SCOPING REPORT

COQUILLE INDIAN TRIBE
FEE-TO-TRUST AND GAMING FACILITY PROJECT

JUNE 2015

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INTRODUCTION

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INTRODUCTION

The Bureau of Indian Affairs (BIA) has initiated the Environmental Impact Statement (EIS) process for the Coquille Indian Tribe's (Tribe's) proposed 2.4-acre fee-to-trust transfer and gaming facility development project in the City of Medford, Oregon. The Proposed Action consists of the transfer of a 2.4-acre parcel from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli. Adjacent fee land would be used for parking. This scoping report describes the EIS scoping process, identifies cooperating agencies, explains the purpose and need for the Proposed Action, describes the proposed project and alternatives, and summarizes the issues identified during the scoping process.

The National Environmental Policy Act (NEPA) integrates environmental considerations into the planning process and decisions of federal agencies. NEPA provides an interdisciplinary framework to ensure that federal agency decision-makers consider environmental factors. The key procedure required by NEPA is the preparation of an EIS for any major federal action that may significantly affect the quality of the environment. Public involvement, which is an important aspect of NEPA procedures, is provided for at various steps in the development of an EIS. The first opportunity for public involvement is typically the EIS scoping process.

1.1 SCOPING PROCESS

The "scope" of an EIS is the range of environmental issues to be addressed, the types of project effects to be considered, and the range of project alternatives to be analyzed. The EIS scoping process is designed to provide an opportunity for the public and government agencies to have input into the scope of the EIS and alternatives.

The first formal step in the preparation of an EIS is publication of a Notice of Intent (NOI) to prepare an EIS. The BIA published the NOI for the Proposed Action in the *Federal Register* on January 15, 2015 (**Appendix A**). The NOI described the Proposed Action and announced the initiation of the formal scoping process, the date and location of the public scoping meeting, and a 30-day public scoping comment period. A newspaper notice announcing the scoping process and date and location of the public scoping meeting was also published in the Medford Mail Tribune on January 16 and January 18, 2015 (**Appendix B**). Direct mailings were sent to interested parties, including four tribes, eight public agencies, one private citizen/homeowner, and seven nearby businesses. On February 19, 2015, notices extending the comment period for an additional 30 days to March 19, 2015 were mailed to interested parties (**Appendix A**), and a newspaper notice announcing the extension was published in the Medford Mail Tribune on February 24, 2015 (**Appendix B**). A list of individuals and agencies that commented during the scoping period is included as **Appendix C**, all comments received during the scoping process are included as **Appendix D**, and a transcript of the public scoping meeting is provided as **Appendix E**.

1.2 COOPERATING AGENCIES

Under NEPA, the BIA is the lead agency for the evaluation of the Proposed Action consistent with the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). The BIA may request that another agency having jurisdiction by law or having special expertise with respect to anticipated environmental issues be a "cooperating agency." Cooperating agencies participate in the scoping process and, at the lead agency's request, may develop information to be included in the EIS.

The BIA has formally invited the United States Environmental Protection Agency (USEPA), Tribe, Oregon Department of Transportation (ODOT), City of Medford, Jackson County, the National Indian Gaming Commission (NIGC), and Rogue Valley Sewer Services (RVSS) to serve as cooperating agencies for the EIS. As of the date of this scoping report, the City of Medford, ODOT, Tribe, and Jackson County have accepted Cooperating Agency status, and USEPA, NIGC, and RVSS have declined (**Appendix F**).

1.3 PUBLIC INVOLVEMENT

Public involvement opportunities provided during scoping included the public comment period and scoping meeting. Comments were made and documented at the public hearing and received in writing via mail and e-mail.

1.3.1 PUBLIC NOTICE

The public was notified of scoping activities for the EIS through the publication of the NOI within the federal register (**Appendix A**), local newspaper notices in the Medford Mail Tribune (**Appendix B**), the project website, and direct mail to interested parties, including agencies, tribes, and nearby businesses.

1.3.2 PROJECT WEBSITE

A project website, www.coquilleeis.com, was launched on August 19, 2013. The website provides information on the Proposed Action, EIS process, and comment opportunities. It also provides documents developed to date, including the NOI and this Scoping Report. Additional documents, including the Draft and Final EIS, will be added to the website as they are developed.

1.3.3 PUBLIC MEETING

A public scoping meeting was conducted on February 2, 2015 to provide project information and to solicit public input on the EIS scope and alternatives. The meeting was intended to obtain input early in the NEPA process on issues and potential impacts to be assessed in the EIS, the purpose and need for the project, and alternatives to consider or eliminate from detailed analysis. The public scoping meeting was conducted in the format of a formal public hearing. A court reporter/stenographer was available at the public scoping meeting to record oral comments (**Appendix E**). Approximately 300 people attended the meeting, thirty-six of whom provided oral comments. Comment forms were available for attendees to provide input during the scoping meeting or to take home and mail later, and fourteen were submitted at the public scoping meeting (**Appendix D**).

1.3.4 MAIL AND EMAIL

Through the pubic scoping notices, the public was invited to submit comments via mail during the public review period, which concluded on March 19, 2015. There were 111 letters submitted during the comment period (**Appendix D**).

SECTION 2.0

PROPOSED ACTION AND ALTERNATIVES

SECTION 2.0
PROPOSED ACTION AND ALTERNATIVES

2.1 PURPOSE AND NEED

The purpose and need for the Proposed Action is to improve the economic status of the Coquille Tribal Government and promote its self-sufficiency so it can provide essential programs and services to its membership, including but not limited to health care, education resources, housing, social services, employment resources, public safety, utilities, cultural preservation, and environmental and natural resource management. The Tribe's need for the Proposed Action is based on:

- Lack of a sufficient income source for the Tribal Government to maintain existing essential governmental programs and services for its tribal membership;
- Increasing costs of Tribal healthcare services, which are projected to nearly double over the next ten years; and
- Desire to enhance and adapt programs infrastructure in order to ensure capacity of the Tribe to meet the future needs of its growing and changing demography.

2.2 ALTERNATIVES IDENTIFIED BY THE PUBLIC

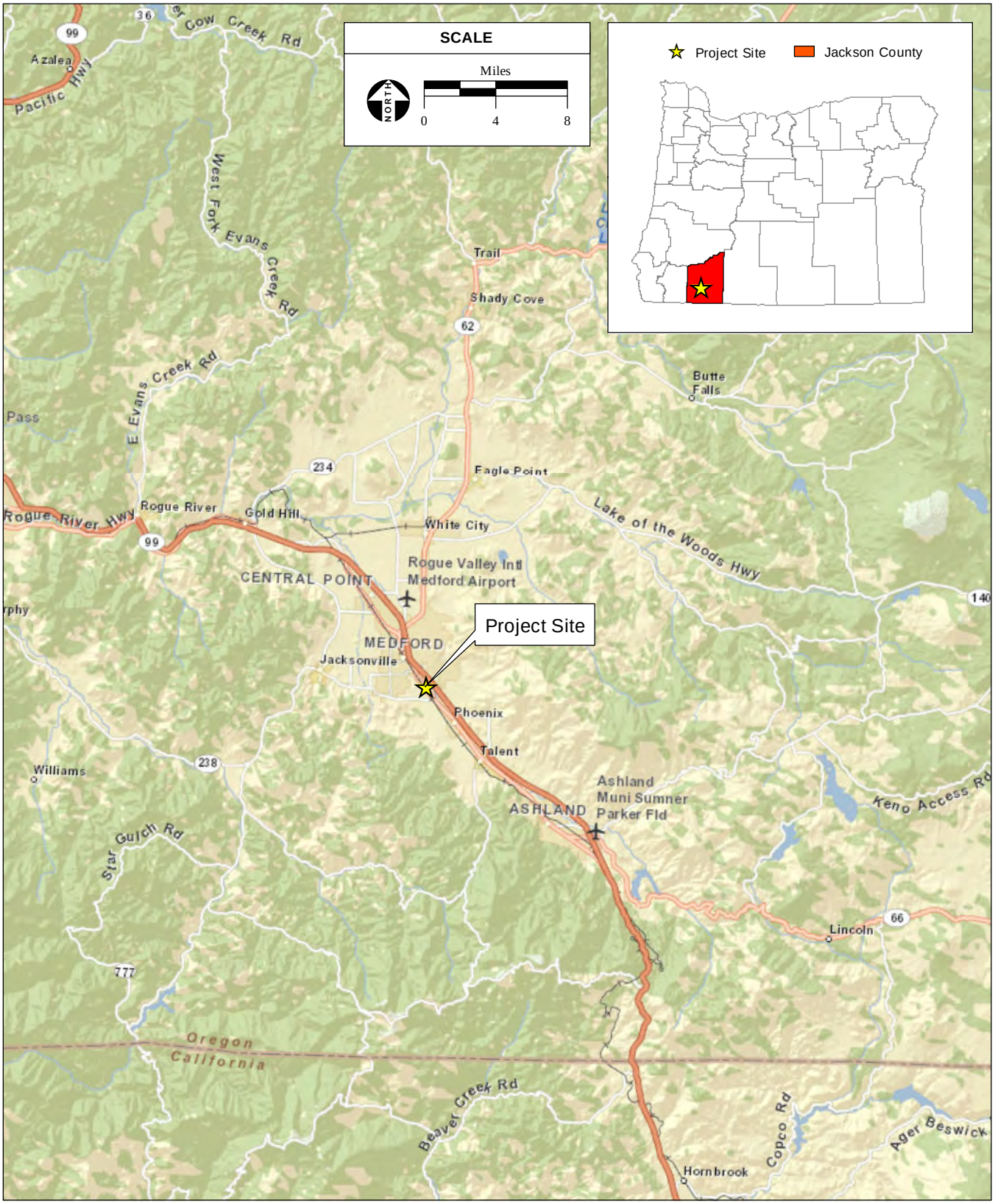
During the EIS scoping period, several issues were raised regarding alternatives that should be evaluated within the EIS. Specifically, comments suggested the analysis of:

- Alternatives outside the Medford area;
- Alternatives on the Tribe's existing trust land in Coos Bay;
- Expansion of The Mill Casino;
- A no-action alternative;
- A non-gaming alternative; and
- Gaming and non-gaming alternatives for each potential site.

As discussed in **Table 2-1** below and as requested by scoping commenters, these alternatives were evaluated and either chosen for full evaluation in the EIS or eliminated from further consideration.

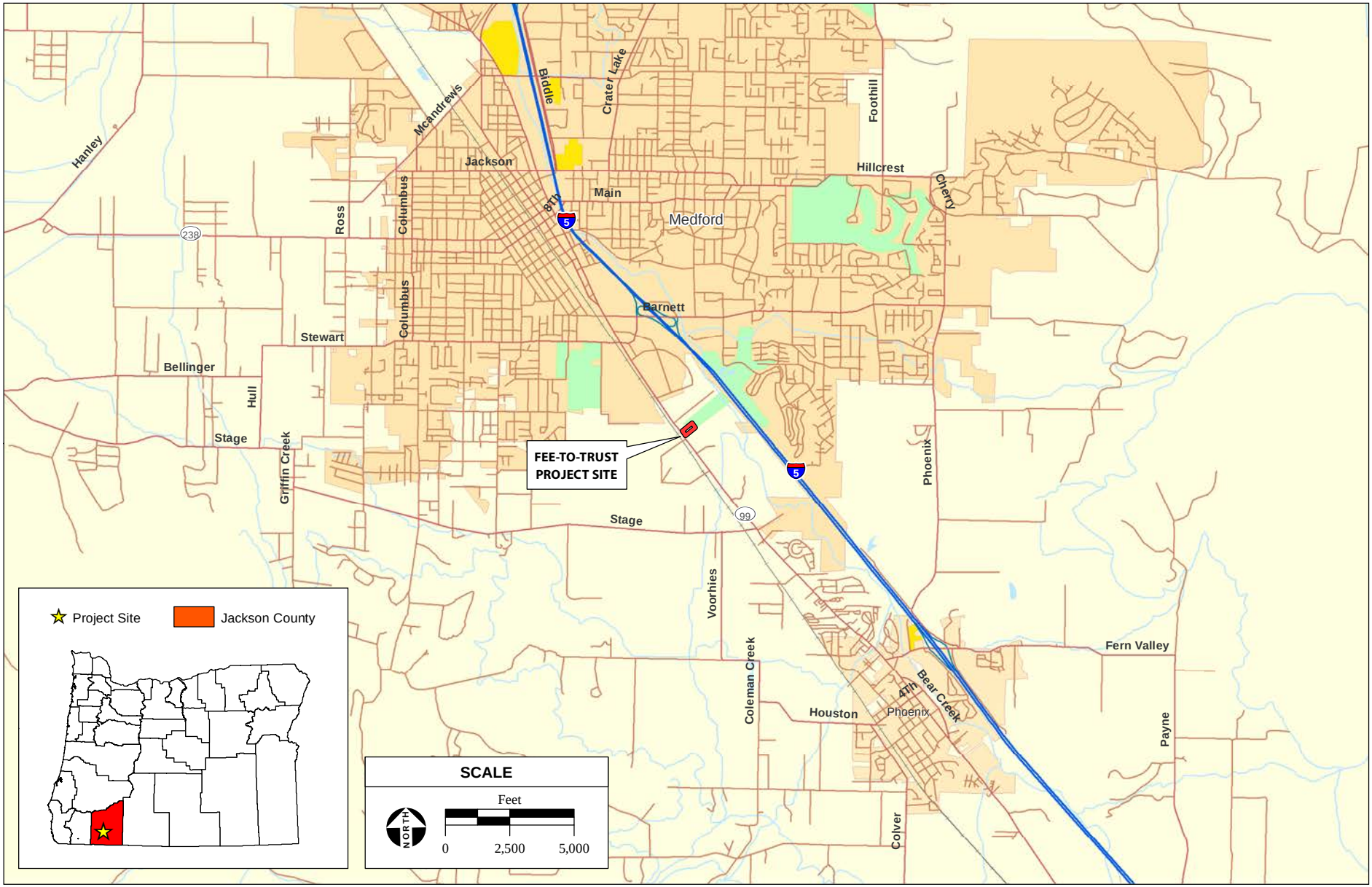
2.3 ALTERNATIVES TO BE ANALYZED WITHIN THE EIS

The project site consists of one parcel, identified as tax lot 37-1W-32C-4701, totaling 2.4 acres located within the incorporated boundaries of the City of Medford, Oregon (**Figures 1** and **2**). The Tribe proposes to transfer this parcel into federal trust status. An aerial photograph of the project site is provided in **Figure 3**. The EIS will evaluate a reasonable range of alternatives to meet the purpose and need for the Proposed Action. Based on the results of an extensive screening analysis, the following alternatives will be evaluated within the EIS: 1) Alternative A – Proposed Project; 2) Alternative B – On-



SOURCE: ESRI Data, 2015; AES, 2015

Figure 1
Regional Location



SOURCE: ESRI Data, 2015; AES, 2015

Figure 2
Site and Vicinity

SOURCE: ESRI Data, 2015; AES, 2015

Figure 3
Aerial Photograph

Site Water and Wastewater Facilities; 3) Alternative C – Gaming Facility on the Arrowhead Site; 4) Alternative D – Expansion of The Mill Casino; and 5) No Action/No Development Alternative.

Table 2-1 identifies and summarizes development alternatives to be analyzed in detail and alternatives considered but eliminated from detailed analysis. Alternative A is the Tribe's Proposed Project. The BIA (Lead Agency), however, may not determine a Preferred Alternative until completion of the environmental analysis. If it is clearly known at the time, a Preferred Alternative may be identified in the Draft EIS; otherwise, the BIA will do so in the Final EIS or Record of Decision (ROD). As described in NEPA Section 1502.14(e), a Preferred Alternative is the alternative that the agency believes would fulfill its statutory mission and responsibilities, considering economic, environmental, technical, and other factors.

TABLE 2-1
SUMMARY OF ALTERNATIVES

Alternative	**Description**
Alternatives to be Analyzed in Detail	
No Action	NEPA Section 1502.14(d) requires analysis of the No Action Alternative. Under the No Action Alternative, none of the three development alternatives considered within the EIS would be implemented. The No Action alternative assumes that that the site would not be taken into trust and existing uses on the 2.4-acre Roxy Ann site would not change in the near term, including continued operation of the bowling alley and on-site Oregon Video Lottery Terminals (VLTs).
Alternative A – Proposed Project	The Proposed Action would transfer the 2.4-acre Roxy Ann site, currently held in fee by the Tribe, to trust status. As part of the Proposed Project, the Tribe would renovate the existing bowling alley on the site and convert it into a gaming facility. Adjacent fee land would be used as parking. Water supply and wastewater treatment service is proposed to be provided through connection to City infrastructure. The Proposed Project would retrofit and remodel the existing bowling alley to an approximately 30,000-square-foot entertainment venue with between 600 and 700 gaming machines and on-site food and beverage facilities (bar/deli).
Alternative B – On-site Water and Wastewater Facilities	Instead of connecting to City infrastructure for water supply and wastewater treatment services, this alternative proposes to utilize on-site water and wastewater treatment facilities. This alternative would involve drilling groundwater wells on the Roxy Ann site to provide water to the Proposed Project. Potential options for wastewater treatment include, but are not limited to, a packaged treatment plant or septic system. In the event that a treatment plant is constructed, recycled water could be utilized for non-potable uses at the proposed gaming facility and excess treated wastewater could be disposed of through direct discharge to a nearby drainage, groundwater injection, and/or use of the adjacent lands for sprayfield irrigation or sub-surface disposal. The pending water/wastewater engineering report will provide further detail and recommendations for implementing this alternative.
Alternative C - Arrowhead Site	Alternative C involves the construction of the proposed gaming facility described under Alternative A on the Arrowhead site instead of the Roxy Ann site. The 49.35-acre Arrowhead Land and Cattle Property ("Arrowhead site") is located just north of the City of Phoenix within Jackson County, off Fern Valley Road and within view of the I-5 corridor. The site under consideration consists of Tax Lots 100 and 500 and is zoned exclusively for farm use.

Alternative D - Expansion of The Mill Casino	This alternative involves expansion of the Tribe's 30,000-square-foot Mill Casino located on the Tribe's existing trust land in North Bend through construction of an approximately 5,000 square foot addition to the south end of the building. Although it is uncertain if expansion of The Mill would meet the purpose and need for the Proposed Action to generate revenue to support tribal government operations, this alternative is recommended for full evaluation in the EIS due to the volume of comments received during the scoping period requesting that the EIS evaluate an alternative on the Tribe's existing trust land.
Alternatives Considered but Eliminated from Further Consideration	
On-site Alternatives	Other alternatives on the Roxy Ann site were considered, including a reduced intensity option, an alternative involving pre-construction demolition of the existing bowling alley, commercial development, a hotel resort, and tribal offices. These alternatives, analyzed in detail in the Alternatives Evaluation Report, were eliminated for a variety of reasons, including inability to reduce the environmental impacts of the project, not contributing to a reasonable range of alternatives and not meeting the purpose and need of the Proposed Project.
Locations within the Tribe's Existing Trust Lands	Alternative locations within the Tribe's existing trust lands, including 80 acres in North Bend, the 954-acre Kilkich reservation near Coos Bay, and the Coquille Forest land, were considered for development of a gaming facility. Development of casino on the Kilkich Reservation or other lands within North Bend was eliminated from detailed consideration as these alternatives would not sufficiently differ from the analysis of Alternative D, expansion of the Mill Casino. Further, these alternatives would not likely meet the purpose and need for the Proposed Action because any patronage to a new facility in this area would likely be taken from the existing Mill Casino, which would not result in a net increase in revenue to the Tribe. Development of casino on the Coquille Forest land was eliminated because under the Northwest Forest Plan (NWFP) development in the Coquille Forest would be prohibited and thus would require a congressional amendment to the Coquille Restoration Act. Further, the Coquille Forest trust land is also unsuitable for the proposed development as it is located far from population centers that could provide a customer base, and a casino would be a highly incompatible land use for the area due to lack of infrastructure (including roadways and public services). Additionally, development in the Coquille Forest has the potential to lead to increased environmental impacts to biological resources, including habitats and wildlife species.
Other Off-site Locations for Proposed Gaming Facility	Over fifteen other off-site properties were considered for development of a gaming facility, including sites in Eugene, Phoenix, Ashland, Roseburg, Millersburg, Central Point, several other parcels in Medford. These alternatives, analyzed in detail in the Alternatives Analysis Report, were eliminated from further consideration for reasons including, but not limited to, infeasibility, inability to reduce the environmental impacts of the project, not contributing to a reasonable range of alternatives, and not meeting the purpose and need of the Proposed Project.

