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STATE OF WASHINGTON
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NO.: 37688-1-II
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

QUINAULT INDIAN NATION, ET. AL.,
APPELLANTS

v.

SEA CREST LAND DEVELOPMENT CO., ET. AL.,
RESPONDENTS.

ON APPEAL FROM THE SUPERIOR COURT OF JEFFERSON COUNTY
BEFORE HONORABLE JUDGE CRADDOCK VERSER

CORRECTED BRIEF OF APPELLANT, QUINUALT INDIAN NATION, ET. AL.

Rickie Wayne Armstrong, WSBA No. 34099
Of the Office of Reservation Attorney
Quinault Indian Nation

BY: _____
Rickie Wayne Armstrong, WSBA. 34099

OFFICE OF RESERVATION ATTORNEY
QUINAULT INDIAN NATION
PO BOX 189
TAHOLAH, WA 98587
(360) 276-8210 ext. (220)

ORIGINAL

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I. INTRODUCTION

The Quinault Indian Reservation encompasses over 200,000 acres of land that is primarily forested with two small Indian villages. While the reservation is mostly Indian trust or other governmental lands, approximately 5% of the reservation lands are fee lands held by individuals, including Sea Crest Development, Inc. The Quinault Indian Nation Business Committee is empowered to enact laws to protect the health, safety, and welfare of the Quinault membership. The Business Committee has enacted a wide variety of laws over the years, including laws addressing Natural Resources, Zoning, and Building.

Over the past two plus years, Sea Crest attempted to develop its fee lands located on the reservation without permits issued from either the Quinault Indian Nation or Jefferson County. Sea Crest developed a forested lot located atop a coastal bluff, which included wetlands and nearby endangered species. Among a large number of unpermitted activities, Sea Crest carved a road from atop the coastal bluff onto a Quinault-owned beach and filled a large wetland area. The Quinault Indian Nation attempted numerous times to gain compliance with existing laws without success. During 2006 and much of 2007, Jefferson County took no action to force compliance from Sea Crest.

Ultimately, the Quinault Indian Nation filed a lawsuit in Quinault Tribal Court against Sea Crest to enforce stop work orders, to obtain an injunction, and to liquidate previous fines into judgment form. Sea Crest defaulted and the Quinault Indian Nation obtained a default judgment. The Quinault Indian Nation took the judgment to Jefferson County Superior Court to obtain recognition of a tribal court order. The Jefferson County Court denied the Quinault Indian Nation's petition, finding that the Nation lacked civil regulatory jurisdiction over Sea Crest's activities, the Court could deny the Quinault Indian Nation's petition.

II. ASSIGNMENT(S) OF ERROR

The Trial Court erred when it denied the Quinault Indian Nation's CR 82.5 petition to recognize, implement, and enforce a Quinault Tribal Court order.

A. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Does the Quinault Indian Nation have civil regulatory jurisdiction over a non-Indian fee-owner of lands within the Quinault Indian Reservation who develops in violation of tribal laws.

III. STATEMENT OF THE CASE

A. Procedural History

Following the Respondents' (hereinafter "Sea Crest") substantial unpermitted building and numerous violations of the Quinault Tribal Code, the Appellants (hereinafter "QIN") filed suit against the Sea Crest in Quinault Tribal Court in September 2007 under cause number CV 07-121. *CP 482-488.* QIN caused Sea Crest to be served in accordance with the Quinault Tribal Code and Sea Crest failed to answer. QIN sought and received an Order of Default and a Default Judgment. *CP 506-508.*

QIN subsequently petitioned the Jefferson County Superior Court for an order entering and recognizing said tribal court judgment under Washington Court Rule 82.5[1]. *CP 1-10.* The Jefferson County Superior

[1] "Enforcement of Indian Tribal Court Orders, Judgments or Decrees.

Court denied QIN's petition under cause number 07-2-00377-0 on February 19, 2008 finding that the QIN lacked jurisdiction to regulate the development of the Sea Crest Parcel. *CP 545-552.*

B. Factual History

1. Sea Crest Parcel and Quinault Indian Reservation

Respondent, Sea Crest Development, Inc. is a business incorporated under the laws of the state of Washington. *CP 572.* Respondent Jack A. Glaubert is the registered agent for Sea Crest Development, Inc. Neither Sea Crest Development nor Jack A. Glaubert (hereinafter collectively referred to as "Sea Crest") is a member of the Quinault Indian Tribe nor reside on the QIR. *CP 572, 574.*

The superior courts of the State of Washington shall recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree (1) lacked jurisdiction over a party or the subject matter ..."

