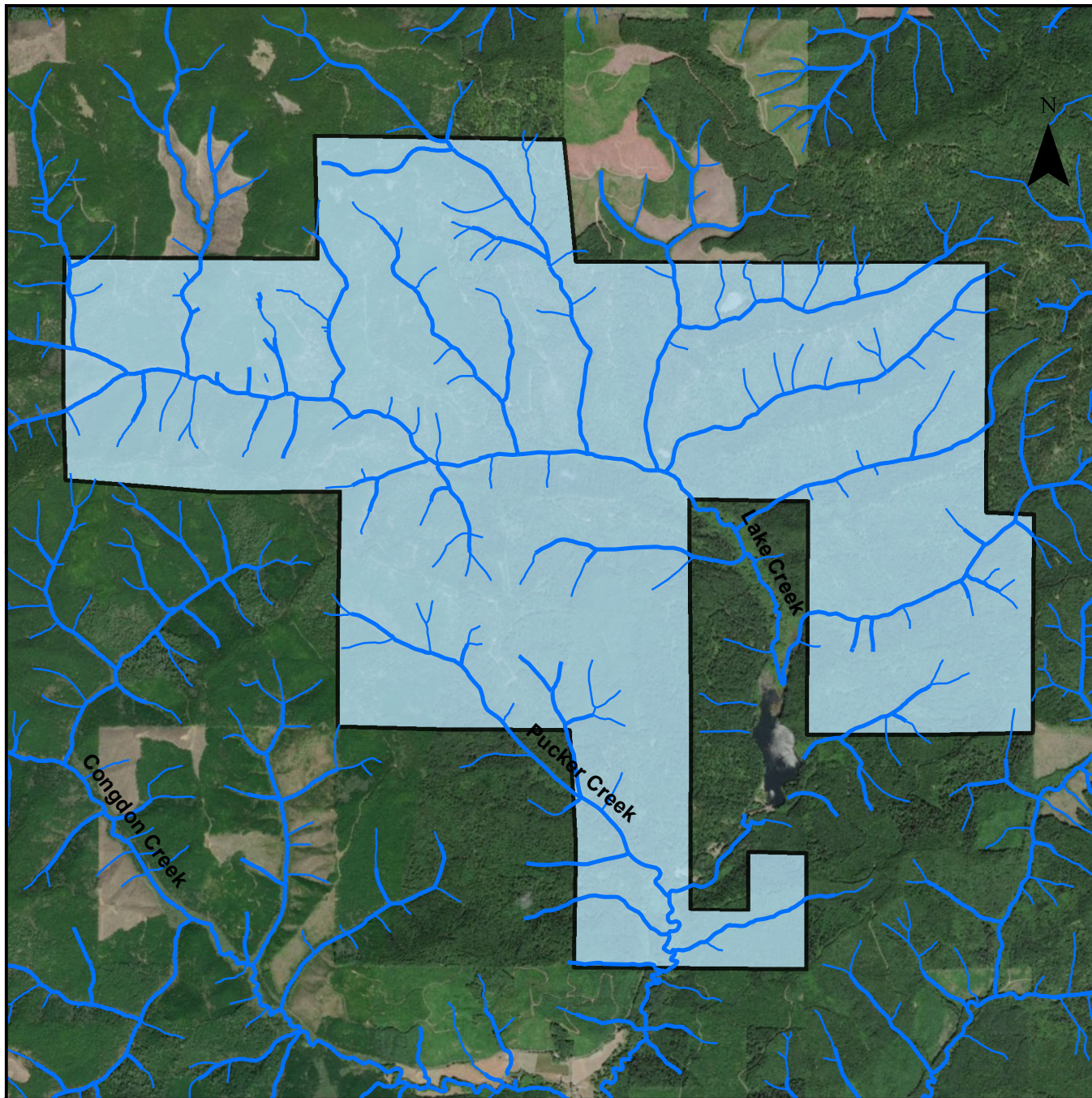
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Lower Smith BIA No. In Progress



Upper Lake Creek BIA No. In Progress



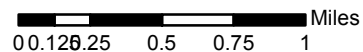
Legend

Land Status

- Fee
- Trust

Hydrologic

- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- CTCLUSI Property Locations
- Watershed Council Boundaries