SECTION 3.0

ISSUES IDENTIFIED DURING SCOPING

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ISSUES IDENTIFIED DURING SCOPING

3.1 INTRODUCTION

The Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) require a process, referred to as "scoping," for determining the range of issues to be addressed during the environmental review of a Proposed Action (25 CFR1501.7). The scoping process entails a determination of issues by soliciting comments from agencies, organizations, and individuals. The Notice of Intent (NOI) comment period for the Coquille Indian Tribe Fee-to-Trust and Casino Project's Environmental Impact Statement (EIS) began January 15, 2015 and closed on March 19, 2015. The issues that were raised during the NOI comment period have been summarized within this scoping report.

The following section lists each of the major issue areas raised by members of the public or government agencies in the scoping process. Specific issues and questions are discussed in each section and will be further addressed in the EIS. General comments, concerns, and questions not falling within one of the major issue areas below, or topics that do not fall within the scope of the EIS, are discussed at the end of the following section under the heading **Non-EIS Issues**. Additional issues not specifically raised but which the Bureau of Indian Affairs (BIA) intends to address in the EIS also are discussed. Copies of the comment letters submitted during the scoping process appear in **Appendix D**. A transcript of the public scoping meeting held at the North Medford High School in Medford, Oregon on February 3, 2015 is provided in **Appendix E**.

3.2 ISSUES IDENTIFIED DURING SCOPING

This section contains a summary of public comments received during the EIS scoping process. These comment summaries are categorized by issue area. A general summary of the expected scope of the EIS for each issue area category is also provided.

3.2.1 ALTERNATIVES AND PURPOSE AND NEED

Comments

The following comments regarding the scope of the alternatives and purpose and need were provided during scoping:

- The purpose and need should be more specifically defined.
- There should be several alternative sites considered, such as outside Medford or on the Coquille's current trust land in Coos Bay that would be safe from the Cascadia event.
- All potential alternatives should be evaluated for both gaming and non-gaming uses.
- A smaller/reduced intensity alternative should be considered.

- The EIS should consider the expansion of the Tribe's Mill Casino in Coos Bay as an alternative.
- The EIS should evaluate a no-action alternative.
- The EIS should evaluate whether a non-gaming alternative would meet the purpose and need for the Proposed Project.
- The EIS should not evaluate alternatives that can be rejected out of hand, nor should it consider as separate alternatives options which consist of the same federal action (for example, different development scenarios for the same location that involve the same action).

Scope

Alternatives expected to be analyzed within the EIS are identified and described in **Section 2.0**. As discussed therein, a reasonable range of alternatives has been developed in light of the purpose and need for the Proposed Action. The EIS will provide a complete description of all alternatives, list all anticipated agency approvals, and provide a thorough analysis of environmental consequences from project implementation.

3.2.2 GEOLOGY AND SOILS

Comments

The following comments regarding geology and soils were provided during scoping:

- The EIS should address potential impacts to soil quality, mineral resources, and topography, including the effects of erosion, geologic hazards, and implementation of a grading/drainage plan.
- The EIS should take into account the seismic setting of the project site and should include a seismic map.
- The EIS should list all permits and authorizations necessary for the Proposed Project.

Scope

The EIS will include a description of the geological, topographic, and soil conditions on the project site, as well an analysis of potential impacts resulting from all alternatives on these resources. Mitigation measures, if warranted, will be discussed in the EIS.

3.2.3 WATER RESOURCES

Comments

The following comments regarding water resources issues were provided during scoping:

- The EIS should consider the impacted waters, the nature of the waters, and specific pollutants likely to affect these waters, as well as existing enhancement or restoration efforts, Clean Water Act (CWA) provisions (especially Section 404), the potential requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit, and coordination with the Oregon Department of Environmental Quality.
- If necessary, the EIS should include information on source waters, activities that may affect these waters, potential contaminants, and measures to protect waters.

- The EIS should consider wetlands, riparian areas, waters of the U.S., Bear Creek, fish and wildlife migration corridors, and floodplains (including Executive Order 11988).
- The EIS should take into account the historic low snowpack level in Oregon.
- The EIS should analyze water supply quality topics including stormwater quality and detention, groundwater quality, aquifer recharge, and irrigation.
- The EIS should analyze how the increase in impervious surfaces may affect stormwater quality and runoff to Bear Creek, including the potential for contamination by heavy metals, pesticides, and/or septic systems.
- The EIS should address the potential for impacts resulting from altered runoff or flow patterns on the project site and/or adjacent properties, as well as the potential for rising water levels in Bear Creek.
- Bear Creek should be considered carefully in the EIS with regard to CWA 303(d) and Total Maximum Daily Load (TMDL) levels.
- The EIS should list all permits and authorizations necessary for the Proposed Project.

Scope

The EIS will include a description of watersheds, drainage patterns, floodplains, groundwater conditions, and water quality on the project site and the surrounding vicinity, as well as analysis of potential impacts resulting from all alternatives on these resources. The EIS will address issues related to site drainage, storm-water runoff, water consumption, and wastewater generation, including impacts to surface water and groundwater quality. Mitigation measures to avoid impacts to water quality and water resources, if warranted, will be recommended in the EIS.

3.2.4 AIR QUALITY

Comments

The following comments regarding air quality were provided during scoping:

- The EIS should take into account potential impacts relating to climate change and greenhouse gas (GHG) emissions, including Council on Environmental Quality (CEQ) guidelines on these topics, and relevant mitigation should be proposed.
- The reduction in GHG emissions as a result of Medford residents patronizing the Proposed Project driving fewer miles to a gaming facility should be taken into account.
- The EIS should analyze potential effects due to dust associated with the construction of the Proposed Project.
- The EIS should consider pollution prevention and LEED standards.

Scope

The EIS will include a description of the regional climate, existing air quality, and pollutants of concern in the vicinity of the project site, as well as an analysis of the potential impacts that could result from implementation of each of the proposed alternatives. Potential impacts associated with greenhouse gases and climate change will be analyzed within the cumulative section of the EIS in accordance with CEQ guidelines. Mitigation measures, if warranted, will be recommended in the EIS.

3.2.5 BIOLOGICAL RESOURCES

Comments

The following comments regarding biological resources were provided during scoping:

- The EIS should consider issues relating to the Federal Endangered Species Act (FESA), specifically lampreys and salmonids (chum, Coho, and fall-run Chinook) salmon.
- The EIS should consider potential impacts to wetlands, waters of the U.S., habitats (especially salmon-spawning habitat), Bear Creek, wildlife, and vegetation.
- There are approximately 9.31 acres of wetlands on/near the project site.
- The EIS should consider monitoring.
- The EIS should list all permits and authorizations necessary for the Proposed Project.

Scope

The EIS will include a description of the habitat, waters of the U.S., and wildlife (including federal and state listed threatened/endangered species) on the project site, as well as the assessment of reasonably foreseeable impacts of the alternatives on these resources. Mitigation measures, if warranted, will be discussed in the EIS.

3.2.6 CULTURAL AND PALEONTOLOGICAL RESOURCES

Comments

The following comments regarding cultural and paleontological resources were provided during scoping:

- The EIS should involve a cultural field survey of the project site.
- Cultural consultation should take into account the cultural viewsheds as well as the project site.
- Cultural consultation should involve tribes within 100 miles of Medford (specifically including Shasta Nation, the Cow Creek Band of Umpqua Indians, and the Karuk Tribe).
- Cultural consultation should be conducted pursuant to Section 106 of the National Historic Preservation Act (NHPA) and the Archeological Resources Act (ARA) and involve appropriate consultation with the State Historic Preservation Office (SHPO) and Native American Heritage Center (NAHC).

Scope

The EIS will contain a cultural resources analysis that identifies historical and archaeological resources located within the project site. Any reasonably foreseeable impacts to historical and archaeological resources will be analyzed within the EIS. The EIS process will include a cultural records search and consultation with the State Historic Preservation Office, Native American Heritage Commission, and consultation under Section 106 of the National Historic Preservation Act (NHPA). Mitigation measures, if warranted, will be discussed in the EIS.

3.2.7 SOCIOECONOMIC AND ENVIRONMENTAL JUSTICE

Comments

Specific socioeconomic issues and questions raised during scoping include:

- The EIS should discuss projected effects to the local economy (including other businesses in the area, as well as the Oregon Lottery and programs that benefit from lottery revenues).
- The EIS should address whether or not the Proposed Project would result in an increase in crime and/or addictive behaviors, such as problem gambling and alcoholism, and mitigate appropriately, such as with rehabilitation programs.
- The EIS should address potential financial and social impacts to the Cow Creek Band of Umpqua Indians, and impacts to existing community support they currently provide, both to Jackson County and their Tribal members.
- The EIS should address the impacts on non-profit organizations in the community.
- The EIS should address whether or not the development of the Proposed Project would change the character of Medford (such as by causing urban blight) and the City's ability to attract tourism and family-oriented businesses.
- The EIS should address potential social issues, such as marriage counseling, child welfare, and drunk driving.
- The EIS should address the effect of lost tax revenues on the City of Medford.
- An updated socioeconomics study that takes into account the potential for logging in the Coquille Forest is necessary for the EIS.
- The EIS should address environmental justice and Tribal participation, pursuant to Executive Order 12898 (possibly by consulting with Tribes located up to 100 miles from Medford).
- The EIS should address the potential for housing impacts as a result of the Proposed Project.

Scope

The EIS will include a description of the socioeconomic conditions of the Tribe and surrounding communities. The EIS would analyze reasonably foreseeable and disproportionate impacts of the alternatives on minority and low-income populations, and analyze socioeconomic issues such as employment, housing, local business revenue, substitution effects, property value, problem gambling, and crime rates. Mitigation measures, if warranted, will be recommended in the EIS.

3.2.8 TRANSPORTATION

Comments

Specific issues and questions related to transportation raised during scoping include:

- The EIS should consider parking, bike parking, public transit service, and pedestrian access on the project site.
- The EIS should consider the contribution of the project to traffic (especially queuing and accident potential) on Hwy 99 and adjacent roadways.
- A traffic impact analysis should be completed.

- The EIS should consider whether it is appropriate for the Proposed Project to pay utility fees to the Medford Public Works Department to mitigate roadway degradation impacts.
- The EIS should list all permits and authorizations necessary for the Proposed Project.

Scope

The EIS will include a description of the local traffic conditions, including an analysis of existing study area roadways and intersections with the potential to be significantly impacted by project traffic. In addition, pedestrian and transit conditions in the vicinity of the project site will be described. The EIS will additionally provide an estimate of the total daily trips and peak hour trips generated by the alternatives, and include an analysis of any reasonably foreseeable impacts to study area roadways and intersections.

3.2.9 LAND USE

Comments

The following comments regarding land use were raised during scoping:

- The EIS should address consistency with local land use regulations on vehicle access requirements, block length requirements, development standards (including building heights and setbacks), big box requirements, and buffer yard requirements on certain property lines.
- The zoning of the adjacent Bear Creek Golf Course and the presence of a high school and youth sports facility near the project site should be taken into account.
- The Proposed Project, were it not to take place on trust land, would require a zoning change from single-family residential to commercial.

Scope

The EIS will identify existing public policies, including zoning and land use regulations, currently applicable to the project site. The potential for land use conflicts to be caused by the alternatives will also be included within the analysis within the EIS. Mitigation measures, if warranted, will be discussed in the EIS.

3.2.10 PUBLIC SERVICES

Comments

Specific issues and questions related to public services raised during scoping include:

- The EIS should analyze potential impacts to public services, including police protection, water supply, wastewater/sewer service (including system development fees and capacity analysis), fire protection and emergency medical services, schools, the justice system (including jails, district attorneys, and courts), solid waste service, social services, electricity and natural gas service, and public health services.
- The EIS should consider the potential for public infrastructure damage.

Scope

The EIS will include a description of the municipal services provided to the project site, either on-site or within the affected municipalities, including water supply, wastewater treatment, utilities, solid waste collection and disposal, schools, fire protection, law enforcement, and emergency medical services. The EIS will provide an analysis of any reasonably foreseeable impacts to these services within the study area. Mitigation measures, if warranted, will be recommended in the EIS.

3.2.11 NOISE

Comments

No specific comments or questions related to noise were raised during scoping.

Scope

The EIS will include a description of the surrounding ambient noise. The EIS will provide an analysis of any reasonably foreseeable impacts to sensitive noise receptors in the vicinity of the project site. Mitigation measures, if warranted, will be recommended in the EIS.

3.2.12 HAZARDOUS MATERIALS

Comments

The following comment regarding hazardous materials was provided during scoping:

- The project should comply with any relevant hazardous waste laws.

Scope

The EIS will include a description of the potential hazardous materials on-site and in the vicinity of the project site. The EIS will disclose incidences of past and current hazardous materials incidents and involvements, if any. Additionally, the EIS shall address the potential for impacts associated with hazardous materials, or the use of these materials during construction and operation of the alternatives. Mitigation measures, if warranted, will be recommended in the EIS.

3.2.13 AESTHETICS

Comments

The following comments regarding aesthetics were provided during scoping:

- The EIS should analyze potential impacts to scenic beauty.
- The EIS should analyze potential impacts as a result of lighting and signage.
- The EIS should consider measures (including landscaping) to screen trash and mechanical equipment from view during construction and operation.

Scope

The EIS will include a description of the project site and surrounding land uses and community character. The EIS will provide an analysis of any reasonably foreseeable impacts to aesthetics within the study area. Mitigation measures, if warranted, will be recommended in the EIS.

3.2.14 INDIRECT EFFECTS

Comments

No specific comments or questions related to indirect effects were raised during scoping.

Scope

The EIS will provide an analysis of any reasonably foreseeable indirect and growth inducing effects from project implementation. Mitigation measures, if warranted, will be discussed in the EIS.

3.2.15 CUMULATIVE IMPACTS

Comments

The following comments related to cumulative impacts were raised during scoping:

- The EIS should include a list of reasonably foreseeable development.
- The EIS should, taking into account that current conditions are a measure of past impacts, identify the trend in the health of resources and the future condition of the resource under each alternative and identify the parties responsible for mitigation as well as opportunities to minimize impacts by working across agencies.
- The EIS should take into account the likelihood of additional trust acquisitions based on the project's precedential status, as well as the fact that Tribal development on trust land is not subject to local land use regulation.
- The EIS should examine the effects of a Class III facility in Medford.
- The EIS should examine the possibility of a cascading effect of tribal-state compacts that would lead to a sudden and dramatic increase in the number and/or concentration of casinos.

Scope

The EIS will address the cumulative impacts of the Proposed Project and Alternatives in connection with reasonably foreseeable actions and projects. "Cumulative impacts" refer to the effects of two or more projects that, when combined, are considerable or compound other environmental effects. The EIS will discuss cumulative impacts and identify appropriate mitigation measures, as required by NEPA.

3.2.16 PROCEDURAL AND NON-EIS ISSUES

Comments

The following procedural and non-EIS comments were raised during scoping:

- The Proposed Project should be subject to the two-part determination process set forth in Section 20 of the Indian Gaming Regulatory Act (IGRA).
- The public hearing was deficient due to audio difficulties and the lack of a packet of information distributed to each attendee.
- The Notice of Intent (NOI) does not meet NEPA requirements due to insufficient detail regarding the Proposed Project and alternatives.
- The NOI does not mention if the process will be one of on-reservation or off-reservation land acquisition.
- The NEPA process is being rushed due to premature demolition of Kim's Restaurant and the schedule proposed for completion and release of the EIS.
- Multiple comments raised concerns about enforceability of the Proposed Project (i.e., not to turn the project into a Class III facility) and mitigation.
- It would be a criminal act against the Shasta Nation to take the proposed project site into trust without a treaty.
- Federal approvals should be obtained prior to filing the trust request.
- Residents voted against a casino.
- Allowing the Proposed Project would allow any group to open a casino, which could lead to foreign interests opening a casino, causing national security concerns.
- Approval of the Proposed Project would result in all Oregon tribes opening additional casinos.
- Approval of the Proposed Project would result in the Tribe taking all 15,000 acres of land mentioned in the Coquille Restoration Act into trust and putting an unlimited number of casinos on that land.
- The Tribe's business plan incorrectly characterizes the number of calls for law enforcement service to the Mill Casino.
- The BIA must not foreclose the possibility of implementing the no action alternative.
- The project must comply with IGRA and IRA.
- A commenter requested an extension of comment period.
- The environmental subcontractor for the BIA has a conflict of interest.
- A commenter requested to be mailed relevant notices.
- The Federal government already owns 48 percent of Jackson County land.
- The Tribe does not have a stronger connection than other tribes to Medford land.

Scope

The EIS will be prepared in accordance with applicable requirements, including those set out in NEPA (42 U.S.C. 4321 *et seq*.); the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Sections 1500 – 1508); and the BIA's NEPA Guidebook (59 IAM 3-H) dated August 2012. These issues will be discussed to the extent required under the NEPA process. While generally these are legal and policy issues, sufficient information will be provided to allow public understanding of the background, issues and processes involved, and to encourage informed comment by the public and consideration of decision makers. Only the potential physical environmental impacts of the Proposed Action and alternatives will be analyzed in the EIS. Other social and economic factors related to the fee-to-trust process will be addressed within the BIA's Record of Decision.

SECTION 4.0

EIS SCHEDULE AND PUBLIC REVIEW

SECTION 4.0

EIS Schedule and Public Review

The current schedule anticipates that the Draft Environmental Impact Statement (EIS) will be available for public review in late 2015. The public review period for the Draft EIS will be for a minimum of 45 days. A public hearing on the Draft EIS will be held during the review period. After public comment on the Draft EIS, the BIA will publish a Final EIS. The Secretary of the Interior will wait at least 30 days after the Final EIS is released before issuing a decision on the Proposed Action.

APPENDICES

APPENDIX A

NOTICE OF INTENT (NOI) AND NOTICE OF COMMENT EXTENSION

elements of conservation design to help us identify priority conservation areas that will contribute to achieving measurable conservation targets such as population objectives. The policy ensures that when employees propose new refuges or expansions to existing refuges, they analyze and describe: (1) The project's vulnerability to climate change and other non-climate stressors (*e.g.,* habitat fragmentation, invasive species), (2) how we will mitigate stressors to ensure the project's resiliency, (3) how the project is arranged in a geographically efficient manner to safeguard ecological processes across the landscape, and (4) how the project complements the resilience of other conservation areas.