Quinault Indian Nation is a federally recognized Indian tribe, *65 Fed. Reg. 13298*, with a reservation surrounding substantial portions of Grays Harbor and Jefferson Counties in Washington State, as well as the Olympic National Forest and Washington Department of Natural Resources Forestlands. *CP 20-21, 544.* These lands were reserved under the Treaty of Olympia, 12 Stat. 971. *Id.* Quinault Planning Commission is a duly appointed committee under the laws of the Quinault Indian Nation. *CP 458-462.*

Sea Crest own in fee simple, Washington designated tax Parcel Number 413273002 (hereinafter "Sea Crest Parcel") located within the exterior boundaries of the Quinault Indian Reservation (hereinafter "QIR") along the QIN's northern shoreline, which is also situated in a remote area of Jefferson County, Washington. *CP 546.* Sea Crest Parcel is legally described as: Gov' t Lot 7 of Section 27, Township 24 North; Range 13 West, Willamette Meridian, EXCEPT Highway 101 R/W, and EXCEPT, the North 100 Feet Thereof lying West of Highway 101. *CP 546.* The property consists of 19.88 acres to the West of U.S. Highway 101 and 4.18 acres to the East of U.S. Highway 101. *Id.*

Sea Crest Parcel is bordered on the West by QIN beaches and the Pacific Ocean, to the North by Gov't Lot 6 with only a small percentage occupied and/or developed; to the south by tribal lands and/or tribal member fee lands; and to the east by tribal lands and/or tribal member fee lands. *CP 538, 546.* The properties bordering the south and east are heavily forested. *Id.* The QIN owns the coastal beach west of the properties. *Id.* A majority of the lands surrounding the Sea Crest Parcel are government and tribal lands. *CP 538, 543.*

As of August 2007, the Quinault Indian Reservation contained approximately 207,000 mapped acres. *CP 50.* The QIR is primarily forest, with approximately 201,000 acres zoned for natural resources management, 600 zoned residential, 80 acres zoned commercial and 5,500 acres classified as timbered costal zone. *Id.* The Nation owns approximately 63,358 acres of the QIR in trust or fee, and, approximately 118,343 acres of which are owned in trust by the United States for individual Indians. *Id.* Of the only 12% of the QIR lands owned in fee by non-Indians, the vast majority of land is forestland held by one non-Indian timber company—Anderson-Middleton. *Id.* Individual non-Indians own only 12,104 acres of the approximately 207,000 acres of the QIR in fee; these lands are scattered throughout the QIR. *Id.* Recently,

the QIN has an aggressively implemented its land acquisition policy to further restore the Indian-owned lands of the QIR. For example, in 2006, the QIN repurchased 302 parcels QIR fee lands in 2006. *CP 49-50.*

While there are two small villages of Queets and Taholah populated primarily by Indians within the QIR; there are no incorporated non-Indian municipalities on the QIR. *CP 139-140.* Census figures from 2000 indicate a total population of 1,370 for the QIR, of which 1,051 are "American Indian or Alaska Native alone." *CP 139.* No non-Indian governmental entities have established or maintained infrastructure and/or public services on the QIR. *CP 139-140.* The QIN provides water and sewer services, solid waste disposal services, police protection, fire protection and emergency medical services to majority of the residents on the QIR. *Id.*

While there is extensive non-Indian residential and commercial development along the Washington coast south of the Reservation boundaries, development stops at the QIR's southern boundary and up to the northwest tip of Washington. *CP 140.* This is true for the western coastline of Jefferson County, where the Olympic National Park, the Hoh Indian Reservation and the Quileute Indian Reservation are situated. The

28 miles of Reservation coastline is pristine and generally undeveloped. *Id.*

The QIR is primarily forestland, which provides the primary source of income to the QIN and its people. *CP 139-140.* The QIN owned properties in the coastal area are undeveloped. All beaches on the coast of the QIR are QIN-owned, and closed to non-members. The QIN governing body adopted a resolution to close the Quinault beaches and subsequently adopted a Tribal Code covering its beaches and closing beaches to non-members who do not possess a permit. Further, the Quinault people use the forestland and beaches for cultural, medicinal, ceremonial, religious, and subsistence purposes. *CP 139.* Except for a few non-Indian owned businesses in Amanda Park and one lumber mill on the Reservation, all businesses on the Reservation are owned by Indians or the Nation. *Id.*