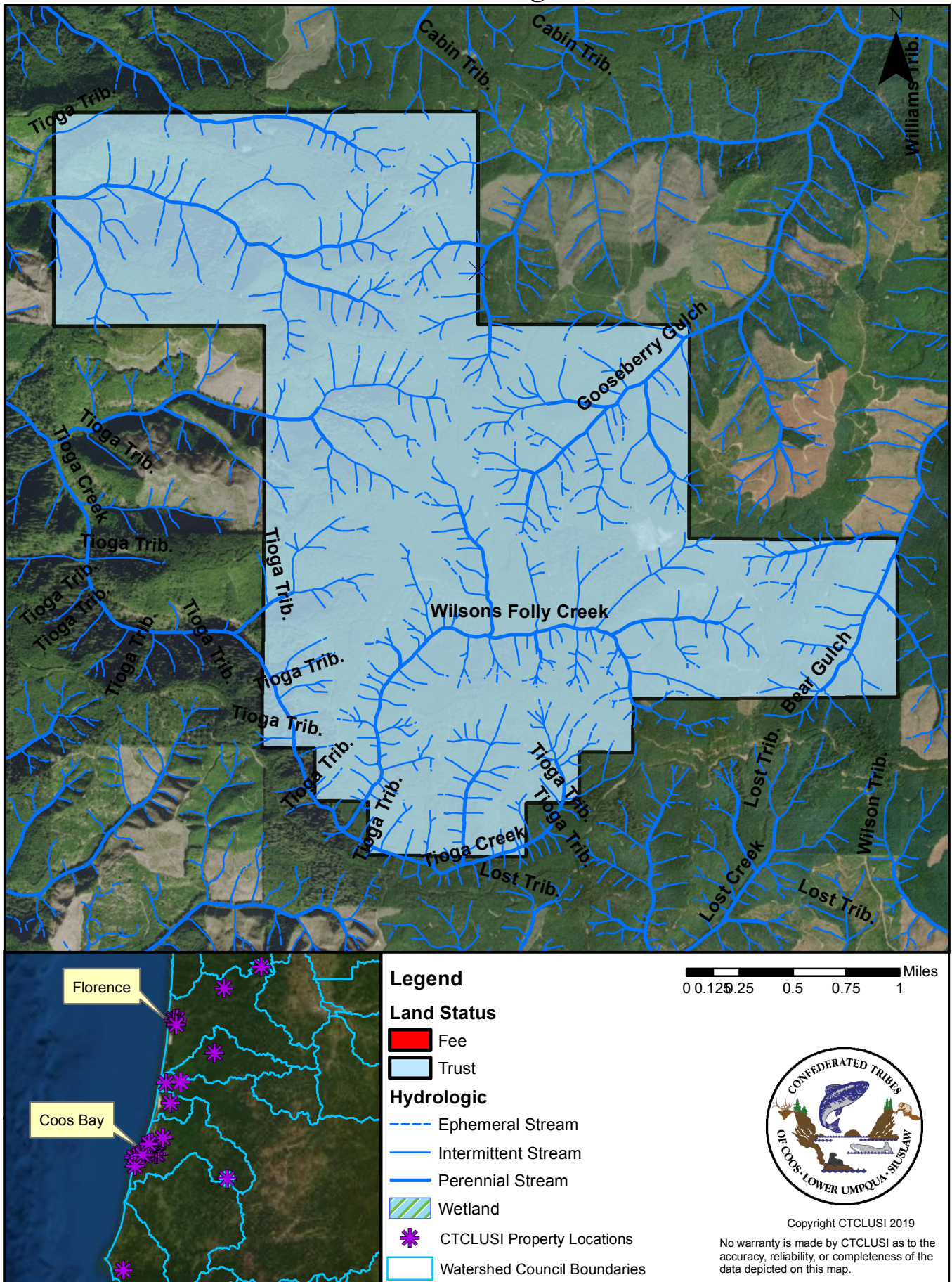


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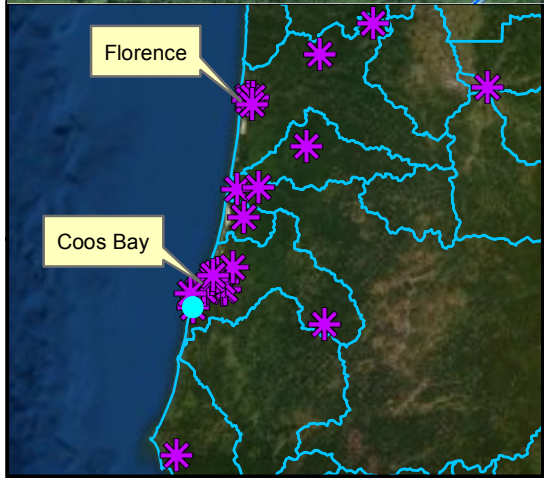
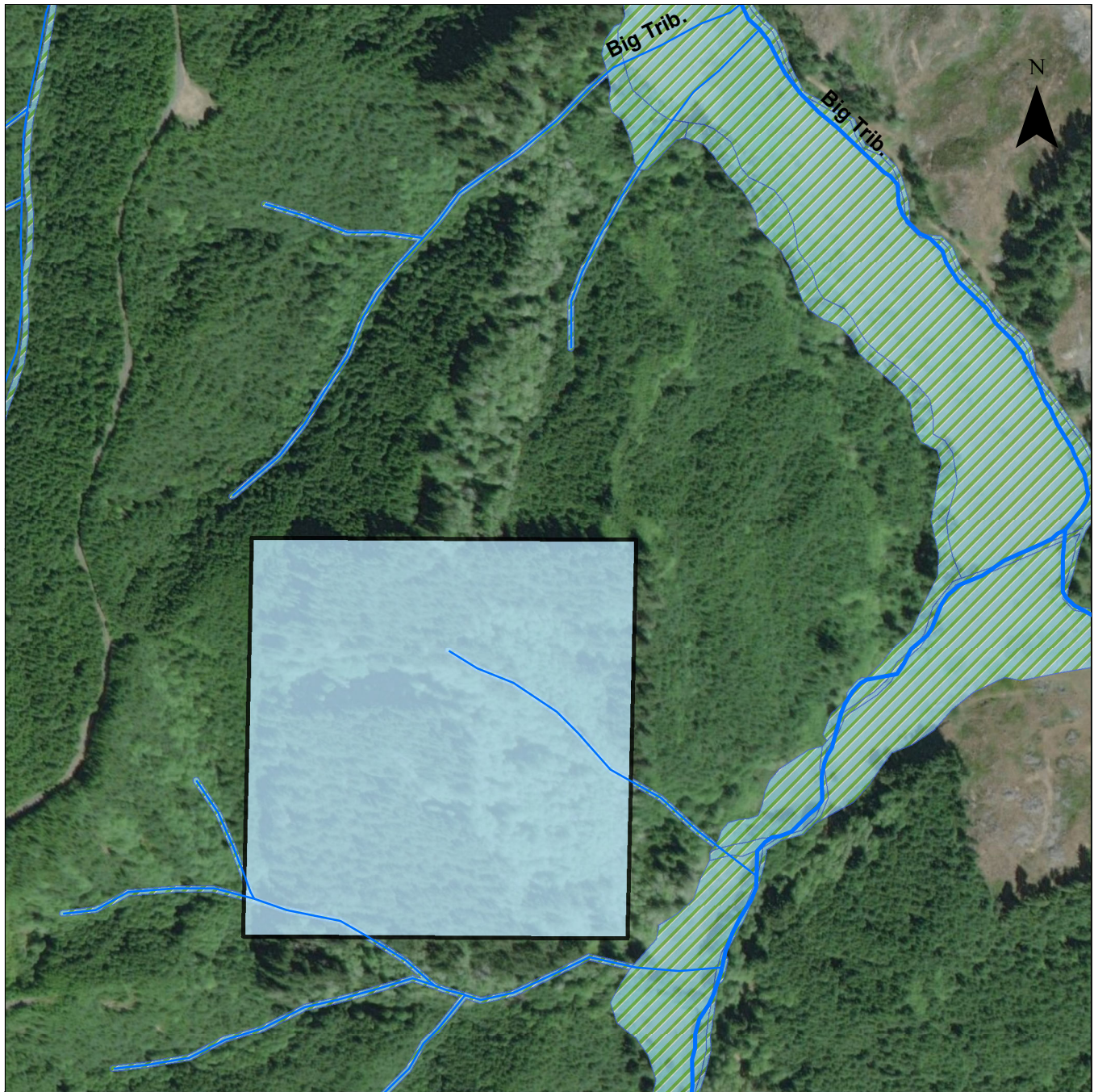
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TIOGA

BIA No. In Progress



Talbot BIA No. In Progress



Legend

Land Status

- Fee
- Trust

Hydrologic

- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- ✱ CTCLUSI Property Locations
- Watershed Council Boundaries