The policy establishes the process for sending project proposals to the Service Director and the potential outcomes of the Director's review. It also describes how designated representatives at the local level—Refuge Managers—must interact, coordinate, cooperate, and collaborate with State fish and wildlife agencies in the acquisition and management of refuges.

Summary of Comments and Changes to the Final Policy

On January 30, 2014, we announced the draft policy and requested public comment via a **Federal Register** notice (79 FR 4952). The comment period was open from January 30, 2014, through March 3, 2014. We received 35 detailed comment letters and many individual comments on the draft policy. In total, we received 236 individual comments, which were grouped into 71 comment categories. The comments were from nongovernmental organizations, individuals, States, and industry. Most of the comments expressed general support, and many addressed specific elements in the draft policy.

We considered all of the recommendations for improvement and clarification included in the comments and made appropriate changes to the draft policy. Many of the comments we received were outside the scope of this policy. We drafted this policy in a way that gives us flexibility as funding levels and resources change. The policy does not supersede any piece of legislation, regulation, or other policy.

Dated: December 11, 2014.

Dan Ashe,

Director, Fish and Wildlife Service.

[FR Doc. 2015–00381 Filed 1–14–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 156A2100DD AOR3030.999900]

Intent To Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to gather information necessary for preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) in connection with the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and casino project to be located in the City of Medford, Jackson County, Oregon. This notice also announces the beginning of the public scoping process to solicit public comments and identify issues.

DATES: Written comments on the scope of the EIS must arrive by February 17, 2015. The date of a public scoping meeting will be announced at least 15 days in advance through a notice to be published in the local newspaper, the Mail Tribune, and posted at *www.coquilleeis.com.*

ADDRESSES: You may mail or hand-deliver written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232–4165. Please include your name, return address, and ''DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project'' on the first page of your written comments. The location of a public scoping meeting will be announced at least 15 days in advance through a notice to be published in the local newspaper, the Mail Tribune, and posted at *www.coquilleeis.com.*

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, Bureau of Indian Affairs, Northwest Regional Office, 911 Northeast 11th Avenue, Portland, Oregon 97232; fax (503) 231–2275; phone (503) 231–6749.

SUPPLEMENTARY INFORMATION: The Tribe has submitted an application to the BIA requesting that approximately 2.4 acres of land be transferred from fee to trust status (Proposed Action), upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility. In order for the Department to fully consider and either grant or deny the Tribe's application, the Department must first comply with NEPA.

The proposed fee-to-trust property is located within the incorporated boundaries of the City of Medford, Oregon, adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The Tribe's stated purpose of the Proposed Action is to improve the economic status of the Tribe so it can better provide housing, health care, education, cultural programs, and other services to its members. Adjacent fee land would be used for parking.

The Proposed Action encompasses the various federal approvals which may be required to implement the Tribe's proposed economic development project, including approval of the Tribe's fee-to-trust application. The EIS will identify and evaluate issues related to these approvals.

Areas of environmental concern identified for analysis in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety; hazardous materials and hazardous wastes; public services and utilities; socioeconomics; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced based on comments received in response to this notice and at the public scoping meeting. Additional information, including a map of the project site, is available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4345 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: January 8, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–00550 Filed 1–14–15; 8:45 am]

BILLING CODE 4337–2A–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD.AADD001000]

Advisory Board for Exceptional Children Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Albuquerque, New Mexico. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The Advisory Board will meet on Thursday, March 26, 2015, from 8:30 a.m. to 4:30 p.m. and Friday, March 27, 2015, from 8:30 a.m. to 4:30 p.m. Mountain Time.

ADDRESSES: The meeting and orientation will be held at the Manuel Lujan, Jr. Indian Affairs Building, 1011 Indian School Road NW., Albuquerque, New Mexico 87104; telephone number (505) 563–5383.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Bement, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., Suite 332, Albuquerque, New Mexico 87104; telephone number (505) 563–5274.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. app.), the BIE is announcing that the Advisory Board will hold its next meeting in Albuquerque, New Mexico. The Advisory Board was established under the Individuals with Disabilities Education Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. The meetings are open to the public.

The following items will be on the agenda:

- Introduction of Advisory Board members;
- Appointment of Advisory Board Chair and Vice Chair;
- Report from Ms. Gloria Yepa, Supervisory Education Specialist, BIE, Division of Performance and Accountability;
- Report from BIE Director's Office;
- Report from Dr. Jeffrey Hamley, Associate Deputy Director of the Division of Performance and Accountability;
- Stakeholder input on BIE Annual Performance Report and State Systemic Improvement Plan;
- Public Comment (via conference call, March 26, 2015, meeting only *); and
- BIE Advisory Board-Advice and Recommendations.

* During the March 26, 2015 meeting, time has been set aside for public comment via conference call from 1:30–2:00 p.m. Mountain Time. The call-in information is: Conference Number 1–888–417–0376, Passcode 1509140.

Dated: January 6, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–00549 Filed 1–14–15; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–LAMR–16527; PP1LAMR00.PPMPSAS1Z.Y00000]

Off-Road Vehicle Management Plan, Final Environmental Impact Statement, Lake Meredith National Recreation Area, Texas

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for the Off-Road Vehicle Management Plan (Plan), Lake Meredith National Recreation Area, Texas. The Plan/FEIS evaluates the impacts of four alternatives that address off-road vehicle (ORV) management in the national recreation area.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of its Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: The Plan/FEIS is available in electronic format online at: *http://parkplanning.nps.gov/LAMR.* Hard copies of the Plan/FEIS are available at Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument Offices, 419 E. Broadway, Fritch, Texas 79036–1460, by phone at 806–857–3151.

FOR FURTHER INFORMATION CONTACT: Robert Maguire, Superintendent, Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036–1460, by phone at 806–857–3151, or by email at *Robert_Maguire@nps.gov.*

SUPPLEMENTARY INFORMATION: The Plan/FEIS responds to, and incorporates agency and public comments received on the Draft Environment Impact Statement (DEIS) and Plan, which was available for public review from January 25, 2013, to March 26, 2013. Public meetings were held on March 19 and 20, 2013, to gather input on the EIS and Plan. Over 116 pieces of correspondence were received during the public review period. Agency and public comments and NPS responses are provided in Appendix B of the FEIS/Plan.

The purpose of this Plan/FEIS is to manage ORV use in the national recreation area for visitor enjoyment and recreation opportunities, while minimizing and correcting damage to resources. By special regulation (Title 36, Section 7.57 of the Code of Federal Regulations), the national recreation area allows the use of ORVs in two areas: Blue Creek and Rosita Flats. The Plan/FEIS evaluates four alternatives to manage ORV use in the national recreation area: a No Action Alternative (A) and three Action Alternatives (B, C, and D (preferred). When approved, the Plan will guide the management of ORV use for the next 15–20 years.

Alternative A: No Action—The national recreation area would continue to operate under the 2007 Interim ORV Management Plan where ORVs are allowed below the 3,000 foot elevation line in Rosita Flats and from cutbank to cutbank at Blue Creek. Limited facilities are supplied. No additional management tools such as zoning, permits, or use limits would be implemented.

Alternative B: Under this alternative, ORV use would be managed through a zone system. Uses would be separated into the following zones: camping, hunting, resource protection, low speed, and beginner. At Rosita Flats, two areas

Bureau of Indian Affairs

Extension of Time to Respond to the Notice of Intent for the Proposed Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Extension of Scoping Comment Period.

The Bureau of Indian Affairs (BIA) is extending the scoping comment period for the Environmental Impact Statement (EIS) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives, which may include a no-project alternative, a casino on an alternative site, and an expansion of the Tribe's existing casino. Written comments on the scope of the EIS, including environmental issues and range of alternatives, must arrive by Thursday, March 19, 2015.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project" on the first page of your written comments.

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, Bureau of Indian Affairs, Northwest Regional Office, 911 Northeast 11th Avenue, Portland, Oregon 97232; fax (503) 231-2275; phone (503) 231-6749.

SUPPLEMENTARY INFORMATION: The BIA published a Notice of Intent for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project in the Federal Register on January 15, 2015 (80 FR 2120); in the Mail Tribune on Friday, January 16 and Sunday, January 18; and on the project website http://www.coquilleeis.com/. The BIA is extending the comment period to Thursday, March 19, 2015. Please refer to the January 15, 2015 (80 FR 2120) notice for project details.

DATED: February 19, 2015.

APPENDIX B

NEWSPAPER NOTICES

710702

Analytical Environmental
1870 7th St. Ste. 100
Sacramento, CA. 95811

Affidavit of Publication

THIS IS NOT A BILL

State of Oregon
County of Jackson

I, *Miranda Moore*, being first duly sworn, depose and say that I am the principal clerk of Medford Mail Tribune, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed at Medford in the aforesaid county and state; that the *Public Notice*, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for 2 successive and consecutive *insertion(s)* in the following issues January 16 & 18, 2015.

(HERE SET FORTH DATES OF ISSUES)

Subscribed and sworn to before me this 29 day of January, 2015.

NOTARY PUBLIC FOR OREGON

My commission expires 12 day of October, 2015 18

Southern Oregon Media Group - Mail Tribune - Ashland Daily Tidings
111 N Fir St
Medford, OR 97501

PUBLICATION	EXPIRE DATE	AD CAPTION	# TIMES	AMOUNT
Mail Tribune	01/18/2015	Enviornmental Impact Statement	2	973.57

OFFICIAL STAMP
SHONNA LEE ZIMMERMANN
NOTARY PUBLIC-OREGON
COMMISSION NO. 932681
MY COMMISSION EXPIRES OCTOBER 12, 2018

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon.
AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Notice.
SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to gather information necessary for preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) in connection with the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project to be located in the City of Medford, Jackson County, Oregon. This notice also announces the beginning of the public scoping process to solicit public comments and identify issues.
DATES: Written comments on the scope of the EIS must arrive by Tuesday, February 17, 2015. The public scoping meeting will be held on February 3, 2015, from 5:30 p.m. until the last public comment is received.
ADDRESSES: You may mail or hand-deliver written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project" on the first page of your written comments. The public scoping meeting will be held in the auditorium of North Medford High School, 1900 North Keene Way Drive, Medford, OR 97504.
FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, Bureau of Indian Affairs, Northwest Regional Office, 911 Northeast 11th Avenue, Portland, Oregon 97232; fax (503) 231-2275; phone (503) 231-6749.
SUPPLEMENTARY INFORMATION: The proposed action would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility. Adjacent fee land would be used for parking. In order for the Department to fully consider and either grant or deny the Tribe's application, the Department must first comply with NEPA.

The proposed fee-to-trust property is located within the incorporated boundaries of the City of Medford, Oregon, adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The purpose of the proposed action is to improve the economic status of the Tribal Government so it can better provide housing, health care, education, cultural programs, and other services to its members.

The proposed action encompasses the various federal approvals which may be required to implement the Tribe's proposed economic development project, including approval of the Tribe's fee-to-trust application. The EIS will identify and evaluate issues related to these approvals.

Areas of environmental concern identified for analysis in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety; hazardous materials and hazardous wastes; public services and utilities; socioeconomics; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced based on comments received in response to this notice and at the public scoping meeting. Additional information, including a map of the project site, is available by contacting the person listed in the FOR FURTHER INFORMATION section of this notice.
PUBLIC COMMENT AVAILABILITY: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the ADDRESSES section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.
AUTHORITY: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4345 et seq.), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

DATED: January 16, 2015.

January 16 & 18, 2015

MAIL TRIBUNE PROOF

Customer: ANALYTICAL ENVIRONMENTAL Contact: BIBIANA ALVAREZ, EMA Phone: 9164473479

Ad Number: 779937

Notice For:

Insertion: Start_Date - 01/16/2015 End_Date - 01/18/2015

Price: 973.57

Section: LE Class: 0816 Size: 3 x 6.97

Printed By: MMTMOORE Date: 01/28/2015

Signature of Approval: _____ Date:_____

ANALYTICAL ENVIRONMENTAL 710702
1801 7TH ST STE 100
SACRAMENTO CA 95811

Affidavit of Publication

THIS IS NOT A BILL

State Of Oregon
County of Jackson

I, Miranda Moore, being first duly sworn, depose and say that I am the principal clerk of Medford Mail Tribune, a newspaper of general circulation , as defined by ORS 193.010 and 193.020; printed at Medford in the aforesaid county and state; that the Public Notice, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for 1 successive and consecutive insertion in the following issues February 24, 2015.
(HERE SET FORTH DATES OF ISSUES)

Miranda Moore

Subscribed and sworn to before me this 25 day of February 2015

Shonna L Zimmermann
NOTARY PUBLIC FOR OREGON

My Commission expires 12 day of October, 2018

Southern Oregon Media Group - Mail Tribune - Ashland Daily Tidings
111 N. Fir St.
Medford, OR 97501

THIS IS NOT A BILL

PUBLICATION	EXPIRE DATE	AD CAPTION	# TIMES	AMOUNT
MAIL TRIBUNE	2/24/15	BUREAU OF INDIA	1	175.06

START DATE: 2/24/15 END DATE: 2/24/15

OFFICIAL STAMP
SHONNA LEE ZIMMERMANN
NOTARY PUBLIC-OREGON
COMMISSION NO. 932681
MY COMMISSION EXPIRES OCTOBER 12, 2018

Bureau of Indian Affairs
Extension of Time to Respond to the Notice of Intent for the Proposed Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project
AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Notice of Extension of Scoping Comment Period.
The Bureau of Indian Affairs (BIA) is extending the scoping comment period for the Environmental Impact Statement (EIS) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives, which may include a no-project alternative, a casino on an alternative site, and an expansion of the Tribe's existing casino. Written comments on the scope of the EIS, including environmental issues and range of alternatives, must arrive by Thursday, March 19, 2015.
ADDRESSES: You may mail or hand-deliver written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project" on the first page of your written comments.
FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, Bureau of Indian Affairs, Northwest Regional Office, 911 Northeast 11th Avenue, Portland, Oregon 97232; fax (503) 231-2275; phone (503) 231-6749.
SUPPLEMENTARY INFORMATION: The BIA published a Notice of Intent for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project in the Federal Register on January 15, 2015 (80 FR 2120); in the Mail Tribune on Friday, January 16 and Sunday, January 18; and onthe project website http://www.coquilleeis.com/. The BIA is extending the comment period to Thursday, March 19, 2015. Please refer to the January 15, 2015 (80 FR 2120) notice for project details.

DATED: February 19, 2015.

February 24, 2015

PAID

MAIL TRIBUNE PROOF

Customer: ANALYTICAL ENVIRONMENTAL Contact: BIBIANA ALVAREZ, EMA Phone: 9164473479

Ad Number: 782269

Notice For:

Insertion: Start_Date - 02/24/2015 End_Date - 02/24/2015

Price: 175.06

Section: LE Class: 0816 Size: 1 x 79.00

Printed By: MMTHAAHR Date: 02/25/2015

Signature of Approval: _____ Date:_____

APPENDIX C

LIST OF COMMENTERS

Coquille FTT and Gaming Facility EIS
Scoping Comments Recieved

Log #	Name	Title/Position	Agency/Organization	Date
Agency Comments				
A-1	Joel C. Benton	County Counsel	Jackson County	1/30/2015
A-2	Susan Morgan, Tim Freeman, and Chris Bo	Chair and Commissioners	Douglas County Board of Commissioners	2/3/2015
A-3	John R. Huttl	City Attorney	City of Medford	2/3/2015
A-4	John R. Huttl	City Attorney	City of Medford	2/3/2015
A-5	Theogene Mbabaliye		United States Envirnomental Protection Agency	2/17/2015
A-6	Gary H. Wheeler	Mayor	City of Medford	3/12/2015
A-7	Joel C. Benton	County Counsel	Jackson County	3/18/2015
Tribe Comments				
T-1	Dirk Doyle	Tribal Attorney	Cow Creek Band of Umpqua Tribe of Indians	1/20/2015
T-2	Dirk Doyle	Tribal Attorney	Cow Creek Band of Umpqua Tribe of Indians	1/27/2015
T-3	Lee Paterson	Board Member	Umpqua Indian Tribe Foundation	1/30/2015
T-4	Duke Summers		Coquille Indian Tribe	2/3/2015
T-5	Dan Courtney	Tribal Chairman	Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-6	Michael Rondeau	CEO	Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-7	Anne Batzer	Program Officer	Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-8	Jacob Ansures		Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-9	Andrea Davis	Director of Human Services	Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-10	Kaitlyn Lee		Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-11	Vera Jones	Tribal Member	Cow Creek Band of Umpqua Tribe of Indians	2/3/2015
T-12	Dale A. Miller	Chairman	Elk Valley Rancheria, California	2/6/2015
T-13	Dan Courtney	Chairman	Cow Creek Band of Umpqua Tribe of Indians	2/11/2015
T-14	Dan Courtney	Chairman	Cow Creek Band of Umpqua Tribe of Indians	2/11/2015
T-15	Neil Hummel	President	Umpqua Community College Foundation Board	2/19/2015
T-16	Dan Courtney	Chairman	Cow Creek Band of Umpqua Tribe of Indians	2/20/2015
T-17	Vera Jones		Cow Creek Band of Umpqua Tribe of Indians	3/13/2015
T-18	Roy Hall	Chief	Shasta Nation	3/14/2015
T-19	Dan Courtney	Chairman	Cow Creek Band of Umpqua Tribe of Indians	3/18/2015
T-20	Brenda Meade	Chairperson	Coquille Indian Tribe	3/19/2015
Public/Individual Comments				
P-1	Susan Wrona			1/18/2015
P-2	Richard E. Moore			1/18/2015
P-3	Elizabeth Munson			1/20/2015
P-4	Joanne and Robert Wilcox			1/25/2015
P-5	Junelle Benedict			1/26/2015
P-6	Katy Mallams			1/28/2015
P-7	Tom Blankinship			1/30/2015
P-8	Lara Murray		Parent Teacher Organization Ashland School	2/3/2015
P-9	Kelly Coates			2/3/2015
P-10	Ron Bjork			2/3/2015
P-11	Janet Shalda			2/3/2015

Coquille FTT and Gaming Facility EIS
Scoping Comments Recieved

Log #	Name	Title/Position	Agency/Organization	Date
P-12	Jose Zamora			2/3/2015
P-13	Elaine Wade			2/3/2015
P-14	Marilynn Baldwin			2/3/2015
P-15	Tom Hall			2/3/2015
P-16	Anne and Rob King			2/3/2015
P-17	Herbert E Fariss			2/3/2015
P-18	Roger Buchman			2/3/2015
P-19	Teresa Negrete			2/3/2015
P-20	Michelle Johnson			2/3/2015
P-21	Freddie Martin			2/3/2015
P-22	Dennis C.W. Smith			2/3/2015
P-23	Gerald J. Kuhl			2/3/2015
P-24	Michael S. Mace			2/3/2015
P-25	Jane Y. Stormer			2/3/2015
P-26	Richard L. Milner			2/3/2015
P-27	Reginald Breeze			2/4/2015
P-28	Patrick Ryan			2/5/2015
P-29	John E. Miller			2/5/2015
P-30	Katy C. Winslow			2/5/2015
P-31	Marian M. Owens			2/6/2015
P-32	Sandra Basaca			2/6/2015
P-33	Marie Arvette			2/6/2015
P-34	Kristin Schulz			2/6/2015
P-35	Steve Wisely			2/6/2015
P-36	Simone Coffan			2/6/2015
P-37	Patricia Wolfe			2/6/2015
P-38	Gordon Nunnally			2/6/2015
P-39	Gerald Trotta			2/6/2015
P-40	Debbie Crouse			2/6/2015
P-41	Robert Coffan	President/Principal	Katalyst, Inc.	2/7/2015
P-42	Margaret Bradburn			2/7/2015
P-43	Guy and Bobbi Swartz			2/7/2015
P-44	Barbara Mercer			2/7/2015
P-45	Katherine Goin			2/7/2015
P-46	Dan Holland			2/7/2015
P-47	Alexander S. Pawlowski			2/7/2015
P-48	Mr and Mrs Gary W. Nelson			2/8/2015
P-49	Sharron Lawson			2/9/2015
P-50	Carol Doty			2/9/2015
P-51	Gary W. Nelson			2/9/2015
P-52	Janice Reese			2/9/2015