2. QIN Government

The QIN has it own Constitution and laws governing development of property within the reservation. *CP 286-399; 400-462.* Title 48 of the Tribal Code, the Zoning Ordinance, requires submission and review of detailed plans and issuance of permits for development within the QIR;

Title 48 also incorporates a Comprehensive Plan, identifying the western portion of the Sea Crest Parcel as within a Coastal Zone and the eastern portion as within a Natural Resource Management Zone. *CP 129, 140.* QIN first adopted Zoning laws (Title 48) in 1967. *CP 140.* Title 61 of the Tribal Code contains regulations and permit requirements designed to protect and preserve the natural resources and environment within the reservation. *CP 399-462.* QIN and Jefferson County previously signed an MOU whereby Jefferson County required landowners to obtain a QIN-issued building permit for non-member fee lands on the QIR. *CP 57-79.*

QIN has a planning commission, a Department of Natural Resources, including a Forestries Department, an Environmental Protection Department, a Fisheries Department, a Permitting Office, and a Land Management Department. *CP 319.* The Environmental Department monitors compliance and enforces applicable laws concerning timber, fish, and wildlife, forest practices, hydrological practices, water resources, and air quality under Tribal Code Title 61.

QIN also has a Division of Community Services, which includes a Department of Community Development and a Department of Public Roads. *CP 460-464.* The Department of Community Services functions

include Land Use Planning, Building Code Enforcement, Zoning Code Enforcement, Dangerous and Nuisance Buildings, Transportation Planning, and Comprehensive Planning under Tribal Code Title 48.

3. Sea Crest Development on Quinault Indian Reservation

At least as early as 1995 Floyd Dickinson, then-owner of the Sea Crest Parcel attempted to develop the property and applied for a subdivision permit from Jefferson County. *CP 127.* At that time, the Jefferson County Permit Center advised Mr. Dickinson that the County would not issue a development permit unless the QIN issued a development permit. *CP 127-128.* No permit ever issued. *Id.*

By spring of 2006, Sea Crest asserted that a 1998 survey recorded with Jefferson County was authority to subdivide the Sea Crest Parcel and began to develop the property as such. *CP 128-129.* At no time has Sea Crest obtained any permit from the QIN or obtained approval from Jefferson County to subdivide. *CP 139.* Jonathan Ciesla, Land Use Planner for the QIN, submitted Sea Crest an application for a variance and advised Sea Crest that it needed a permit issued by the QIN before proceeding with any development. *CP 128, 139.*

On June 16, 2006, after significant unpermitted development, QIN issued a Stop Work Order to Sea Crest for violations of Quinault zoning and building ordinances. *CP 150.* On August 3, 2006, QIN staff sent another application for a variance to Sea Crest at Sea Crest's request. *CP 153.* Sea Crest never returned a completed application to QIN. By September 7, 2006, Sea Crest built a wood structure, including what appeared to be an electrical box, and a wellhead. *CP 131.* In October 2006, Sea Crest continued work on Sea Crest Parcel in anticipation of building a residential unit. *CP 131-135.* On October 30 and November 1, 2006, heavy equipment operators were clearing land and building a road through a coastline bluff to the ocean beach. *CP 134-135, 186- 205.*

On November 1, 2006, QIN enforcement personnel issued another Stop Work Order and attempted to serve the order to a machinery operator, who identified himself as Ervin Gilbertson. *CP 243, 251.* Mr. Gilbertson stated that he did not have any permit for his activities. *CP 243.* Mr. Gilbertson refused to sign the Stop Work Order but requested a copy, which was given to Mr. Gilbertson. *Id.* The Stop Work Order indicated various violations of Title 61, including operation of heavy equipment within the shoreline protection zone, building a road to the beach without

a Quinault HPA, and harvest of standing timber without a Quinault forest practices permit. *CP 243.*