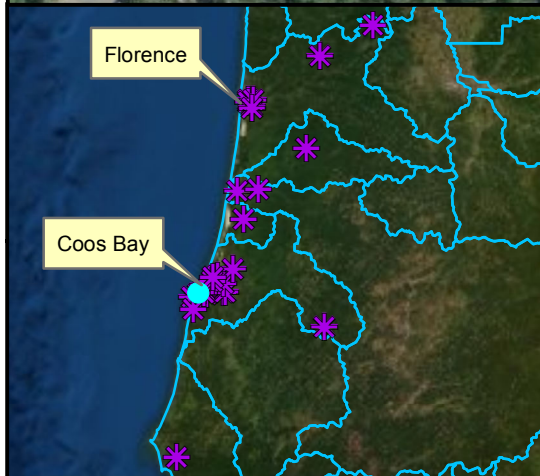
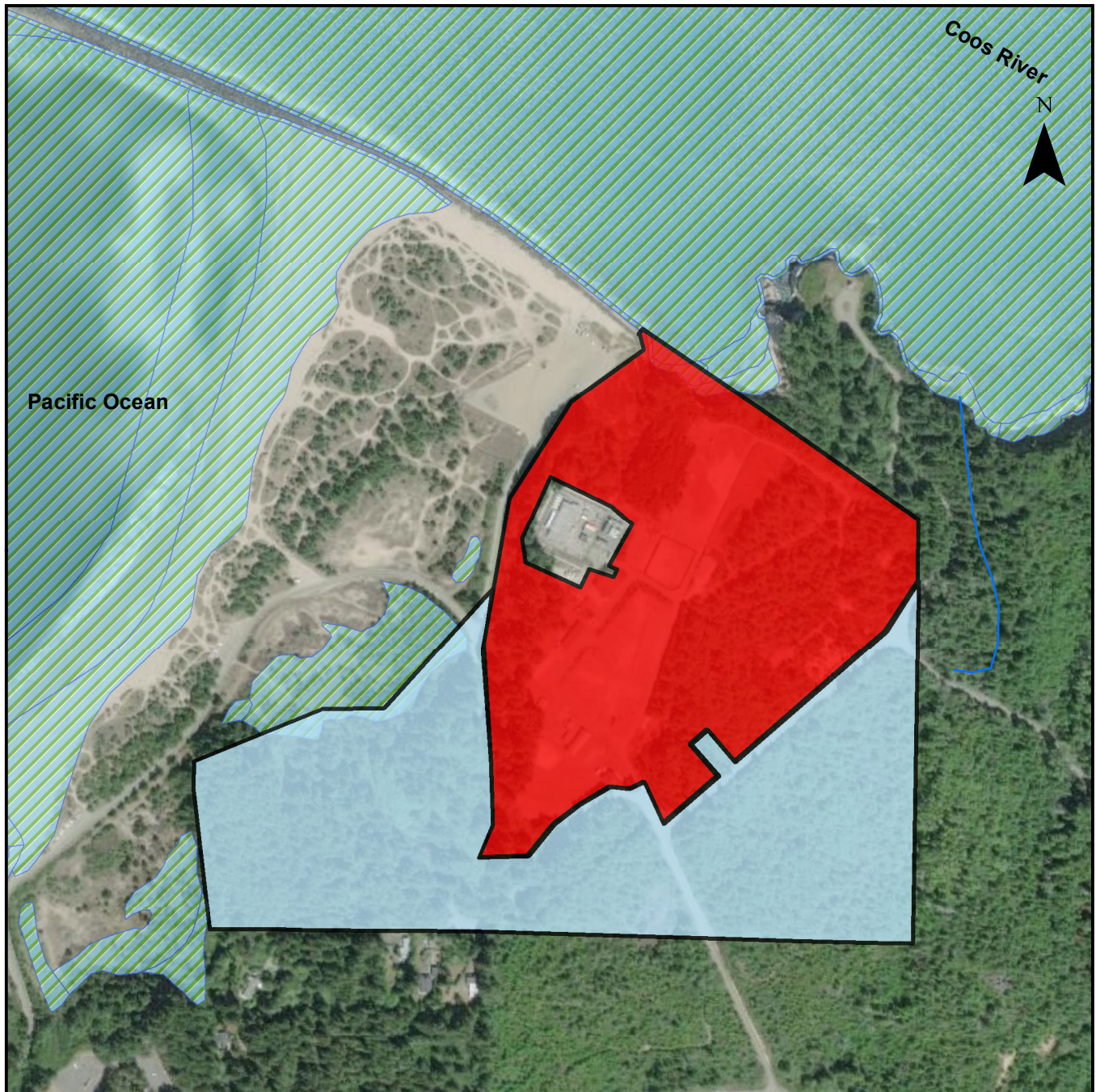
Miles

0 0.125 0.25

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Coos Head BIA No. In Progress



Legend

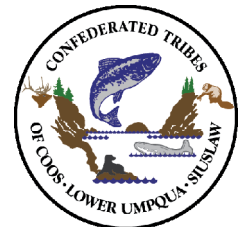
0 0.05 0.1 Miles

Land Status

- Fee
- Trust

Hydrologic

- Ephemeral Stream
- Intermittent Stream
- Perennial Stream
- Wetland
- ✱ CTCLUSI Property Locations
- Watershed Council Boundaries



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