Coquille FTT and Gaming Facility EIS
Scoping Comments Recieved

Log #	Name	Title/Position	Agency/Organization	Date
P-53	Catherine M. Shauger			2/9/2015
P-54	Desirae Oaks	CFO	Ultra Pure Water, Inc.	2/10/2015
P-55	William Meyer and Diane Gravatt			2/10/2015
P-56	David McAlaster			2/10/2015
P-57	Shirley Sturgis			2/11/2015
P-58	Scott Lubich			2/11/2015
P-59	Christine Greene			2/11/2015
P-60	Donna Galphenee			2/11/2015
P-61	Laurie and Marvin Teply			2/12/2015
P-62	Julie Gilkey Wright			2/13/2015
P-63	Karen Whalen			2/13/2015
P-64	Claude McConnell			2/13/2015
P-65	Gladys Magro			2/14/2015
P-66	David Elsbernd	President	Voices of Problem Gambling Recovery, Inc.	2/16/2015
P-67	Marla Cates			2/17/2015
P-68	R.M. "Mike" Heverly			2/17/2015
P-69	Annie Summers			2/27/2015
P-70	Linda Maier			2/27/2015
P-71	D. McCollum			2/27/2015
P-72	Mike & Cheryl Johnson			3/1/2015
P-73	Carol Palmer			3/1/2015
P-74	Candy Sharp			3/2/2015
P-75	Kara Towner			3/2/2015
P-76	Rusty Arakawa			3/2/2015
P-77	Christopher K. Tanner			3/5/2015
P-78	Danny Wok			3/5/2015
P-79	Jeannie Bianco			3/5/2015
P-80	Soo Lee			3/5/2015
P-81	John Ivy			3/5/2015
P-82	Shawna Marie			3/5/2015
P-83	Robert W. Larson			3/9/2015
P-84	Jonathon L. Ivy			3/18/2015
Public Hearing Speakers				
1	Brenda Meade	Chairperson	Coquille Indian Tribe, Coquille Tribal Council	
2	James Prevatt	Spiritual Leader and Council Member	Shasta Nation	
3	Doug Breidenthal	Chairman	Jackson County Board of Commissioners	
4	Vera Jones	Elder	Cow Creek Band of Umpqua Tribe of Indians	
5	Robert Van Norman	Tribal Member/Vietnam Veteran	Cow Creek Band of Umpqua Tribe of Indians	
6	Steve Guenther	Tribal Member	Cow Creek Band of Umpqua Tribe of Indians	

Coquille FTT and Gaming Facility EIS
Scoping Comments Recieved

Log #	Name	Title/Position	Agency/Organization	Date
7	Dennis CW Smith	Former Comissioner/Retired Sheriff and Former Police Chief/Vietnam Veteran	Jackson County/Chickasaw Nation	
8	Reginald Breeze	Resident of Rogue Valley		
9	Brian Fraser	Resident of Jackson County		
10	Michael Rondeau	CEO	Cow Creek Band of Umpqua Tribe of Indians	
11	Cindy Elbert	Tribal Member	Coquille Indian Tribe	
12	Jacob Ansures	Tribal Member	Cow Creek Band of Umpqua Tribe of Indians	
13	Dan Courtney	Tribal Chairman	Cow Creek Band of Umpqua Tribe of Indians	
14	John Huttl	City Attorney	City of Medford	
15	Andrea Davis	Director of Human Services Department/ Tribal Member	Cow Creek Band of Umpqua Tribe of Indians	
16	Barbara Barnes	Retired case manager from Jackson County Mental Health/ Resident of Jackson County	Jackson County	
17	Gary Lake	Former Councilman for the Karuk Tribe/ Former vice-chairman of the Shasta Nation	Karuk Tribe/ Shasta Nation	
18	Kelly Coates	Aquatic Biologist		
19	Jessie Plueard	Oregon Resident/ Archaeologist	Cow Creek Band of Umpqua Tribe of Indians	
20	Bill Mansfield	Medford Resident		
21	Rob Taylor	Coos Bay Resident		
22	Sue Kupillas	Former Jackson County Commissioner	Jackson County	
23	Don Chance	Bandon/Coos Bay Resident/ Former employee of the Coquille Tribe		
24	Anne Cook	Executive Director of the Coquille Indian Housing Authority	Coquille Indian Tribe	
25	Jane Metcalf	Coos Bay Resident/ Former employee of the Coquille Tribe		
26	Joe Cook	Coos Bay Resident/Business Owner	Bite's On Bate and Tackle Shop	
27	John Michaels	City Council Member		
28	Linda Borum	Central Point Resident		
29	Anne Batzer	Program Officer	Cow Creek Band of Umpqua Tribe of Indians	
30	Forrest Lewis	Police Officer		
31	Robert Coffan	President and Principal Hydrologist	Katalyst, Inc.	
32	Yelena Hunt	Medford Resident		
33	Todd Hunt	Medford Resident		
34	Roger Kelm	Navy Vetran/Tribal Member	Takelma Tribe	
35	Kaitlyn Lee	Tribal Member	Cow Creek Band of Umpqua Tribe of Indians	
36	Elana Hammer	Jackson County Resident		
37	Gordon Challstrom	Medford Resident		

APPENDIX D

COMMENTS RECEIVED

AGENCY COMMENT LETTERS

A-1

JACKSON COUNTY
Oregon

Office of County Counsel

Joel C. Benton
County Counsel

10 South Oakdale, Room 214
Medford, OR 97501
Phone: (541) 774-6160
Fax: (541) 774-6722
bentonjc@jacksoncounty.org

www.jacksoncounty.org

January 30, 2015

VIA CERTIFIED MAIL, FAX AND EMAIL

Dr. B.J. Howerton
Bureau of Indian Affairs, Northwest Regional Office
911 Northeast 11th Avenue
Portland, OR 97232-4169
Fax: (503) 231-2275
bj.howerton@bia.gov

RE: Request for Extension of Time to Submit Public Scoping Comments

Dear Dr. Howerton:

The Bureau of Indian Affairs ("BIA") has initiated the preparation of an Environmental Impact Statement ("EIS") for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project ("Coquille Project"). According to the Notice of Intent, written comments on the scope of the EIS are due by February 17, 2015. Due to the limited information provide to the public in the Coquille Notice of Intent, Jackson County requests an additional sixty (60) days to submit public scoping comments.

As you know, the purpose of the Notice of Intent is to announce a federal agency's intention to prepare an EIS to analyze the potentially significant impacts on the environment of a proposed federal action, in compliance with the National Environmental Policy Act ("NEPA"). NEPA's implementing regulations, promulgated by the Council on Environmental Quality ("CEQ"), provide that a notice of intent to prepare an EIS "shall briefly ... describe the proposed action and possible alternatives." 40 C.F.R. § 1508.22(a); *see also* BIA NEPA Handbook, § 8.3.2(1). Here, the Coquille Notice of Intent does not address this most basic requirement. The Notice of Intent does not provide adequate detail regarding the Coquille Proposed Action. Further, the Notice of Intent entirely fails to list any of the alternatives that will be considered.

While the BIA is requesting comments on the scope of the EIS, not having access to information about the proposed action makes participation in the scoping process difficult. "Scoping" is defined as an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. 40 C.F.R. §§ 1501.7, 1508.25; BIA NEPA Handbook, § 8.3.3. When there is insufficient information about what the proposed action entails, it is difficult for participants to identify potential alternative actions or significant issues. As the CEQ's guidance on scoping makes clear, "[s]coping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a coherent proposal

and a suggested initial list of environmental issues and alternatives." CEQ Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping, Section II.B.1 (April 30, 1981); *see also* CEQ Guidance Regarding NEPA Regulations (July 22, 1983), 48 Fed. Reg. 34262. Here, while the Coquille Notice of Intent includes a boilerplate laundry list of significant issues to be covered in scoping, it entirely fails to list any alternatives. Without more information regarding the specific details of the Coquille Proposed Action there is no way to evaluate the significance of the issues or adequacy of the alternatives.

Accordingly, Jackson County requests additional detail regarding the Coquille Proposed Action. Further, as the inadequate Notice of Intent prevented and delayed Jackson County and our constituents from being able to meaningfully participate in the public scoping process, Jackson County requests a 60-day extension of time to submit public scoping comments.

Thank you for your consideration. Please do not hesitate to contact us should you need any additional information or have any questions.

Sincerely,

Joel C. Benton
County Counsel

cc: County Administrator
Board of Commissioners

A-2

DOUGLAS COUNTY
BOARD OF COMMISSIONERS

CHRIS BOICE SUSAN MORGAN TIM FREEMAN

1036 SE Douglas Ave., Room 217 • Roseburg, Oregon 97470

February 3, 2015

Mr. Stanley Speaks
Northwest Region Director
Bureau of Indian Affairs
911 NE 11th Ave.
Portland OR 97504

RE: DEIS Scoping comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Dear Mr. Speaks,

We are writing to you to express our opposition to the siting of a gaming facility in Medford, Oregon, by the Coquille Tribe.

The Cow Creek Tribe's 7 Feathers Casino & Resort in Canyonville draws about half of its customers from the Medford area. Data shows that, if the Coquille Tribe builds a facility in Medford, citizens of that area will decide not to travel to Canyonville and the customer base for 7 Feathers will be significantly reduced. The Cow Creek Tribe has clearly indicated that they will need to respond by reducing staffing levels at the Canyonville facility. A large majority of the people that work at 7 Feathers are residents of Douglas County, especially south Douglas County.

The proposed Medford facility will have a serious negative economic and social impact on southern Douglas County residents. The jobs that will be lost at the 7 Feathers Canyonville operations will be a blow to an already very economic and socially vulnerable area.

As you know, the 7 Feathers Casino complex in Canyonville is a major employer in the south Douglas County region. This is a region where unemployment is currently at 9.3%, higher than Oregon's current 6.7% rate, the nation's current 5.8% rate, and Jackson County's current 8.4% rate.

To further illustrate the local poverty, just less than 70% of the students in the South Umpqua School District are eligible for free and reduced cost school lunches. The area suffers from high rates of crime, substance and physical abuse, and Douglas County has consistently ranked near the bottom in public health ranking for Oregon.

Jobs at the Casino have been a life line out of poverty for many residents. Over the history of the facility, thousands of our citizens have found gainful employment and a measure of stability and predictability for their families. The Tribe works hard to train these individuals in soft skills: showing up on time, having a business-like appearance, being customer service oriented. They also have worked hard to promote from within their operations, giving many local citizens the chance to get educated, to take on new challenges, increase their income, and move up in their organization.

The jobs that the Cow Creek Tribe provides are benefitted and have health care coverage. We cannot state strongly enough what a difference this has made to increase economic and social stability in our region, and the concern we have for the welfare of our citizens that will be impacted.

The Coquille's Mill Casino in North Bend will benefit from a significant increase in customers when the natural gas terminal is built at the Port of Coos Bay. The construction crews and the individuals holding the many jobs that will be permanent and on-going will frequent the Mill Casino for food and entertainment. The increase in jobs that will be realized at the Coquille's North Bend location will have clear and long-lasting benefit to the citizens of Coos County.

The opposite will occur for the Cow Creek Tribe and south Douglas County residents if the Coquille's Medford facility is permitted. We will see jobs at the Canyonville facility drop off as residents of Jackson County stay home. For our citizens, there will be no replacement jobs. The result for Douglas County will be more unemployment and less economic and social certainty for our citizens.

Again, we strongly and respectfully oppose the Coquille Tribe's proposal to establish a gaming facility in Medford because of the negative impacts it will have in our county.

Please do not hesitate to contact us if you have questions or require more information.

Sincerely,

DOUGLAS COUNTY BOARD OF COMMISSIONERS

Susan Morgan, Chair

Tim Freeman

Chris Boice

A-3

CITY ATTORNEY'S OFFICE
411 WEST 8TH STREET
MEDFORD, OR 97501

TEL:(541) 774-2020
FAX: (541) 774-2567

www.ci.medford.or.us
cityattorney@ci.medford.or.us

February 3, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Re: Requests for an Extension to Provide Scoping Comments on the Notice of Intent to Prepare an Environmental Impact Statement for the Coquille Indian Tribe Fee-to-Trust and Casino Project (80 Fed. Reg. 2120 (January 15, 2015)) and to be Designated a Cooperating Agency

Dear Regional Director Speaks:

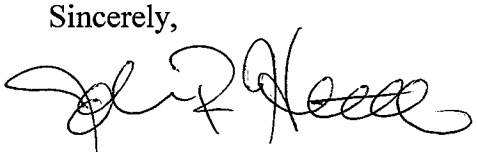
The City of Medford received notice in January 2015 that the Bureau of Indian Affairs was initiating scoping to prepare an Environmental Impact Statement ("EIS") for the Coquille Indian Tribe's proposed casino project. Thorough scoping early in the environmental review process is crucial to a successful EIS. To that end, the City requests that you extend the scoping comment period by sixty (60) days to allow the City time to conduct community outreach and to work with the appropriate City agencies to identify areas of concern that should be addressed in the EIS for the project.

The Coquille Tribe's proposed Medford casino generated a substantial amount of controversy when the Tribe first announced its plans in 2012, and the City continues to have serious reservations about the Tribe's proposal, including the regulatory review process the Tribe has argued applies. The City made a commitment to the community to keep it informed as to any developments, including the initiation of the environmental review process, and to include the community to the extent practicable in the proceedings. In fact, we have already received several inquiries regarding the Bureau's notice, as well as requests for additional time from the community to provide comments. The City also needs more time to work with the relevant agencies so that we can provide critical information that will help inform the EIS. Our request for 60 additional days to the written comment deadline will allow us to meet these obligations.

The City also formally requests that the Bureau designate it a cooperating agency in the preparation of the EIS. *See* 40 C.F.R. §§ 1501.6, 1506.2, and 1508.5. The City has a strong interest in the impacts associated with casino development within City limits and our agencies have special expertise and knowledge with regard to local conditions, potential impacts, and issues of concern that the EIS must address. In addition, the City has jurisdiction over ancillary and/or related activities that will occur on non-trust lands, such as any parking or traffic improvements that may be needed to improve access to the proposed site.

Please confirm our designation as a cooperating agency at your earliest convenience and whether the Bureau will extend the written comment period an additional 60 days as requested to allow us to conduct our own due diligence and appropriate outreach. Please contact me at (541) 774 2024 if you have any questions.

Sincerely,



John R. Huttl
City Attorney
Medford, Oregon

RESOLUTION NO. 2013-68

A RESOLUTION adopting comments for consideration by the Northwest Director of the Bureau of Indian Affairs on the Coquille Tribe's fee-to-trust application to the United States Department of the Interior.

WHEREAS, on February 4, 2013, the City received a letter from Stan Speaks, Northwest Regional Director of the U.S. Department of Interior (DOI) Bureau of Indian Affairs (BIA) giving notice that the Coquille Tribe was applying to the DOI for an order taking property into federal trust for the benefit of the tribe; and

WHEREAS, after receiving the notice from the Director, the City attempted to gather information responsive to the application's impacts, however, due to delays in receiving the tribe's business plan and difficulties scheduling a meeting with the tribe, the City requested and received two successive 30-day extensions of time, making the City's response due on May 6, 2013; and

WHEREAS, on March 7, 2013, staff gave Council a progress report that identified certain legal issues with respect to the fee-to-trust authority and gaming activities and Council encouraged the City Attorney to retain outside counsel to obtain a second opinion; and

WHEREAS, on April 23, 2013, Council had a public meeting work session with the Coquille Tribe at which time the tribe indicated it would be investing $26 million into the projected casino structure, expand the existing bowling alley building by 200 square feet, install approximately 600 (or more) Type II bingo-logic video slot machines and employ approximately 200 people with an annual payroll of $9.65 million; and

WHEREAS, when asked to address provision of services and mitigation of adverse impacts, the Tribe explained that services and impacts would be more completely identified through and Environmental Impact Statement and paid for through a fee-for-services intergovernmental agreement, which would be negotiated subsequently; a copy of the business plan was provided to City staff at the end of the meeting, and not having sufficient time to fully analyze the casino's impacts prior to the deadline for comments; and

WHEREAS, on April 25, 2013, the City Council held a public hearing town hall meeting to receive input from the local community at which time the Cow Creek Band of the Umpqua Tribe presented information counter to that presented by the Coquilles; and

WHEREAS, on advice of legal counsel we have been advised that the land in Medford does not qualify for gaming and thus must be reviewed under the more rigorous two-part determination test set forth in Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(A); now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON, that because we cannot support the tribe's application, we oppose it; and comments for consideration by the Northwest Director of the Bureau of Indian Affairs on the Coquille Tribe's fee-to-trust application to the United States Department of the Interior, attached as Exhibit A and incorporated herein, are hereby adopted.

PASSED by the Council and signed by me in authentication of its passage this 3 day of May, 2013.

ATTEST: Glenda Wilson
City Recorder

Mayor

hereby formally requests designation as a cooperating agency and that it be provided the opportunity to work with BIA to develop the proper scope of the environmental review.

Thank you for the opportunity to provide comments, which the City will develop in greater detail in the coming months. Should you have any questions regarding this matter, please contact John Huttl, our City Attorney, at (541) 774-2020.

Very truly yours,

Gary H. Wheeler
Mayor of the City of Medford, Oregon

Enclosures

cc: Governor John Kitzhaber
Attorney General Ellen F. Rosenblum
U.S. Senator Jeff Merkley
U.S. Senator Ron Wyden
U.S. Representative Greg Walden

EXHIBIT A

OFFICE OF THE
MAYOR & CITY COUNCIL
www.ci.medford.or.us

CITY OF MEDFORD
411 WEST 8TH STREET
MEDFORD, OREGON 97501

TELEPHONE
(541) 774-2000
FAX: (541) 618-1700

May 3, 2013

The Honorable Kevin K. Washburn
Assistant Secretary - Indian Affairs
Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Stanley Speaks, Regional Director
Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

Re: Preliminary Response of the City of Medford, Oregon to Coquille Tribe's Proposed Trust Request for Gaming

Dear Mssrs. Washburn and Speaks:

Thank you for granting a 60-day extension for the City of Medford, Oregon to provide comments on the Coquille Indian Tribe's application to have 2.42 acres of land located in Medford acquired in trust for class II gaming. The City has a number of concerns regarding the proposed project. The City's concerns include its loss of regulatory jurisdiction over City land, the impacts a class II casino will have on the City, the potential for future casino expansion at the site and the introduction of class III games, the economic impacts related to substitution effects and problem gambling, and a number of similar issues.

Although it is difficult to see how the Tribe could address all of the City's concerns and mitigate the adverse impacts of its proposed project to the City's satisfaction, the City recognizes that it does not have sufficient information about the Tribe's proposal at this time to reach a final conclusion. Without such information, however, the City cannot take a position in support of the proposed development, and therefore opposes it. The City is also not able to provide complete comments in response to the Bureau of Indian Affairs' ("BIA") February 1, 2013, letter requesting certain information regarding the impacts of the proposed project. The City therefore reserves the right to supplement these very preliminary comments, as it learns more about the Tribe's proposal and continues to meet with the community and nearby tribes to hear their views.