By November 7, 2006, Sea Crest leveled the east side of the property with gravel, filling approximately two acres. *CP 244, 267-8, 546.* On November 9, 2006, QIN submitted another request to Sea Crest to cease and desist development activities and to apply for a Quinault Building Permit using a Master Land Use Application. *CP 135.* On November 14, 2006, Steve Roos, then-Sea Crest attorney informed QIN that Sea Crest would halt development activities and remove heavy equipment from the Sea Crest Parcel. *CP 80.* On December 4, 2006, QIN staff met with Bob Charters, a representative of Sea Crest, and Steve Roos, then-Sea Crest attorney, to discuss the QIN- required permits. *CP 257.*

Several additional months of development continued when QIN submitted a citation letter to Sea Crest's registered agent Jack Glaubert, and to Steve Roos, then-Sea Crest attorney on May 21, 2007. *CP 257-260.* Mr. Glaubert refused the citation sent by U.S. mail. *CP 258, 261.* By June 14, 2007, Sea Crest had added to the previously built wood structure, including adding concrete and wiring for pumps. *CP 244.* On June 26,

2007, Sea Crest added a stake indicating where the conduit was to be placed. *CP 245.*

By July 2, 2007, Sea Crest had cleared approximately 6 acres of forest and groundcover, filled approximately .5-2.0 acres of wetlands, cut a road from atop of a coastal bluff and onto a beach beneficially owned by the QIN and closed in accordance with the QIN Resolution 70-16 in order to protect the wildlife resources of the QIR. *CP 54-56.* On July 10, 2007, Sea Crest continued excavating the Sea Crest Parcel. *Id.* By July 27, 2007, Sea Crest had continued clearing the timber and brush from Sea Crest Parcel. *Id.*

Sea Crest never obtained a permit for any activity on Sea Crest Parcel from QIN. *CP 128, 139.* Sea Crest did not apply for a Jefferson County permit until July of 2007 and Jefferson County did not issue a permit to Sea Crest until September 24, 2007, over one year after construction and development began. *CP 234-241, 584-586.* Jefferson County issued the Sea Crest permit even though the county failed to zone lands within the QIR and/or establish any criteria for development. *CP 537-543.* Jefferson County's Comprehensive Plan zones all lands within the borders of Jefferson County with the exception of those lands within the QIR,

including the Sea Crest Parcel. *CP 540-543.*

From at least the spring of 2006 to September 24, 2007, Sea Crest developed Sea Crest Parcel without any permit whatsoever. Sea Crest filled at least one-half acre up to two acres of wetlands, cleared approximately six acres of forestlands and ground brush, and carved at least 2,500 feet of new roadway, including approximately 1,000 feet of road through a shoreline bluff and onto a QIN-owned beach. *CP 259-260.*

Sea Crest's logging activities atop the coastal bluff resulted in immeasurable destabilization of the bluff as well as reducing the number of possible nesting habitats for bald eagles. *CP 267.* An active and occupied bald eagle nest is less than one-quarter mile away from Sea Crest Parcel. Further, Sea Crest Parcel is located in a high bald eagle density area. *CP 276-8.* Sea Crest's act of cutting a 1,000 foot road through the coastal bluff reduced the stability of the bluff and increased the likelihood of noise disturbance to neighboring nesting habitats for bald eagles. *CP 267.* Sea Crest's act of filling wetlands reduced needed habitat for species of birds and amphibians. *Id.*

IV. ARGUMENT

A. THE QUINAULT INDIAN NATION HAS JURISDICTION TO REGULATE ITS MEMBERS AND ITS TERRITORIES, INCLUDING THE SEA CREST PARCEL

Indian tribes have the authority to govern their members and their territories, subject to Congress' plenary power. *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975). Under current case law, an Indian tribe has civil regulatory jurisdiction over the conduct of non-Indians when the non-member's **conduct threatens or affects the "political integrity, the economic security, or the health or welfare of the tribe."** *Montana v. United States,* 450 U.S. 544, 566 (1981); *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. _____(2008)(emphasis added).

Many courts have applied the *Montana* test to hold that tribal governments have civil regulatory jurisdiction over non-members in regards to land use. See *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408, 440 (1989)(holding tribe could zone non-Indian fee land in reservation); *State of Montana v. U.S. E.P.A.*, 137 F.3d 1135 (9th Cir.),

cert. denied, 525 U.S. 921 (1998); (holding tribes right to regulate non-Indian fee lands on reservation in regards to water usage); *Confederated Salish and Kootenai Tribes of Flathead Reservation, Montana v. Namen*, 665 F.2d 951 (9th Cir.), cert. denied, 459 U.S. 977 (1982) (holding tribe had authority to regulate activities of non-Indians who owned reservation land bordering lake that tribe had beneficial title); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir.), cert. denied, 454 U.S. 1092 (1981) (holding state water permits to non-Indian landowners on reservation fee lands invalid).