These comments are divided into three sections. First, the City sets forth its concerns regarding the process that the Tribe has argued applies to the acquisition. It is the City's view that the land in Medford does not qualify for gaming and thus must be reviewed under the more rigorous two-part determination test set forth in Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(A). Second, the City provides preliminary responses to the questions BIA posed in its February 1, 2013, letter. Third, the City sets forth other concerns that it has regarding the proposed action.

1. BIA Must Apply the Two-Part Determination Test and Defer to the City's Views Regarding Detrimental Impacts on the Community

The City has been informed that the Tribe has requested a gaming eligibility determination from the Office of Indian Gaming ("OIG") under the restored lands exception to the general prohibition on gaming, 25 U.S.C. § 2719(b)(1)(B)(iii). Upon review of the Coquille Restoration Act, the legal cases concerning the restored lands exception, and the policies behind the equal footing exceptions, it is clear that the Medford Site does not qualify as restored lands.

First, the Coquille Restoration Act itself does not mandate or authorize this acquisition; the Secretary would instead be exercising her discretionary authority to acquire this land pursuant to the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465. There is no basis for claiming that the Restoration Act automatically qualifies any land acquired in trust within the Tribe's service area as restored lands when such land is not acquired pursuant to the Restoration Act, but is instead acquired under the generally applicable IRA.

Second, the Tribe's argument would undermine the purpose of the equal footing exceptions, which embody a policy of promoting parity between restored and other tribes. Here, the Coquille Tribe already has a reservation 170 miles away and a casino, which it has been operating for 17 years. The Tribe's argument, if accepted, would unfairly advantage tribes with restoration act over virtually all other tribes, and particularly those where the restoration act defines the tribe's service area broadly. Such an interpretation is fundamentally inconsistent with the purpose of the equal footing exceptions.

Third, the City notes that the Tribe's proposal to develop a casino in Medford has been highly disruptive to the tribal community. Multiple tribes have contacted the City and have spoken out in public hearings objecting to the Tribe's proposal and claiming that the Coquille Tribe lacks a significant historical connection to Medford. Although the City has not reached a conclusion as to the Tribe's historical connection to Medford, if any, it does note that the City is clearly not within the area that federal courts have identified as the Tribe's territory. Thus, the Tribe's proposal places the City in a difficult position with respect to those Tribes who are already members of the Medford community and are strongly opposed to the Coquille Tribe's application to obtain land outside of its primary territory.

It is the City's view that the only way that gaming can be permitted at the Medford Site is through the two-part determination process, which requires the Secretary to determine that gaming in Medford – 170 miles away from the Tribe's current reservation, tribal offices, and existing casino – is in the best interests of the Tribe and will not be detrimental to the surrounding community *and* the Governor concurs in that determination. *See* 25 U.S.C. § 2719(b)(1)(A). The two-part determination process is critically important to state and local government because it gives local governments a far more significant role in any gaming-related trust request and gaming eligibility determination. *See generally* 25 C.F.R. §§ 292.13-25. To reach a no detriment finding requires the Secretary to conduct extensive consultation with governments within 25 miles of the proposed gaming and a strong, cooperative relationship between the host community and the applicant tribe. In addition, the two-part determination process gives the governor the authority not to concur in the Secretary's determination, thereby preventing gaming (and trust acquisition) for occurring when such proposals might disrupt state policies.

A finding that the Medford Site qualifies as restored lands would circumvent the two-part determination process and deprive the City of critical procedural and substantive rights to which it is entitled. It would also be inconsistent with the statute, the case law, and the policies behind the exceptions. The City therefore strongly opposes any effort to circumvent the procedural and substantial rights Congress granted it through Section 20 of IGRA and will soon be filing its legal analysis with the OIG to ensure that the proper processes are followed.

2. The City Provides the Following Preliminary Responses to BIA's February 1, 2013 Request for Information

As set forth above, the City does not have sufficient information to provide BIA anything other than preliminary responses. The City, therefore, anticipates supplementing these comments as more information is made available.

1) The annual amount of property taxes currently levied on the property:

See attached tax report. Ex. 1.

2) Any special assessments, and amounts thereof, which are currently assessed against the property:

See attached tax report. Ex. 1.

3) Any governmental services which are currently provided to the property by your jurisdiction:

a. Development service: Planning including long-range regional planning, Engineering, Building including administration of building safety codes;

b. Life and Property Safety service: Police and Fire Protection including Emergency Medical Service and administration of Fire codes;

c. Special Event permitting service;

d. Water service – not allowed outside city limits per City Charter;

e. Sewer service;

f. Roadway and Sidewalk Right-of-Way Management service;

g. Parks and Recreation service;

h. Licensing and other Financial Department service;

i. Code Enforcement;

j. Court service including offense prosecution;

k. Emergency Management Disaster Response service;

l. Tourism Promotion service; and

m. Utility Management Franchise service.

4) If subject to zoning, how the property is currently zoned:

See attached. Ex. 2.

3. Additional City Concerns

It is the City's understanding is that the Coquille Tribe has been seeking the City's support for its gaming-related fee-to-trust application. The City has had the opportunity to meet with the Tribe to discuss the proposed facility. Unfortunately, those discussions have been preliminary only and did not occur until April 23, 2013. And although the Tribe provided the City a bit more detail about its business plan at that meeting, the City has not had sufficient time to consult with its various departments to identify areas of concern and potential impacts. Thus, the comments represent the City's initial effort to identify general areas of concern, each of which will require further development. In addition to the procedural questions and comments set forth above, the City provides the following information:

1) The City has been asked by the Coquille Indian Tribe to support its proposed fee-to-trust application for gaming purposes. The Tribe's proposed action would take property out of local control to establish an activity that is not allowed under State or local law. It will be difficult for the City to support such a proposition, regardless of who is proposing it.

2) The Coquille Tribe has stated that it would like to pay its fair share for services and impacts. The Tribe therefore understands that there will be adverse impacts from the proposed development. The Tribe appears to concede that gambling would create or foster addiction, and it has stated that it would pay for programs to rehabilitate the addict. From the testimony the City has heard to date, such rehabilitation does not fully address the damage that takes place. Therefore, it will be difficult for the City to support such an application, regardless of who is proposing it.

3) The Coquille Tribe has explained that that their proposed casino would provide 223 full-time jobs. The City, however, was presented with evidence that suggests that not all jobs would be new jobs. Instead, it is highly likely that some of the jobs would be from existing establishments that would lose customers and employees to the Tribe's proposed Medford casino. Although the City is not against fair competition, when an establishment can have a monopoly, the City does not consider that fair competition. Therefore, it will be difficult for the City to support such an application, regardless of who is proposing it.

4) The Tribe states that its proposed operation would generate revenues which would benefit the community. The City, however, has been presented with a study that indicates that a tribal casino in Medford would reduce the revenues generated by the state lottery. The City is a beneficiary of state lottery revenues, and the local schools are beneficiaries of state lottery revenues. The City would be adversely impacted if state lottery revenues to schools and City programs were diminished.

5) The Tribe has explained that it needs to locate a casino in Medford because its current casino in North Bend will be destroyed by the inevitable Cascadia event. The Tribe provided maps, charts and graphs to show where its current casino is located and what lands would be inundated by Cascadia. The City was provided with additional maps that showed that lands already held in trust for the Tribe within blocks of its existing casino would survive a Cascadia event. Further, in a Cascadia event, there is no guarantee that Medford would be better off than the Coos Bay North Bend area. It will be difficult for the City to support the Tribe's application with the asserted need to game in Medford based on the Cascadia event.

6) The Tribe provided the City with a copy of its trust application for 2.42 acres of land to develop a Class II gaming facility. When questioned about whether the Tribe's leasing of the neighboring 7+

acres of golf course land was for a Class III establishment, the Tribe represented that it did not now have plans for a Class III establishment, but that things may change in the future. The City has received testimony that it is common for Class III establishments to begin as Class II facilities. Based on that testimony, it is likely that the Tribe will eventually offer Class III games at the Medford Site. Not only is it difficult for the City to support Class II gaming in Medford, the strong likelihood that the Medford Site will ultimately have Class III gaming is a major concern for the City.

7) The Tribe has not provided the City with any evidence that it has any historical or aboriginal connection to Medford. The Tribe's Restoration Act establishes Jackson County as part of its service area where tribal members are allowed to receive federal benefits. Service areas, however, are designated on the basis of where Tribal members live today, not their historical locations. The City was also presented with evidence from other Tribes that the Coquille Tribe does not have aboriginal ties to the area. Other Tribes and tribal groups that are part of our community attended the City's public hearing town hall meeting and explained their heritage. People identifying themselves as Shasta Indians and the Cow Creek Band of the Umpqua explained that their ancestors fought and died and were buried in Medford and Jackson County. Those Tribes and tribal groups stated that permitting the Coquille Indian Tribe to obtain trust land and operate a casino in Medford would be an affront to their ancestors and to tribal sovereignty and traditions that exist within and without federal government recognition. It will be difficult for the City to support a casino, when the Tribes that have long been members of the Medford community are so strongly opposed to such development.

8) The City has been asked to address the impacts and costs from the proposed development. When asked what the impacts will be, the Tribe has stated that impacts and costs will be addressed in the environmental review process. The City cannot presently address the impacts based on information that will be developed in some yet-to-occur process. The Tribe also states that it will spend $26 million on improvements. If this project were permitted to go forward under the City's jurisdiction, the City would realize approximately $150,000 in building permits and inspection fees alone. The Tribe has also stated that its North Bend facility generated 89 calls for service last year. Research conducted by the Medford Police Department indicates the number is up to four times that many calls, suggesting that the impact on City services may be great. The Tribe submitted its business plan one week prior to the due date for these comments. That is not enough time to determine the scope of the proposed project's impacts. The City cannot currently support the Tribe's application based on the limited information available, some of which appears to be inaccurate, and the short period it has been given to review information.

9) The City has information that approval of the Tribe's proposed project will establish precedent in the State that would encourage other tribes to seek additional trust land for gaming and allow other such facilities to be placed in major metropolitan areas. Such action will disrupt the equilibrium in the State and will have impacts on other cities, counties and the State. For this reason, the City must oppose the proposed project and the process at least until such impacts are taken into account.

10) The Tribe's trust request asks the Secretary to take a parcel of land out from under City, County and State jurisdiction. However, the Federal government currently owns approximately 48% of the land in Jackson County. We cannot support the federal removal of lands from the State, City and County on this basis.

11) Finally, the Tribe has represented to the City that the BIA will be preparing an environmental impact statement, as is required under the National Environmental Policy Act. The City, of course, has valuable expertise on environmental, land use, and jurisdictional issues within City limits and accordingly, should participate extensively in the review process as a cooperating agency. The City

REAL PROPERTY TAX STATEMENT
JULY 1, 2012 TO JUNE 30, 2013
JACKSON COUNTY, OREGON
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

ACCOUNT NO: 10568511

PROPERTY DESCRIPTION
CODE: 0407
MAP: 371W32C004701
ACRES: 2.42
SITUS: 2375 SOUTH PACIFIC HWY PHOENIX-TA

SOUTHERN OREGON PROPERTY HOLDINGS LLC
1159 MIRA MAR AVE
MEDFORD, OR 97504

VALUES:	LAST YEAR	THIS YEAR
REAL MARKET (RMV)		
LAND	522,510	491,170
STRUCTURES	1,357,540	1,276,120
TOTAL RMV	1,880,050	1,767,290
TOTAL ASSESSED VALUE	1,244,440	1,281,770
EXEMPTIONS		
NET TAXABLE:	1,244,440	1,281,770
TOTAL PROPERTY TAX:	17,771.85	18,303.80

EDUCATION SERVICE DISTRICT	437.34
ROGUE COMMUNITY COLLEGE	657.29
PHOENIX / TALENT SCHOOL DIST 4	5,437.52
EDUCATION TOTAL:	6,532.15
JACKSON COUNTY	2,494.07
VECTOR CONTROL	53.32
ROGUE VALLEY TRANSIT DISTRICT	219.95
JACKSON COUNTY SOIL & WATER CONS	62.17
CITY OF MEDFORD	6,787.36
MEDFORD URBAN RENEWAL	636.91
GENERAL GOVT TOTAL:	10,253.78
JACKSON COUNTY BONDS	241.10
ROGUE COMMUNITY COLLEGE BONDS	141.38
CITY OF MEDFORD	103.44
PHOENIX / TALENT SCHOOL DIST 4 B	1,031.95
BONDS & OTHER TOTAL:	1,517.87

VALUE QUESTIONS (541) 774-6059
PAYMENT QUESTIONS (541) 774-6541

ALL TAX PAYMENTS ARE NOW PROCESSED LOCALLY - PLEASE DO NOT SEND TO PREVIOUS PORTLAND ADDRESS.

2012-13 TAX (Before Discount) 18,303.80

PAYMENT OPTIONS			
Date Due	3% Option	2% Option	Trimester Option
11/15/12	17,754.69	11,958.48	6,101.27
02/15/13			6,101.27
05/15/13		6,101.27	6,101.26
Total	17,754.69	18,059.75	18,303.80

TOTAL DUE (After Discount and Pre-payments) 17,754.69

↓ Tear Here — PLEASE RETURN THIS PORTION WITH YOUR PAYMENT — Tear Here ↓

2012-2013 PROPERTY TAXES — JACKSON COUNTY REAL — ACCOUNT NO. 10568511

PAYMENT OPTIONS	Discount	Date Due	Amount		Date Due	Amount		Date Due	Amount
Full Payment Enclosed	3%							11/15/12	17,754.69
or 2/3 Payment Enclosed	2%			&	05/15/13	6,101.27		11/15/12	11,958.48
or 1/3 Payment Enclosed	0%	05/15/13	6,101.26	&	02/15/13	6,101.27	&	11/15/12	6,101.27

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE ☐ Mailing address change on back

Enter Payment Amount
$

MAKE PAYMENT TO:

SOUTHERN OREGON PROPERTY HOLDIN
1159 MIRA MAR AVE
MEDFORD OR 97504-8576

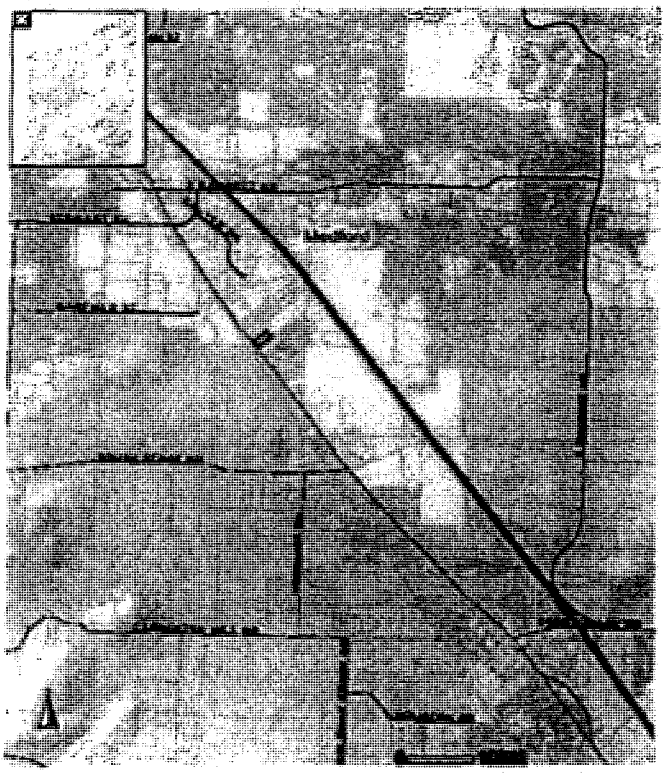
16824 6 1/1 LLCJACKSON COUNTY TAXATION OFFICE
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

1583 - 013067 - 1830380

1510010568511000061012700011958480001775469 6

EXHIBIT 1

Property Data Online



Text Only Mode

ASSESSMENT & PLANNING DETAILS

Account Detail | Sales | Deed Card | Overlay Report | Permit Details | Tax Report

Zoom map to this taxlot

Bing Google Yahoo

Map & TaxLot	37S2W32C 4701 pdf
Tax Code	4-07
Acreage	2.42
Zoning	C-S
Land Class	UNK 2.42 Ac
Property Class	201
Stat Class	672
Unit ID	160409-1
Maintenance Area	4
Neighborhood	000
Study Area	00
Account Status	ACTIVE
Tax Status	[illegible]
Sub Type	[illegible]
Owner	SOUTHERN OREGON PROPERTY HOLDINGS LLC
Situs Address	2375 SOUTH PACIFIC HWY PHOENIX-TALENT/COUNTY
Mailing Address	SOUTHERN OREGON PROPERTY HOLDINGS LLC 1159 MIRA MAR AVE MEDFORD OR, 97504
Taxlot Acreage	2.42
Building # 1	0 23312 SqFt Bowling Alley

EXHIBIT 2

A-4

CITY ATTORNEY'S OFFICE
411 WEST 8TH STREET
MEDFORD, OR 97501

TEL:(541) 774-2020
FAX: (541) 774-2567

www.ci.medford.or.us
cityattorney@ci.medford.or.us

February 3, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Regional Director Speaks:

The City of Medford is here tonight in response to your notice requesting comments to determine the scope of the Environmental Impact Statement for the Coquille Tribe's proposed Medford Casino.

Request for Extension of Time and Request for Cooperating Agency Designation
By separate letter of this same date, the City has requested an extension of time for an additional 60 days to submit comments beyond the deadline for written comments. By that same letter, the City requested cooperating agency designation. Seeking cooperating agency designation does not in any way indicate support for the application by the City of Medford.

Opposition to Suggested Legal Analysis of Coquille Tribe on its Application
On May 3, 2013, in response to a request for comments from the Department of Interior Bureau of Indian Affairs Northwest Director, the City Council for the City of Medford adopted Resolution 2013-68, which opposed the Coquille Tribe's Fee-to-Trust application. A copy of that resolution is adopted and incorporated by reference herein.

Per that resolution, decisions regarding Fee-to-Trust and whether gaming activities were appropriate on the property should follow a two part determination under Indian Gaming Regulatory Act. The City maintains that 25 U.S.C. section 2719(b)(1)(A) applies.

///

Preliminary Comments for DEIS on Fee-to-Trust and Casino Project Application
In its prior submittals on this application, the City explained it needed additional information and additional time to fully formulate comments. The Coquille Tribe responded that the City would be given more information during the Environmental Impact Study process.

However, we are now at the DEIS stage of the process, and there is little if any additional information. Therefore we have insufficient information to formulate comprehensive comments in response to your DEIS notice. Given the circumstances, all of the comments contained in City of Medford Resolution 2013-68 and exhibits accompanying that resolution should be considered in scoping the EIS for this project.

Further, it is our understanding that Jackson County, the Governor for the State of Oregon, and multiple state and federal elected representatives supported one or more of the positions outlined in our resolution. We have no information that any of those organizations and officials has changed their position since that time.

The City reserves the right to submit additional comments for the scope of the EIS when additional information is received. Thank you for your time.

Please contact me at (541) 774 2024 if you have any questions.