The U.S. Supreme Court long ago recognized that, in order to protect the health and welfare of a community, a government must be able to exercise comprehensive regulatory powers over lands within its borders. *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922). Further, over thirty years ago, the Ninth Circuit articulated an important rationale for protecting tribal control over Indian Reservations:

> "...[S]ubjecting the reservation to local jurisdiction would dilute if not altogether eliminate Indian political control of the timing and scope of the development of reservation

> resources, subjecting Indian economic development to the veto power of potentially hostile local non-Indian majorities. Local communities may not share the usually poorer Indian's priorities, or may in fact be in economic competition and seek, under the guise of general regulations, to channel development elsewhere."

Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 664 (9th Cir. 1975), cert. denied 429 U. 429 U.S. 1038 (1977) *Knight v. Shoshone and Arapahoe Indian Tribes of the Wind River Reservation, Wyoming*, 670 F.2d 900, 903 (10th Cir. 1982) (holding that tribal zoning ordinance affecting fee lands owned by non-Indians within Indian Reservation "relates substantially to the general welfare of those living on the Reservation and reflects the Tribes' concern over the perceived threat to the rural character of the Reservation and the lifestyle of a majority of those living on the Reservation."); and *Thomsen v. King County,* 39 Wash. App. 505 (Wash. App. Div. 1), review denied, 103 Wash.2d 1030 (1985). Given this substantial case law, QIN has civil regulatory jurisdiction over lands within the QIR, including the Sea Crest Parcel.

B. SEA CRESTS ACTIVITIES THREATEN THE POLITICAL INTEGRITY, ECONOMIC SECURITY, AND THE HEALTH AND WELFARE OF THE QUINAULT INDIAN NATION AND ITS MEMBERS

When determining whether the QIN has civil regulatory jurisdiction, this Court must focus on Sea Crest's activities and their affect on the QIN and its members and not the non-member, fee status of Sea Crest. *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. _____(2008). Here, while Sea Crest's activities occur specifically upon the Sea Crest Parcel, the impacts affect numerous QIN resources and adjoining properties.

In the underlying case, Sea Crest cleared six acres of a coastal bluff and carved a road from the top of the coastal bluff onto a beach beneficially owned by the QIN. *CP 54-55, 245.* The QIN closed all beaches on the QIR to all non-members in 1970 specifically for the health and welfare of the QIN and its members because of non-member exploitation and abuse of the treaty protected shellfish, fish, and wildlife resources. *CP 54-55.* Sea Crest's sole interests in carving a road from the bluff to the beach are

for personal recreation and aesthetic beauty. Sea Crest's past action of carving out the coast bluff demonstrate that Sea Crest's past and future intent are aimed to further exploit the Quinault coastline and to disregard neighboring QIN lands and the needs of QIN members.

Treaty protected resources have been previously recognized by *U.S. v. Washington* ("Boldt decision") as **"the principal, economic activity of the Quinault."** 384 F.Supp. 312, 375 (1974) (emphasis added). Further, the Quinault Indian Nation has been long recognized to self-regulate its fisheries. *Id.* at 333. In so doing, the QIN Department of Natural Resources protects the QIN's fisheries, including shellfish and fish habitat with resource plans and regulations. Through its fisheries, QIN members provide a significant source of their income and family needs. QIN members sell treaty seafood to the QIN-owned Fish House who then wholesales the product across the world. The Fish House provides employment for some tribal members, while the profits from the Fish House provide revenue for necessary and essential government services. These resources, adversely affected by Sea Crest's actions clearly impair the political integrity, economic security, and health and welfare of the QIN.

Next, the QIN and its members depend in large part upon the natural wildlife of the QIR, many members hunting for sustenance. Sea Crest's activities destroyed large amounts of wildlife habitat, which directly affect the health and welfare of the QIN membership. Here, Sea Crest eliminated six acres of forestlands on a coastal bluff that provided optimal bald eagle nesting areas and a dense canopy for wild game. *CP 244, 259-260, 267-268, 546.* Sea Crest filled in wetlands that provide habitat for numerous other species. *Id.* In so completing these activities, Sea Crest brought in heavy equipment, causing excessive noise, scaring wildlife and wild game far away from the Sea Crest Parcel and neighboring QIR parcels. *CP 267.* The lost wild game caused by Sea Crest's activities cannot be captured by QIN members and used for the basic needs of their families.