Sincerely,

John R. Huttl
City Attorney
Medford, Oregon
Encl: City of Medford Resolution 2013-68 with Exhibits

A-5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

February 17, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Re: Scoping comments on the proposed Coquille Indian Tribe Fee-to-Trust and Casino Project (EPA Project Number: 15-0008-BIA)

Dear Mr. Speaks:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) has reviewed the Notice Of Intent to prepare an Environmental Impact Statement (EIS) for the proposed **Coquille Indian Tribe Fee-to-Trust and Casino Project** in the City of Medford, Jackson County, Oregon. Section 309 of the Clean Air Act specifically directs the EPA to review and comment in writing on the environmental impacts associated with all major Federal actions.

According to the NOI, the Bureau of Indian Affairs (BIA), in cooperation with the Coquille Indian Tribe (Tribe), will prepare an EIS for a proposed 2.4-acre fee-to-trust transfer and casino project to be located in the City of Medford, Oregon. This development would include renovation of an existing bowling alley to convert it into a gaming facility and use of adjacent fee land for parking. This action is needed to improve the economic status of the Tribe so it can better provide housing, health care, education, cultural programs, and other services to its members.

Overall, the EPA encourages the development of an EIS that fully evaluates and compares project alternatives and comprehensively assesses direct, indirect, cumulative impacts of the project, and subsequent activities. Given the very broad purpose and need in the NOI, it appears that a wide variety of projects could be considered in the EIS. The NOI also includes a preliminary list of issues and environmental resources to be addressed in the EA analysis. We are offering the attached scoping comments to highlight issues the EPA believes are important to address in the NEPA analysis for the proposed project.

Thank you for the opportunity to provide comments at this stage of the EIS development process. If you have questions about our comments, please contact me at (206) 553-6322 or by electronic mail at mbabaliye.theogene@epa.gov.

Sincerely,

Theogene Mbabaliye
Environmental Review and Sediment Management Unit

Enclosure:

1. EPA Detailed Scoping Comments on the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon

EPA Detailed Scoping Comments on the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project City of Medford, Jackson County, Oregon

Water resources impacts

Section 303(d) of the Clean Water Act (CWA) requires the State of Oregon and Tribes with the EPA-approved water quality standards to identify water bodies that do not meet water quality standards and to develop water quality restoration plans to meet established water quality criteria and associated beneficial uses. The EIS should disclose impacted waters, the nature of the impacts, and specific pollutants likely to affect those waters. It should also report those water bodies potentially affected by the project that are listed on the State and any Tribe's most current EPA-approved 303(d) list. The EIS document should describe existing restoration and enhancement efforts for those waters, how the project will coordinate with on-going protection efforts, and any mitigation measures implemented to avoid further degradation of impaired waters. Please also note that antidegradation provisions of the CWA prohibit degrading water quality within waterbodies that are currently meeting water quality standards. Because of this, the EIS document should indicate how the project will meet those provisions.

Under the CWA, any project construction that would disturb a land area of one or more acres also requires a National Pollutant Discharge Elimination System permit for discharges to waters of the U.S. The EIS should document the project's consistency with applicable storm water permitting requirements and should discuss specific mitigation measures which may be necessary or beneficial in reducing adverse impacts to water quality.

Since the project may also impact sources of drinking water, BIA should contact the Oregon Department of Environmental Quality to help identify source water protection areas within the analysis area and, if necessary, include the following in the EIS document:

a) Source water areas within the project area.
b) Activities that could potentially affect source water areas.
c) Potential contaminants that may result from the proposed project.
d) Measures which would be taken to protect the source water protection areas.

Source water is water from streams, rivers, lakes, springs, and aquifers that is used as a supply of drinking water; and the 1996 amendments to the Safe Drinking Water Act require Federal agencies to protect sources of drinking water for communities.

Construction projects, such as the proposed casino, typically require infrastructure that may include heavy machinery to transport materials, existing and new access roads, and other facilities. Use of equipment and construction of facilities may compact soils and change hydrology, runoff characteristics, and ecological function of sites, affecting flows and delivery of pollutants to waterbodies. Therefore, the EIS should include a detailed discussion of the cumulative effects from this and other projects on the hydrologic conditions of the proposed project site and vicinity. The document should also clearly depict reasonably foreseeable direct, indirect and cumulative impacts to groundwater and surface water resources. For groundwater, BIA should identify potentially affected groundwater basins and any

potential for subsidence, and analyze impacts to springs or other open water bodies and biological resources.

Roads and their use also facilitate sediment transport to streams, increase habitat fragmentation and wildlife disturbance, as well as invasive plant infestations. Thus, the EIS should include data about existing and new roads and evaluate the change in road miles and density that will occur because of the project and predicted impacts to water quality by the roads.

Impacts to wetland, floodplain, and riparian resources

Based on information in the NOI, it is not yet clear whether wetlands are present on or adjacent to the project area. Therefore, the EIS should describe all waters of the United States, including wetlands, which could be affected by the project alternatives and include maps that clearly identify all waters within the planning area, as well as the pathways of alternative routes through the planning area. The document should include data on acreages and channel lengths, habitat types, values, and functions of these waters.

If wetlands are present and would be affected by the project, then, the EIS should discuss how the project would comply with the CWA §404 requirements, which are under the authority of the United States Army Corps of Engineers. The EIS should also evaluate potential impacts to adjacent wetlands or indirect impacts to wetlands, such as hydrologic changes due to increases in impervious surfaces. Project discharges can result from a variety of activities, including road and facility construction. The EIS should disclose where there are known waters or wetlands, which would be directly or indirectly affected by the proposed project.

Activities affecting floodplains are also regulated under the CWA §404 and Executive Order 11988, *Floodplain Management*. The EIS for this proposed action, therefore, should include information explaining why activities would be located in floodplains, alternatives considered, and steps taken to reduce impacts to floodplains. Floodplains perform a vital function of conveying and dissipating the volume and energy of peak surface runoff flows downstream. Thus, periodic flood flows form and sustain specific habitat types, such as wetland and riparian areas within floodplains. Because of this, it is important to preserve unimpaired flood flows and prevent flood-related damage to downstream resources. Furthermore, it should be noted that any floodplain mitigation requirements, which are identified by the Flood Emergency Management Agency may in themselves impact waters of the United States, and these impacts should be included in the overall CWA §404 analysis of alternatives, if any, are identified.

Air quality impacts

The protection of air quality should be addressed in the EIS. The types of fuels to be used during construction activities, increased traffic during operations, and related volatile organic compounds and nitrogen oxides emissions, should be disclosed and the relative effects on air quality and human health evaluated. Dust particulates from construction activities and ongoing operation of roadways are important concerns. Thus, the EIS should evaluate air quality impacts and detail mitigation steps that would be taken to minimize impacts. This analysis should also address and disclose the project's potential impacts on all criteria pollutants under the National Ambient Air Quality Standards, including ozone, visibility impairment, and air quality related values in the protection of any affected Class I Areas, any significant concentrations of hazardous air pollutants, and protection of public health.

Seismic risk
Construction and operation of the proposed project may cause or be affected by increased earthquake activity in tectonically active zones. Because of this, it will be important to discuss the potential for seismic risk and approaches to evaluate, monitor, and manage the risk. The document should include a seismic map or a reference to it.

Impacts to endangered species
The proposed project may impact endangered, threatened or candidate species listed under the Endangered Species Act (ESA), their habitats, as well as State sensitive species. The EIS should identify the endangered, threatened, and candidate species under ESA, and other sensitive species within the proposed project area. In addition, the EIS should describe the critical habitat for these species; identify any impacts the proposed project will have on these species and their critical habitat, and how it will meet all requirements under ESA, including consultation efforts with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

Vegetation and habitat impacts
The proposed project may have impacts on fish and wildlife habitat, and habitat connectivity. The EIS should describe the current quality and potential capacity of habitat, its use by fish and wildlife on and near the proposed project area, and identify known fish and wildlife corridors, migration routes, and areas of seasonal fish and wildlife congregation. The EIS should evaluate effects on fish and wildlife from habitat removal and alteration, aquatic and terrestrial habitat fragmentation caused by roads, land use, and management activities, and human activity. The EIS should also evaluate the impacts the project may have on plant species and their habitats.

Cumulative Effects
The EIS should assess impacts over the entire area of impact, and it may be of particular importance to consider the effects of other past, present and future projects both in and outside the project area, together with the proposed action, including those by entities that are not affiliated with the BIA. Where adverse cumulative impacts may exist, the EIS should disclose the parties who would be responsible for avoiding, minimizing, and mitigating those adverse impacts.

In determining cumulative effects, the EIS should clearly identify the resources that may be cumulatively impacted, the time over which impacts are going to occur, and the geographic area that will be impacted by the proposed project. The focus should be on resources of concern - those resources that are at risk and/or are significantly impacted by the proposed project before mitigation. In the introduction to the Cumulative Impacts Section, identify which resources are analyzed, which ones are not, and why. For each resource analyzed, the EIS should:

a. Identify the current condition of the resource as a measure of past impacts. For example, the percentage of species habitat lost to date.
b. Identify the trend in the condition of the resource as a measure of present impacts. For example, the health of the resource is improving, declining, or in stasis.
c. Identify the future condition of the resource based on an analysis of the cumulative impacts of reasonably foreseeable projects or actions added to existing conditions and current trends. For example, what will the future condition of the watershed be?

d. Assess the cumulative impacts contribution of the proposed alternatives to the long-term health of the resource, and provide a specific measure for the projected impact from the proposed alternatives.
e. Disclose the parties who would be responsible for avoiding, minimizing, and mitigating those adverse impacts.
f. Identify opportunities to avoid and minimize impacts, including working with other entities.

Climate change effects

Scientific evidence supports the concern that continued increases in greenhouse gas emissions resulting from human activities contribute to climate change. Effects of climate change may include changes in hydrology, sea level, weather patterns, precipitation rates, and chemical reaction rates. The EIS document, therefore, should consider how resources affected by climate change could potentially influence the proposed project and vice versa, especially within sensitive areas. In addition, the EIS should quantify and disclose greenhouse gas (GHG) emissions from the project and discuss mitigation measures to reduce emissions. For more information on climate change effects, please consult the Council on Environmental Quality's revised draft guidance[1] on consideration of GHGs emissions and effects of climate change in NEPA review.

Permits and other authorizations

The EIS should include a list of all permits and authorizations that the proposed project may already have and will need including modification(s) to any existing permit or authorization, what activity and/or facility is regulated by the permit or authorization, entities that will issue each permit and authorization, when each will expire, and conditions to assure protection of human health and the environment. Such information, presented in a consolidated fashion, will assist us and decision-makers in evaluating risks and mitigation measures.

Pollution Prevention/Green Building

The proposed action would involve construction of a new facility, which can provide an opportunity to design a building that utilizes green building[2] techniques, reduces waste generation, and reduces energy consumption. We recommend that the EIS consider discussing a strategy to support low-impact building and operation. The BIA may also consider pursuing the Leadership in Energy and Environmental Design (LEED) certification for the casino facility because the program[3] assists in the design, construction and operation of high performance green buildings.

Environmental Justice and Public Participation

If the project area includes environmental justice populations, then, the EIS would need to address the potential for disproportionate adverse impacts to minority and low-income populations, and approaches used to foster public participation by these populations. One tool available to locate Environmental Justice populations is the Environmental Justice Geographic Assessment tool, which is available online[4].

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs federal agencies to identify and address

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[1] http://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance.pdf
[2] http://yosemite.epa.gov/R10/TRIBAL.NSF/programs/tswm_buildingresources
[3] http://www.usgbc.org/certification
[4] http://epamap14.epa.gov/ejmap/entry.html

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process.

Monitoring

The proposed project has the potential to affect a variety of resources for an extended period. As a result, we recommend that the project design include an environmental inspection and mitigation-monitoring program to ensure compliance with all mitigation measures and assess their effectiveness. The EIS document should describe the monitoring program and its use as an effective feedback mechanism so that any needed adjustment can be made to meet environmental objectives throughout the life of the project.

OFFICE OF
THE CITY MAYOR
www.ci.medford.or us

CITY OF MEDFORD
411 WEST 8TH STREET
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2000
FAX (541) 618-1700
E-mail: mayor@ci.medford.or.us

March 12, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232

Re: City of Medford's Scoping Comments on the Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project; 80 Fed. Reg. 2120 (January 15, 2015)

Dear Mr. Speaks:

On behalf of the City of Medford, Oregon, thank you for granting a 30-day extension of time to provide comments on the Bureau of Indian Affairs' ("BIA") January 15, 2015, Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe's Fee-to-Trust Gaming Facility Project, City of Medford, Jackson County, Oregon. Ex. 1. In addition, thank you for your February 26, 2015 letter inviting the City to participate as a cooperating agency as the BIA prepares an environmental impact statement ("EIS") of the proposed casino under the National Environmental Policy Act ("NEPA"). The City accepts the BIA's invitation to participate as a cooperating agency and looks forward to working closely with the BIA to ensure that the impacts of the proposed casino project are fully evaluated in the EIS. Ex. 2.

The City appreciates the opportunity to provide scoping comments on this important and controversial application. The comments below constitute the City's initial response to the proposed project and identify both procedural and substantive areas of concern. The City fully anticipates, however, that new issues will arise as more information regarding the Tribe's proposed casino is developed.

The City has identified three categories of concern: (1) the regulations that apply under the Indian Gaming Regulatory Act to the Tribe's proposed casino project; (2) questions arising under the Indian Reorganization Act; and (3) comments specific to the preparation of the EIS. Because all three categories of information are relevant to BIA's consideration of the proposed casino, the City summarizes its concerns with respect to each below.

I. Analysis under the Indian Gaming Regulatory Act: Review Under 25 U.S.C. § 2719(b)(1)(A) Is Required

The City considers it imperative that the Tribe's proposed casino be reviewed under the appropriate authority. To that end, the City does not agree with the Tribe's position that the proposed site in Medford ("Medford site") qualifies for gaming under the restored lands exception to the general prohibition on gaming on lands acquired in trust after 1988. *See* Ex. 3; *see generally* 25 U.S.C. § 2719. Because the Tribe already operates a casino in North Bend pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii), it must undergo the process set forth at 25 U.S.C. § 2719(b)(1)(A) for the Medford Site to be eligible for gaming. As set forth in City Resolution No. 2013-68, which the City previously provided to BIA, the City must oppose the proposed project until—at least—the proposed casino is evaluated under the applicable regulations. Ex. 4.

In fact, the Tribe's argument has been challenged by former-Governor Kitzhaber, Jackson County, the City, the Cow Creek Tribe, and other parties. On May 6, 2013, for example, Governor Kitzhaber laid out his opposition to the proposed project, expressing his concerns regarding casino expansion in Oregon and deviation from the one casino per tribe policy. Ex. 5. The Coquille Indian Tribe has a 6,512-acre reservation located southeast of the Coos Bay-North Bend area, where it also manages approximately 5,400 acres of forest land, as well as various economic ventures, including the Mill Casino, which has been in operation since 1995. Although the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians are in the midst of building a second casino project—a class II facility—near the Coquille Tribe's Mill Casino, the land involved is already eligible for gaming. The fact that the Confederated Tribes has been able to take advantage of gaming eligible lands does not mean that the Governor's policy should be revoked or that the Department should grant gaming eligibility status without regard to the law.

In fact, the Governor's General Counsel—Liani Reeves—provided additional legal and policy justifications for the Governor's opposition, which included the possibility of conversion of the Tribe's proposed facility from class II to class III gaming, fiscal, social and public safety concerns regarding the proposal, and whether the proposed site qualifies for gaming under the "restored lands" exception, as the Tribe claims. Ex. 6. Jackson County raised objections, Ex. 7, as did the Cow Creek Tribe, Ex. 8. Senators Wyden and Merkley sent the Assistant Secretary-Indian Affairs a letter opposing the application, Ex. 9, and ten members of the Oregon Delegation did the same, Ex. 10. The City appreciates the strong legal and political support in opposing the proposed casino as a restored lands casino and reiterates its position that the restored lands exception does not apply in this case. Exs. 11, 12.

Rather than simply restating its legal position, the City notes that the Department, in fact, agrees with the arguments made by the Governor and other political leadership in the State. In fact, the Department has interpreted the restored lands exception to be limited and has convincingly argued its interpretation of the exception to the Ninth Circuit in *Redding Rancheria v. Jewell*, No. 12-15817, Dkt. 23 (Sept. 28, 2012). Ex. 13. In that case, the Department successfully argued

that a tribe may take advantage of the restored lands exception only once. The Department explained that its interpretation "is consistent with the purposes of IGRA for the Secretary to determine that when a tribe has already successfully requested that land be taken into trust 'as part of — the restoration of lands' for that tribe, then the tribe may only make subsequent land-into-trust requests for gaming purposes if it is not already gaming on its previously-acquired lands." *Id.* at 30 (emphasis added). According to the Secretary, broadening the benefit of the "restored lands" exception to restored tribes "'would be detrimental to other recognized tribes, contrary to Congressional intent.'" *Id.* at 30-31 (citing 73 Fed. Reg. at 29,364).

The Ninth Circuit approved the Department's interpretation of IGRA and upheld temporal, geographic and other limitations the Department imposed—including the limitation that the exception is not available if a tribe already has gaming. Ex. 14. As the court stated: "[t]he [restored lands] exception was not intended to give restored tribes an open-ended license to game on newly acquired land," but rather "its purpose was to promote *parity* between established tribes ... and restored tribes." *Id.* at 10 (emphasis added).

But an unfair advantage is exactly what the Tribe seeks in this case, to the immediate detriment of the City. The Tribe argues that the regulations governing gaming eligibility set forth at 25 C.F.R. Part 242 and the Coquille Restoration Act ("Restoration Act"), 25 U.S.C. § 715 *et seq.*, require the Secretary to conclude that the Medford site qualifies as "restored lands," relying on what appears to be a loophole that only a few tribes in the nation could exploit and an unreasonable interpretation of its Restoration Act. The argument the Tribe makes, however, is directly contrary to Departmental policy, which the Department just successfully defended in the Ninth Circuit. Congress clearly did not intend to give a very small subset of Congressionally restored tribes an extraordinary gaming advantage over all other tribes in the nation. Nor did Congress intend to give the Coquille Tribe carte blanche to develop casinos in Coos, Curry, Douglas, Jackson, and Lane Counties, merely by authorizing the Secretary to acquire lands in trust within the Tribe's service area.

Contrary to the Tribe's argument, the part 292 regulations and the Tribe's Restoration Act do not require the Secretary to conclude that the Medford site qualifies as restored lands. In fact, the Restoration Act mandates acquisition of lands in only two counties and then, of limited acreage: "The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary." 25 U.S.C. § 715c(a) (emphasis added). Only the lands that Congress required the Secretary to acquire in trust qualify as restoration lands. *See Nebraska ex rel. Bruning v. U.S. Dept. of Interior*, 625 F.3d 501 (8th Cir. 2010) (Kornmann, J. dissenting, on the sole ground of ordering remand) (concluding that land acquired in trust pursuant to tribe's restoration act reference to the Secretary's permissive authority under the Indian Reorganization Act, 25 U.S.C. § 465, does not qualify for the "restored lands" exception to the general prohibition of gaming on trust lands). Finally, if 25 C.F.R. § 292.11 must be interpreted as the Tribe argues, the regulation would violate IGRA because—in the Department's own words—that interpretation would

produce results that "'would be detrimental to other recognized tribes, [and] contrary to Congressional intent.'" 73 Fed. Reg. at 29,364.

The two-part determination process applies to the Medford application. The Department should issue a determination that the Medford site does not qualify for gaming under the restored lands exception.