Under Quinault Tribal Code Title 61, certain development may have occurred in some fashion had Sea Crest requested a variance and obtained an inexpensive permit from QIN Planning Committee. *CP 307-398.* Such a variance would have allowed for the Planning Committee and Sea Crest to fully assess the environmental impacts of proposed and actual Sea Crest development. In so doing, the parties could have protected the coastal shoreline, natural resources, wildlife, the adjacent QIN-owned beachlands,

other neighboring QIN property, as well as water and air resources. The variance process would also have allowed for any authorized development to require mitigation and other protective measures consistent with the surrounding pristine and sensitive coastline. Further, as a matter of political integrity, the above-described process allows for the creation of a public record against which the residents and tribal community are entitled to and to which the same standards are applied. This process is key, in that, the Nation itself has forgone development of the area surrounding Sea Crest for reasons similar to those identified in this brief.

However, certain Sea Crest activities are unlawful period due to the resulting loss of habitat for wildlife, erosion of coastal bluffs, and destruction of QIN beach lands. *Id.* QIN enacted its zoning, building, and natural resource codes in order to protect the QIN, its members, the QIR, and its non-member residents from certain Sea Crest activities. *CP 307-462.* Sea Crest crushed a road from a previously forested area over a coastal bluff and onto a beach beneficially owned by the QIN. *CP 134-135, 186-205.* It is clear QIN attempted to protect its political integrity, the economic security, and the health and welfare of the QIN and its members from activities such as Sea Crest's.

C. FAILING TO ACKNOWLEDGE QIN'S JURISDICTION OVER LAND USE REGULATION OF FEE PARCELS ON THE QUINAULT INDIAN RESERVATION WILL HAVE FAR REACHING IMPACTS THAT DIRECTLY IMPAIR THE POLITICAL INTEGRITY, ECONOMIC SECURITY, AND THE HEALTH AND WELFARE OF THE QUINAULT INDIAN NATION

Sea Crest's past activities clearly demonstrate that without QIN regulatory authority in this matter, the impact of Sea Crest's activities will continue to leach into neighboring reservation trust lands, reservation beaches, and adversely affect on-reservation wildlife for which the QIN members rely upon. Failure to protect said Sea Crest activities from leaching onto QIN lands and other lands within the QIR does affect the political integrity, the economic security, and the health and welfare of the QIN.

Sea Crest went well over a year developing without a QIN-issued permit or Jefferson County-issued permit. Sea Crest developed an area that cannot be developed even under state law. Nevertheless, Jefferson County, whose primary enforcement office is located approximately five hours away from the Sea Crest Parcel allowed Sea Crest to develop for over a year without any permit or citation while Sea Crest refused to

comply with QIN laws. Given the significance of this area, QIN continued to monitor the Sea Crest Parcel, document what activities took place, and attempt to enforce the laws of the QIN. *CP 126-140, 242-258.* Meanwhile, federal, state and local authorities, specifically Jefferson County, were absent.

The coast of northern Washington is largely made up of reservation lands, national forests, sanctuaries, and other protected zones. The QIN is a member of the Olympic Coast Marine Sanctuary. Jefferson County lacks any lands not located within an other jurisdictions control – Quinault Indian Reservation, Hoh Indian Reservation, the usual and accustomed areas for the Quileute Indian Reservation, and the Olympic National Park. Nevertheless, under Jefferson County's watch, Sea Crest logged and cleared approximately 6 acres of land, filled wetlands, and plowed a road through a coast bluff and onto a beach without any permit from Jefferson County, in fact, without a citation from Jefferson County. Unregulated logging and brush clearing, especially in six-acre increments, and unregulated destruction of wetlands and coastal bluffs are catastrophic toward wildlife, wildlife habitat, and upon the economic resources, which the QIN and its members rely upon. From past experience, QIN has a substantial interest in land use on the QIR and has taken initiative to

monitor development within QIR, whereas, no local authority has presented itself.