II. Analysis Under the Indian Reorganization Act

The Notice of Intent does not identify whether the application will be processed under the regulations governing on- or off-reservation fee-to-trust requests. The Tribe, however, has characterized its application as an on-reservation gaming request. Ex. 15. Under the trust regulations, set forth at 25 C.F.R. Part 151, an on-reservation acquisition is one where the land subject to the request "is located within or contiguous to an Indian reservation." 25 C.F.R. § 151.10. Clearly, the Medford site is not located within or contiguous to an Indian reservation and cannot be processed as such. Instead, the process set forth at 25 C.F.R. § 151.11 applies to this application, which requires the Secretary to consider:

- The existence of statutory authority for the acquisition and any limitations contained in such authority;
- The need of the individual Indian or the tribe for additional land;
- The purposes for which the land will be used;
- If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- Jurisdictional problems and potential conflicts of land use which may arise; and
- If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.
- The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

- The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

- Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

- Contact with state and local governments pursuant to § 151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

25 C.F.R. §§ 151.10 (a-c, e-h), 151.11 (a-d).

The City looks forward to the Secretary's careful evaluation of each of these factors, including her authority to acquire the land in trust; the Tribe's need for land located 170 miles from its existing reservation, governmental headquarters, and economic development activities; and the Tribe's business plan outlining the anticipated economic benefits associated with the proposed use. In particular, the City noted that the Secretary must give the City's concerns greater weight as the distance between the tribe's reservation and the land to be acquired increases, and greater scrutiny to the Tribe's justification of anticipated benefits from the acquisition.

III. Environmental Review Under NEPA

A. Concerns Regarding the Environmental Contractor

It appears that the environmental contractor that the Department has selected and/or approved to prepare the EIS in this case is the same contractor that is used for virtually all gaming-related trust acquisitions and many other tribal projects— Analytical Environmental Services ("AES"). The City is concerned that AES has been repeatedly accused of bias and producing sub-standard EISs. In our experience, federal agencies do not use the same contractor for every project, as it creates the appearance of impropriety and can ultimately undermine the NEPA review, as the product tends to be very similar from one project to another. In the case of AES's EISs, there is, in fact, a remarkable similarity between documents. Not only do the documents look startlingly similar, AES has apparently never concluded that a project will have detrimental effects, based on Congressional questioning. *See* House Resources Committee, Subcommittee on Indian and

Alaska Native Affairs Oversight Hearing on "Executive Branch standards for land-in-trust decisions for gaming purposes" (Sept. 19, 2013) (Congressmen LaMalfa 55:20).

In fact, AES identifies scores of tribes as clients, including the Coquille Indian Tribe. Having the Tribe as a client clearly creates a conflict of interest, if AES is also to develop an EIS for the proposed Medford casino. If AES is listing *projects* that it has worked on, it clearly seems to misperceive who, in fact, is its client. Under federal law, it is the *agency* who is the client, not the tribe. Given that AES is marketing to tribes, AES appears unable to produce an objective document.

The purpose of NEPA is to ensure informed and *objective* decision-making by federal agencies, which using the same environmental contractor for every project thwarts. Authorship of an EIS by a biased party—as AES appears to be—can prevent the fair and impartial evaluation required by NEPA. *NRDC v. Callaway*, 524 F.2d 79, 87 (2d Cir. 1975). Indeed, AES has been alleged to have a "revolving door" with BIA where employees of BIA and AES have switched jobs and has a history of conflict of interest complaints. *See, e.g.*, Motion for Preliminary Injunction, *United Auburn Indian Community v. Salazar*, No. 12-1988-RBW, Doc. 7 (D.D.C., filed Dec. 12, 2012).

These allegations must be rigorously investigated by BIA to ensure that there is not even the appearance of a conflict of interest in the process. The City also hereby requests, pursuant to the Freedom of Information Act, BIA's list of preferred contractors and/or any evidence that BIA has solicited proposals from other contractors pursuant to federal procurement standards. The City will be following up with the House Resources Committee and BIA to address this wide-spread concern.

B. The Purpose and Need of the EIS and the Range of Alternatives

BIA should carefully consider an appropriate purpose and need statement, in light of the Tribe's existing reservation lands, economic development and aboriginal lands, in framing this EIS. The purpose and need statement in the EIS is critical to complying with NEPA. "The stated goal of a project necessarily dictates the range of 'reasonable' alternatives . . . ." *City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1995) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir. 1991)). The analysis of alternatives is at the heart of an EIS. If the purpose and need statement is deficient, the EIS will not address an appropriate range of alternatives.

The statement of purpose and need is supposed to "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. BIA must first reasonably and fairly define the project's purpose. *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) (citing *Citizens Against Burlington*, 938 F.2d at 195–96). Importantly, BIA must "tak[e] responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that

fall between the obvious extremes," not the Tribe. *Colo. Envtl. Coalition v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

BIA must also take into account its own statutory mandates. *See New York v. Dept. of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983). There are two statutes in play: 1) the Indian Reorganization Act, which relates to the trust acquisition decision; and 2) the IGRA gaming eligibility determination, which relates to where, when and how gaming is to occur. This NEPA requirement underscores why it is critical to determine the appropriate IGRA process *now*, because the statutory purpose under the two-part process is different from the purpose for the "restored lands" exception. The "statutory objectives" relevant here are the dual findings that the Secretary must make before seeking gubernatorial concurrence: that (1) gaming is beneficial to the Tribe and (2) not detrimental to the surrounding community. 25 U.S.C. § 2719(b)(1)(a). BIA's EIS purpose and need statement must incorporate both the need to promote the Tribe's economic development, self-sufficiency, and self-government and the need to avoid detriment to the surrounding community. Properly understood, the Purpose and Need for BIA's proposed action makes clear that alternative locations outside of the Medford community must be evaluated.

The EIS must examine a reasonable range of alternatives to the proposed federal action (trust acquisition of the proposed site in Medford). At a minimum, a reasonable range of alternatives must examine several off-reservation locations outside of the Medford area, but within the Tribe's traditional territory. Each location must be evaluated for both gaming and commercial non-gaming economic development. Different development scenarios for the same location, however, must not be treated as separate alternatives if the federal actions involved are the same (e.g., different development scenarios for large and small class II gaming operations on the same site do not require different federal actions).

Further, alternative sites must not be chosen in locations that allow them to be rejected out of hand as unsuited for economic development. Medford is obviously not the only possible location for the Tribe's economic development, nor even the only off-reservation gaming location that should be considered. If BIA were to determine that the Tribe qualified for the "restored lands" exception in Medford, it would qualify in any of the Counties identified in the Tribe's Restoration Act. Eugene would therefore be a reasonable alternative location for casino development, for example, and should be considered.

C. Cumulative Impacts

BIA must examine the likelihood of additional trust acquisitions and further development of trust lands that will not be subject to state or local law, BIA approval, or environmental review, including the foreseeable subsequent development of class III gaming at the Medford site. There is a substantial likelihood that the Tribe will seek to negotiate a compact with the State, if the Medford site is developed, and if the State refuses, the Tribe may sue the State for failing to

negotiate in good faith under IGRA. A determination that the Medford site qualifies as restored land will have a cascading effect, including disruption of the tribal gaming market in the State, which must be taken into account. BIA must address the likelihood that the Tribe will seek additional land in one or more counties listed in its Restoration Act to develop as restored lands, if BIA concludes that the exception applies. Given the legal theory the Tribe is advancing, the conclusion that the exception applies would mean that the Tribe can open casinos without limitation under IGRA throughout its service area.

The decision BIA makes here will have precedential effect for the Coquille and all other tribes in Oregon. The law requires BIA to take these effects into account. *See, e.g., Anderson v. Evans*, 371 F.3d 475 (9th Cir. 2004) (EIS required to consider that precedential effect of allowing Makah Tribe to whale could lead to increase in whaling by other domestic groups).

D. Mitigation and Enforceability

BIA must address mitigation of impacts in the EIS, including whether mitigation measures and project design parameters are actually enforceable, before concluding that impacts will be insignificant. AES regularly concludes that a project will not be detrimental to the surrounding community on the basis that those impacts will be mitigated, without any reasonable basis for concluding that they will. Promises that the Tribe will negotiate a mitigation agreement sometime in the future is not a reasonable basis for concluding that impacts will be less than significant and relying on such empty assurances renders the NEPA analysis arbitrary and capricious.

Further, while some mitigation measures that might be required under federal law—i.e., Clean Water Act requirements—would indeed be enforceable, until federal approvals are issued, the exact nature of the mitigation required in such federal approvals or permits is uncertain. Such federal approvals should be obtained prior to approval of a trust request. In addition, BIA cannot reasonably rely on tribal law because tribal law is subject to unilateral change by the Tribe itself, and therefore cannot be considered an independent source of authority to enforce mitigation requirements against the Tribe. Tribal sovereign immunity is a significant limitation on enforcement actions, of course, and its effect on the enforceability of mitigation measures must be considered in the EIS. Similarly, mitigation measures in any intergovernmental agreements must be evaluated as to enforceability.

The EIS must not assume that different development scenarios are enforceable if there is no mechanism to force the Tribe to adhere to a specific project design once the land is taken into trust. The EIS must explain how, if the proposed site is taken into trust, the Tribe would be required by BIA to build the proposed gaming facility, and not an even bigger or significantly different casino. In particular, the EIS must explain how the Tribe will be precluded from expanding into class III gaming after the land is in trust. Without such an explanation, it will be entirely uncertain what the actual effects of the proposed federal action will be, and there is no way to comment on the adequacy or effectiveness of any proposed enforcement mechanism.

It is far from clear that such an enforcement mechanism even exists. No two-part determination has ever been qualified by specific project design parameters, and BIA has never taken the position that it has the power (or the inclination) to ensure compliance with whatever mitigation measures it chooses to include in an EIS. Accordingly, setting forth a list of mitigation with no discussion of its enforceability and/or implementation to determine no detrimental impact violates NEPA and the Administrative Procedure Act.

E. Specific Impacts

1. Socio-Economic Impacts

The EIS must address the socio-economic impacts of the project, including impacts on state lottery revenues, existing businesses and employment, and impacts on the nearby communities.

As a general matter, the City relies on taxes to fund governmental operations, and charges fees for water, sewer, roads, parks, police, and other services. The Tribe's facility would be tax exempt. At the same time, the Tribe would enjoy many of the services the taxpayers in the City support, including emergency services, good roads, excellent schools, bike trails, riparian corridors and other benefits. The City does not have any ability to tax the Tribe for the services that it provides, harming the community which will have to pay a disproportionate burden.

If the Tribe were to negotiate a fees for services agreement, it is possible that many of those costs would be offset, although fees for services often increase over time. There is no guarantee that the Tribe will be willing to accept increased payment, as circumstances might demand. In addition, the City is aware of disputes between the City of North Bend and the Tribe regarding the Tribe's failure to reimburse the City, according to the terms of its governmental agreement. Ex .16. Thus, the City has substantial concern regarding its ability to enter into and/or enforce an agreement that adequate addresses its concerns.

Even if the City received reasonable assurances that all costs would be mitigated, including escalating costs over time, and that the Tribe would not contest such an intergovernmental agreement, as it has in North Bend, the problems associated with gambling and the availability of such concentrated gaming facilities would not be addressed.

The EIS must address in detail the socio-economic impacts of the facility on the Medford community.

In addition, while the Oregon Lottery does not operate casinos, it has about 1,500 lottery retailers selling traditional products (Megabucks, Powerball, Scratch-its, Keno, etc.), and about 600 retailers who sell only video lottery games. About 1,700 retailers sell both types, for a total of

approximately 3,800 Oregon Lottery retailers. The Oregon Lottery's unaudited 2011 fiscal year sales reached $1.04 billion. The FY 2011 sales total ranked as the fifth-highest in Lottery history, continuing a six-year trend of Lottery sales topping the $1 billion mark. According to the report prepared by EcoNorthwest, a class II casino in Medford would take away $29.1 million dollars in revenue from the state, dollars that are used to fund libraries, schools, and parks. Ex. 17.

2. Land-Use Planning Conflicts

The City has developed regulations that all developments must comply with before any project can be approved. The development review process typically includes opportunity for public comment and a public hearing in front of a review body such as the Planning Commission, which will not apply if the land is acquired in trust. Failure to comply with these regulations will undermine the City's efforts to implement measures that ensure a well-designed and sustainable community. Thus, the EIS must address land use planning issues and development review. Specific concerns include:

- Zoning: The golf course is split zoned C-R, Regional Commercial, and SFR-00, 1 dwelling unit per existing lot. There is a question of whether the use is permitted or not.
- Vehicular access, involving the number, location and design of access points to and from the site.
- Parking, involving the number, location, dimensions, aisle widths, spaces for persons with disabilities.
- Bicycle parking.
- Pedestrian access.
- Block length requirements. Depending on how the site is developed, this may or may not apply.
- Development standards such as height, setbacks, lot coverage, etc.
- Big box requirements that apply to buildings over 50,000 square feet.
- Lighting.
- Screening of trash and mechanical equipment.
- Stormwater quality treatment and detention.
- Landscaping and irrigation along the street frontage and in the parking lot.
- Buffer yard requirements along certain property lines.
- Signage.

The EIS should address each of these issues to ensure that the proposed development does not irreparably harm Medford or compromise its efforts to provide services to its residents.

3. Water Resources

A portion of the property is within the 100-year floodplain. The proposed land is adjacent to and will presumably discharge storm water directly to Bear Creek, which is protected by a riparian corridor along its banks. Bear Creek is located 1,000 feet downslope of the Medford site. It is the most urbanized stream in southern Oregon, but it still serves as spawning habitat for Coho and Chinook salmon. Water quality and runoff are therefore major concerns, particularly because existing infrastructure--i.e., parking lots and buildings--were constructed before the regulations and guidelines were made more stringent to minimize runoff and require the treatment of contaminants.

The EIS must ensure there is no-rise of Bear Creek during the 100-year storm, no changes in flows to adjacent properties, and storm water quality treatment sufficient to ensure that water quality in Bear Creek, and a 303(d) water for which the City of Medford is one of the responsible jurisdictions under the Total Maximum Daily Load (TMDL) program, is not negatively impacted. Moreover, the EIS should consider the adjacent property, which the Tribe also owns, which is slated for parking use. The impacts of that additional development must be considered as a related and/or cumulative impact.

4. Sewer

The City charges System Development Charges for treatment and conveyance capacity. The City also charges Sewer collection and sewage treatment utility fees for maintenance of the treatment plant and sewer pipes. Any development connecting to the City's sewer system must pay these fees. In addition, an analysis of the sewer conveyance system is necessary to ensure that adequate capacity exists and no sewer surcharge or overflow potential is increased. If capacity deficiencies are determined to exist then any development must construct additional capacity or delay construction until adequate capacity is constructed by others.

5. Traffic

Under normal circumstances, development such as what the Tribe has proposed would require a zone change from SFR-00 probably to a commercial designation. This typically would require a Traffic Impact Analysis to assess its impacts on the street system and whether improvements are required or not. At a minimum, a traffic study must be completed that analyzes all impacted intersections (defined as impacted by 25 peak hour trips or more) and demonstrates that impacted intersections operate at Level of Service (LOS D) or better. Proposed driveways should also be analyzed to ensure that queues do not impact the operation of Highway 99 or increase the accident potential.

A traffic study scoping letter request describing the project in detail should be submitted to the Medford Public Works Department. All of the criteria described in the subsequent traffic study scoping letter should be addressed in a report stamped by a Professional Engineer qualified to perform such studies. If constructed, this project will use existing City street capacity. The appropriate Street System Development Charges should be paid for the use of capacity. Street utility fees should be paid for maintenance of the City streets.

6. Housing and School Impacts

The Tribe has estimated that employment at the proposed casino is expected to total approximately 233 full time-equivalent positions. Ex. 18 at 8. The EIS must consider the impacts of people moving into Medford for work and the availability of housing. Although the Tribe estimates that the average wage for employees, including benefits, will be $41,416 per year, the number of actual full time employees the Tribe will hire is unknown and the effects on housing and schools not understood. In fact, many casino jobs are low wage jobs, which often generates undesirable

7. Crime and Burdens on Local Law Enforcement

The proposed facility will increase the burdens on the City's emergency services. Based on information from North Bend Police—where the Tribe operates the Mill Casino—calls for service ("CFS") for Public Safety in 2012 were:

- 437 CFS for Law Enforcement
- 54 CFS for Fire

It is safe to assume that there will be approximately 500 CFS per year at the proposed facility, with 450 that require a law enforcement response. North Bend Police note that in 2012 there were 680 CFS requiring Law Enforcement at the local Wal-Mart. Although that number is high for a retail outlet, it is the type of CFS at a Casino that changes the comparison. Many of the CFS at a gaming center would be two Officer calls as opposed to shoplifting complaints at a Wal-Mart that are generally a one Officer call.

The Coquille Tribe entered into "binding agreements" for local government services such as public safety and public works, and paid the City of North Bend approximately $400,000 for Law Enforcement, Fire, and Sewer/Storm Drain services in 2012. The City, however, does not have information on how that amount was determined, or if that amount is consistent in years since.

8. Societal Concerns

Numerous studies have shown that casino gambling may be correlated with domestic violence, divorce, bankruptcy, drug and alcohol abuse, risky or illicit sexual behavior (especially prostitution), and problem gambling. Studies of gaming towns in Colorado and South Dakota, for example, also indicate that the rates of criminal activities increased due to the development of casino enterprises in these two locations. The increase in the number of pathological gamblers is another concerning issue regarding the development of casino gambling and there are increasing concerns regarding child neglect and family problems associated with casinos. Some studies have determined that areas in which casino development has occurred have faced growing demands for child protection, marriage counseling, and other social service programs. The EIS should review these studies to determine the likely impacts on the Medford community.

9. Nuisance Issues

Finally, the EIS must also address noise, light and other nuisance issues. Commercial activity taking place 24 hours a day, 7 days a week is unusual in Medford and will substantially affect the amount of noise and light pollution in the area. Traffic jams, parking difficulties, escalation of trash, soil erosion, poor air quality, decline of scenic beauty, demolition of public infrastructure, and large tourist gatherings are frequently cited as eroding the quality of life in communities supporting casinos. While these impacts fall under other categories for review, the overall community effect, particularly on those residents who do not support casino develop, but will have to live with its impacts, should be considered from a nuisance perspective.

CONCLUSION

The City looks forward to working with BIA to address these and other concerns as they arise. Please do not hesitate to contact me with any questions. I also ask that you direct any correspondence with the City to Lori Cooper, the City Attorney and the City's outside counsel, Jena A. MacLean of Perkins Coie LLP:

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Medford, OR 97501

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Very truly yours,

Gary H. Wheeler
Mayor, City of Medford, Oregon

cc: Governor Kate Brown
Attorney General Ellen F. Rosenblum
U.S. Senator Ron Wyden
U.S. Senator Jeff Merkley
U.S. Representative Greg Walden
U.S. Representative Don Young
Oregon Senator Alan Bates
Oregon Representative Sal Esquivel
Bob Smith, Smith West Co.
Jackson County Administrator Danny Jordan
Chairwoman Brenda Meade, Coquille Indian Tribe
Chairman Dan Courtney, Cow Creek Band of the Umpqua Tribe
Chair, Jackson County Board of Commissioners, Doug Breidenthal

elements of conservation design to help us identify priority conservation areas that will contribute to achieving measurable conservation targets such as population objectives. The policy ensures that when employees propose new refuges or expansions to existing refuges, they analyze and describe: (1) The project's vulnerability to climate change and other non-climate stressors (*e.g.*, habitat fragmentation, invasive species), (2) how we will mitigate stressors to ensure the project's resiliency, (3) how the project is arranged in a geographically efficient manner to safeguard ecological processes across the landscape, and (4) how the project complements the resilience of other conservation areas.