Simply stated, QIN has an interest where the state and local authorities either do not have an interest or do not intend to adequately protect their interests. Although the Sea Crest Parcel may be near, but not next to, the northern boundary of the QIR, allowing continued development such as Sea Crest's, would eventually eliminate the QIN's control of the QIR and terminate the QIN as a politically viable entity --- parcel by parcel, acre by acre, lot by lot. Further, Jefferson County cannot adequately protect the interests of the QIN. Jefferson County has demonstrated its intent to neglect monitoring Sea Crest and other activity on fee parcels within the QIR by its (1) signing of an MOU, deferring to QIN as the sole regulatory power; (2) failing to zone any lands on the QIR; (3) leaving regulation of Sea Crest nearly exclusively upon the landowner – Sea Crest; and QIN. Jefferson County's failure to zone, implement any regulatory framework for development on the reservation, and its failure to ensure regulatory compliance opens the door for nearly any activity to occur on the approximate 12,000 acres of non-Indian QIN fee lands.

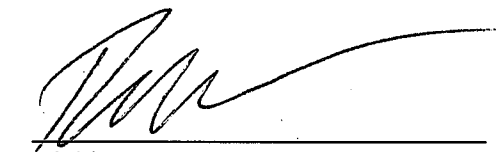
The current situation involving Sea Crest on the QIR is precisely the reason why Indian tribes, not the neighboring counties, must regulate land use on reservation. Sea Crest is exploiting the Sea Crest Parcel in a manner that is inconsistent with the pristine characteristics the QIN protects for the coastline of the QIR and northern Washington. Unlike Jefferson County, QIN is willing and able to enforce its laws. QIN is close in proximity to QIR fee lands, including the Sea Crest Parcel, and QIN sends a watchful eye to ensure compliance. Under Jefferson County "regulation", a fee owner developed on the QIR for well over a year before Jefferson County became involved. Under Jefferson County "regulation", the fee owner continues to exceed the scope of permits without concern of enforcement from Jefferson County. Under Jefferson County "regulation", Sea Crest spoils the QIN lands surrounding the Sea Crest Parcel. Sea Crest's development directly affects and impairs the political integrity, the economic security, and the health and welfare of the QIN. Simply stated, under *Montana*, the QIN holds a vital political and economic interest in the exercise of civil regulatory jurisdiction to the Sea Crest Parcel.

V. CONCLUSION

Montana, in essence, is a test to determine not only if an Indian tribe has a stake in regulating an activity, but also which jurisdiction(s) have a sufficiently large stake in regulation. Here, should this court find that the QIN lacks jurisdiction because Sea Crest's activities do not affect the political integrity, economic security or health and welfare of the QIN, the same is true for Jefferson County. This is simply not the case; both jurisdictions have an interest. However, QIN's interest is much greater than Jefferson County's interest because allowing unregulated development upon fee lands such as the Sea Crest Parcel will, parcel-by-parcel, destroy QIN political control over its own resources and lands. Therefore, the QIN respectfully requests that this Court find the QIN has jurisdiction to regulate Sea Crest's building activities.

DATED this 17th day of JULY 2008.

Respectfully Resubmitted,



Rickie Wayne Armstrong
Office of Reservation Attorney
Quinault Indian Nation
WSBA No. 34099

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IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

QUINAULT INDIAN NATION and QUINAULT PLANNING COMMISSION, *Petitioner,*	CAUSE NO. 37688-1-II
v.	CERTIFICATE OF SERVICE
SEA CREST LAND DEVELOPMENT CO. INC., a Washington State corporation, JACK A. GLAUBERT, registered agent of SEA CREST LAND DEVELOPMENT, INC. *Respondent.*	

I, Jenelle Sutton, certify that I caused to be served by U.S. Mail, the following documents: CORRECTED BRIEF OF APPELLANT, to the following:

Opposing Counsel:
Beebe, Roberts & Bryan, P.L.L.C.
Attn: David A. Roberts
P.O. Box 163
Kingston, WA 98346-0163
(360) 297-4542

Office of the Reservation Attorney
QUINAULT INDIAN NATION
Post Office Box 189
Taholah, Washington 98587
(360) 276-8211

DATED this 18TH day of July, 2008.

Jenelle Sutton

Office of the Reservation Attorney
QUINAULT INDIAN NATION
Post Office Box 189
Taholah, Washington 98587
(360) 276-8211