The policy establishes the process for sending project proposals to the Service Director and the potential outcomes of the Director's review. It also describes how designated representatives at the local level—Refuge Managers—must interact, coordinate, cooperate, and collaborate with State fish and wildlife agencies in the acquisition and management of refuges.

Summary of Comments and Changes to the Final Policy

On January 30, 2014, we announced the draft policy and requested public comment via a **Federal Register** notice (79 FR 4952). The comment period was open from January 30, 2014, through March 3, 2014. We received 35 detailed comment letters and many individual comments on the draft policy. In total, we received 236 individual comments, which were grouped into 71 comment categories. The comments were from nongovernmental organizations, individuals, States, and industry. Most of the comments expressed general support, and many addressed specific elements in the draft policy.

We considered all of the recommendations for improvement and clarification included in the comments and made appropriate changes to the draft policy. Many of the comments we received were outside the scope of this policy. We drafted this policy in a way that gives us flexibility as funding levels and resources change. The policy does not supersede any piece of legislation, regulation, or other policy.

Dated: December 11, 2014.

Dan Ashe,

Director, Fish and Wildlife Service.

[FR Doc. 2015–00381 Filed 1–14–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 156A2100DD AOR3030.999900]

Intent To Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to gather information necessary for preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) in connection with the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and casino project to be located in the City of Medford, Jackson County, Oregon. This notice also announces the beginning of the public scoping process to solicit public comments and identify issues.

DATES: Written comments on the scope of the EIS must arrive by February 17, 2015. The date of a public scoping meeting will be announced at least 15 days in advance through a notice to be published in the local newspaper, the Mail Tribune, and posted at *www.coquilleeis.com*.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 Northeast 11th Avenue, Portland, Oregon 97232–4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project" on the first page of your written comments. The location of a public scoping meeting will be announced at least 15 days in advance through a notice to be published in the local newspaper, the Mail Tribune, and posted at *www.coquilleeis.com*.

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, Bureau of Indian Affairs, Northwest Regional Office, 911 Northeast 11th Avenue, Portland, Oregon 97232; fax (503) 231–2275; phone (503) 231–6749.

SUPPLEMENTARY INFORMATION: The Tribe has submitted an application to the BIA requesting that approximately 2.4 acres of land be transferred from fee to trust status (Proposed Action), upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility. In order for the Department to fully consider and either grant or deny the Tribe's application, the Department must first comply with NEPA.

The proposed fee-to-trust property is located within the incorporated boundaries of the City of Medford, Oregon, adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The Tribe's stated purpose of the Proposed Action is to improve the economic status of the Tribe so it can better provide housing, health care, education, cultural programs, and other services to its members. Adjacent fee land would be used for parking.

The Proposed Action encompasses the various federal approvals which may be required to implement the Tribe's proposed economic development project, including approval of the Tribe's fee-to-trust application. The EIS will identify and evaluate issues related to these approvals.

Areas of environmental concern identified for analysis in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety; hazardous materials and hazardous wastes; public services and utilities; socioeconomics; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced based on comments received in response to this notice and at the public scoping meeting. Additional information, including a map of the project site, is available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4345 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: January 8, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–00550 Filed 1–14–15; 8:45 am]

BILLING CODE 4337–2A–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD.AADD001000]

Advisory Board for Exceptional Children Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Albuquerque, New Mexico. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The Advisory Board will meet on Thursday, March 26, 2015, from 8:30 a.m. to 4:30 p.m. and Friday, March 27, 2015, from 8:30 a.m. to 4:30 p.m. Mountain Time.

ADDRESSES: The meeting and orientation will be held at the Manuel Lujan, Jr. Indian Affairs Building, 1011 Indian School Road NW., Albuquerque, New Mexico 87104; telephone number (505) 563–5383.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Bement, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., Suite 332, Albuquerque, New Mexico 87104; telephone number (505) 563–5274.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. app.), the BIE is announcing that the Advisory Board will hold its next meeting in Albuquerque, New Mexico. The Advisory Board was established under the Individuals with Disabilities Education Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. The meetings are open to the public.

The following items will be on the agenda:

- Introduction of Advisory Board members;
- Appointment of Advisory Board Chair and Vice Chair;
- Report from Ms. Gloria Yepa, Supervisory Education Specialist, BIE, Division of Performance and Accountability;
- Report from BIE Director's Office;
- Report from Dr. Jeffrey Hamley, Associate Deputy Director of the Division of Performance and Accountability;
- Stakeholder input on BIE Annual Performance Report and State Systemic Improvement Plan;
- Public Comment (via conference call, March 26, 2015, meeting only *);
and
- BIE Advisory Board-Advice and Recommendations.

* During the March 26, 2015 meeting, time has been set aside for public comment via conference call from 1:30–2:00 p.m. Mountain Time. The call-in information is: Conference Number 1–888–417–0376, Passcode 1509140.

Dated: January 6, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–00549 Filed 1–14–15; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–LAMR–16527; PP1LAMR00.PPMPSAS1Z.Y00000]

Off-Road Vehicle Management Plan, Final Environmental Impact Statement, Lake Meredith National Recreation Area, Texas

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for the Off-Road Vehicle Management Plan (Plan), Lake Meredith National Recreation Area, Texas. The Plan/FEIS evaluates the impacts of four alternatives that address off-road vehicle (ORV) management in the national recreation area.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of its Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: The Plan/FEIS is available in electronic format online at: *http://parkplanning.nps.gov/LAMR.* Hard copies of the Plan/FEIS are available at Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument Offices, 419 E. Broadway, Fritch, Texas 79036–1460, by phone at 806–857–3151.

FOR FURTHER INFORMATION CONTACT: Robert Maguire, Superintendent, Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036–1460, by phone at 806–857–3151, or by email at *Robert_Maguire@nps.gov.*

SUPPLEMENTARY INFORMATION: The Plan/FEIS responds to, and incorporates agency and public comments received on the Draft Environment Impact Statement (DEIS) and Plan, which was available for public review from January 25, 2013, to March 26, 2013. Public meetings were held on March 19 and 20, 2013, to gather input on the EIS and Plan. Over 116 pieces of correspondence were received during the public review period. Agency and public comments and NPS responses are provided in Appendix B of the FEIS/Plan.

The purpose of this Plan/FEIS is to manage ORV use in the national recreation area for visitor enjoyment and recreation opportunities, while minimizing and correcting damage to resources. By special regulation (Title 36, Section 7.57 of the Code of Federal Regulations), the national recreation area allows the use of ORVs in two areas: Blue Creek and Rosita Flats. The Plan/FEIS evaluates four alternatives to manage ORV use in the national recreation area: a No Action Alternative (A) and three Action Alternatives (B, C, and D (preferred). When approved, the Plan will guide the management of ORV use for the next 15–20 years.

Alternative A: No Action—The national recreation area would continue to operate under the 2007 Interim ORV Management Plan where ORVs are allowed below the 3,000 foot elevation line in Rosita Flats and from cutbank to cutbank at Blue Creek. Limited facilities are supplied. No additional management tools such as zoning, permits, or use limits would be implemented.

Alternative B: Under this alternative, ORV use would be managed through a zone system. Uses would be separated into the following zones: camping, hunting, resource protection, low speed, and beginner. At Rosita Flats, two areas

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

City of Medford
Attn: Eric Swanson, City Manager
411 West 8th St.
Medford, OR 97501

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. Swanson:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the City of Medford to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

RECEIPT NO: 7011 0470 0003 0036 2952
SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 23, 2013

Paula Hart
Office of Indian Gaming
U.S. Department of the Interior
1849 C Street, NW
MS 3657 MIB
Washington, DC 20240

Stan Speaks, Regional Director
Bureau of Indian Affairs
911 NE 11th Ave
Portland, OR 97232

Dear Directors Hart and Speaks,

By this letter, the Coquille Indian Tribe (the "Tribe") requests an opinion that certain lands described below (the "Coquille Parcel") will qualify as "restored lands" eligible for gaming purposes, once they are transferred to the United States in trust on the Tribe's behalf. The Tribe has submitted a related request to the Bureau of Indian Affairs ("BIA") to transfer these lands into trust for gaming and nongaming (governmental) purposes.

The Coquille Tribe plans to conduct on-Reservation Class II gaming at the Coquille Parcel.

The Tribe bases this on-Reservation gaming request on the Indian Gaming Regulatory Act ("IGRA") (25 U.S.C. § 2701) and its regulations and the Coquille Restoration Act ("Restoration Act") (25 U.S.C. § 715 et seq.).

A copy of the Coquille Tribal Council Resolution supporting this request is attached at Tab 1.

A. The Coquille Parcel

The 2.42-acre Coquille Parcel is situated in the south part of the City of Medford, in Jackson County, Oregon. It contains a 23,300 square foot structure that currently operates as a bowling alley, restaurant, bar and Oregon lottery licensee. The parcel is currently zoned as C-R (Commercial – Regional). The Tribe proposes to use the existing building on the property, remodeled from its current use to provide space for gaming and certain governmental services to tribal members. The Coquille Parcel is currently owned by Southern Oregon Property Holdings, LLC, a wholly owned subsidiary of the Tribe. If necessary, the Coquille Parcel will be transferred to the Tribe before being transferred into trust

I have attached the following items to help you identify and locate the Coquille Parcel:

- Current deed and legal description of the Coquille Parcel (Tab 2);
- Map of the Tribe's five county Service Area identifying the City of Medford (Tab 3);
- Map showing Tribe's headquarters and existing trust lands (Tab 4);
- Map of the City of Medford showing the location of the Coquille Parcel (Tab 5);
- A Jackson County, Oregon assessor's map of the Coquille Parcel (Township: 37 Range: 1W Section: 32C, Tax Lot: 4701) (Tab 6); and
- An aerial photograph portraying the Coquille Parcel and its surrounding property uses (Tab 7).

B. The Relationship between this Application and *Carcieri v. Salazar*

In *Carcieri v. Salazar*, 555 U.S. 379, 129 S.Ct. 1058, 172 L.Ed.2d 791 (2009) ("*Carcieri*") the U.S. Supreme Court held that the Secretary lacks authority to take land into trust under the Section 465 of the Indian Reorganization Act (25 U.S.C. §461 et seq.) ("IRA") unless a tribe can show it was "under Federal jurisdiction" in 1934. The *Carcieri* opinion has generated significant uncertainty and controversy over what evidence satisfies the "under Federal jurisdiction" standard and how the BIA should determine whether a particular tribe qualifies to have land accepted into trust.

Fortunately, the Coquille Tribe is not subject to any of that uncertainty or controversy. As summarized below, the Restoration Act decisively resolves all questions regarding the Tribe's eligibility for the fee-to-trust process. A copy of the Restoration Act is attached at Tab 8.

In the Restoration Act, Congress specifically and unequivocally authorizes the BIA to take land into trust for the Coquille Tribe's benefit. The Restoration Act clearly states that the IRA applies to the Tribe and its members. 25 U.S.C. § 715a(d). Another section specifically authorizes the Secretary to accept land into trust within the defined Service Area under the authority of the IRA. 25 U.S.C. § 715c(a). The subject land is within the Service Area defined by the Restoration Act. These specific references to the IRA demonstrate Congress's intention that the trust process be available to the restored Coquille Tribe, and render the *Carcieri* holding irrelevant to this case. This combination of provisions definitively resolves any question of the Tribe's eligibility for IRA treatment in general, and particularly the provisions for trust land acquisition. Under U.S. Supreme Court precedent, such specific provisions in a later enacted statute control construction of the prior statute, even though it had not been expressly amended. *U.S. v. Estate of Romani*, 523 U.S. 517, 518, 118 S.Ct. 1478 (1998); *Food and Drug Admin. v.*

Brown & Williamson Tobacco Corp. 529 U.S. 120, 143, 120 S.Ct. 1291 (2000). Thus the *Carcieri* general construction of IRA section 465 eligibility is overridden by the later enactment of provisions specific to the restored Coquille Tribe, and any uncertainty is conclusively resolved by the congressional language specific to Coquille restoration.

C. The Coquille Parcel clearly qualifies as restored lands under section 20 of the IGRA

The IGRA prohibits certain gaming on land transferred into trust after October 17, 1988. The IGRA, however, makes important exceptions to that limitation, one of which applies here. The restored lands exception permits gaming on real property taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." (25 U.S.C. § 2719(b)(1)(B)(iii)).

At 25 C.F.R. Part 292, the Interior Department has adopted regulations that give effect to this restored lands exception. The Coquille Tribe demonstrates below that the Coquille Parcel qualifies as restored lands under the IGRA. The Tribe requests the Department to issue a letter confirming the gaming eligibility of that land once it is transferred into trust for the Tribe.

Although the IGRA does not require lands be in "reservation" status to qualify for gaming, the Restoration Act's mandate that the subject land have "reservation" status (discussed above) only bolsters the conclusion that the Coquille Parcel qualifies as Coquille Indian tribal restored lands. Once trust title is accepted by the United States, the Restoration Act provides that such restored lands shall be part of the Tribe's Reservation.

> (b) Lands to be part of reservation
> Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the Tribe **and shall be part of its reservation.**
> 25 U.S.C. § 715c(b). (Emphasis added).

No separate proclamation is required.

Any such land, once acquired, may be used by the Tribe for "on-reservation" gaming.

The Coquille Parcel, if placed in trust, would clearly become part of the Tribe's reservation.

Next this letter demonstrates that the Coquille Parcel qualifies as IGRA-eligible restored lands. Two basic elements must exist for an IGRA restored lands exception to apply (25 CFR § 292.7):

1. The Tribe must be a restored tribe; and
2. The newly acquired lands must be restored lands.

The BIA's Part 292 regulations address both of these requirements.

1. **The Coquille Indian Tribe is a Restored Tribe**

To prove that it is restored, a Tribe must meet all of the requirements of 25 CFR § 292.7. As shown below, the Tribe meets these requirements.

a. Recognition: The Coquille Indian Tribe was recognized prior to its Congressional termination in 1954 as provided in 25 CFR § 292.8. (25 CFR §292.7(a)).

To show pre-termination recognition, a tribe must meet any one of the criteria listed in 25 CFR § 292.8 entitled "How does a tribe qualify as having been federally recognized?" That regulation lists five possible ways that a terminated tribe can show previous Federal recognition. The Coquille Tribe easily qualifies under the first criterion, which says that a tribe conclusively qualifies if, "[t]he United States at one time entered into treaty negotiations with the tribe." 25 CFR § 292.8(a).

In Senate Report 101-50, (attached at Tab 9) Congress made the following finding as part of the Coquille Restoration Act:

> In 1855 the Coquille Tribe negotiated a treaty with the United States which was never ratified." That referenced treaty is the unratified August 11, 1855 Joel Palmer Treaty with Oregon Coast Tribes, negotiated and signed with several bands, including "the Quans-sake-nah, Klen-nah-hah, and Ke-ah-mas-e-ton bands of Nas-o-mah or Coquille tribe," and "the Cah-toch, Chin-chen-ten-tah,ta, Whiston and Klen-hos-tun bands of Coquilles.

A copy of this treaty is attached at Tab 10.

Because the legislative and historical record clearly shows that the United States entered into treaty negotiations with the Coquille Indian Tribe, the federal recognition element of the restored lands exception is satisfied.[1]

b. Termination: The Tribe at some later date lost its government-to-government relationship by one of the means specified in 25 CFR § 292.8. (25 CFR § 292.7(b))

To show that is was terminated, a tribe must meet any one of the criteria listed in 25 CFR 292.9. The Coquille Indian Tribe easily qualifies under the first listed criterion, which provides that a tribe conclusively demonstrates a lost government-to-government relationship if it was legislatively terminated. 25 CFR 292.9(a). As shown below, Congress subjected the Coquille Tribe to just such a termination.

On August 13, 1954, Congress adopted the Western Oregon Termination Act ("WOTA") (68 Stat. 724). The purpose of the Act was:

> [T]o provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in western Oregon and the

[1] The Tribe qualifies under other criteria listed in 25 C.F.R. 292.8 and we would be happy to provide more data regarding these other criteria at your request.

> individual members thereof, for the disposition of federally owned property acquired or *withdrawn for the administration of the affairs of such Indians, and for a termination of* Federal services furnished such Indians because of their status as Indians.
>
> 68 Stat. 724 §1 (Formerly 25 U.S.C. § 691)

Among the tribes that the WOTA terminated were the "Lower Coquille" and the "Upper Coquille". *Id* §2. Relevant provisions of the Western Oregon Termination Act are attached to this letter at Tab 11.

The legislative termination of the Coquille Tribe was affirmed in Senate Report 101-50, which was prepared to accompany S. 881, the Tribe's Restoration Act:

> In 1954 Congress enacted the Western Oregon Termination Act (68 Stat. 724, 25 U.S.C. 691 et seq.), terminating the Federal relationship with some 58 tribes in the State of Oregon. The Coquille Tribe was among the many tribes terminated under that Act.

See Tab 9.

It is clear that Congress enacted legislation terminating the Coquille Tribe. As shown below, later Congressional legislation referred to that termination, and reversed it.

c. Restoration: at a time after the Tribe lost its government-to-government relationship the Tribe was restored to Federal recognition by one of the means specified in 25 CFR 292.10. (25 CFR § 292.7(c)).

"For a Congressionally-terminated Tribe to qualify as 'restored', the Tribe must show that Congress enacted legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the Tribe." 25 § CFR 292.10(a). Congress did exactly that.

The Coquille Restoration Act provides, in part, as follows:

> Restoration of Federal recognition, rights, and privileges
> (a) Federal recognition
> Notwithstanding any provision of law, Federal recognition is hereby extended to the Coquille Indian Tribe. Except as otherwise provided herein, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe and its Members.
>
> (b) Restoration of rights and privileges
> Except as provided in subsection (d) of this section, all rights and privileges of this Tribe and of its Members under any Federal treaty, Executive order, agreement or statute or under any other authority, which were diminished or lost under the Act of August 13, 1954 (68 Stat. 724) [the Western Oregon Termination Act, 25 U.S.C.A. § 691 et seq.],

> ***are hereby restored*** and provisions of said subchapter shall be inapplicable to the Tribe and its Members after June 28, 1989.

25 U.S.C. § 715a (Emphasis added)

Senate Report 101-50 (attached at Tab 9) states in part, "[t]he purpose of [the Restoration Act] is to restore the Federal trust relationship with the Coquille Tribe of Indians in the State of Oregon . . . "

Congress adopted the Restoration Act expressly to restore Federal recognition to the Coquille Indian Tribe, patently satisfying the requirements of 25 CFR § 292.10.

The Interior Solicitor previously concluded that the Coquille are a restored tribe eligible for the IGRA restored lands exception. In a January 30, 1995, memorandum to the BIA's Indian Gaming Director the Solicitor recognized the Coquille as a restored tribe for the purposes of applying IGRA's restored lands exception to the Tribe's current gaming location in North Bend, Oregon. This memorandum is attached at Tab 12.

The Tribe clearly qualifies as a restored tribe.

d. The Coquille Parcel qualifies as IGRA "restored lands"

The Part 292 regulations set out requirements for lands to qualify as restored under the IGRA. Applying these regulations to the unequivocal language of the Restoration Act shows that the Coquille Parcel clearly satisfies these requirements.

(1) Restored Lands criteria established at 25 C.F.R. § 292.11.

Under existing regulations, in addition to establishing that a tribe was restored, the Tribe must also demonstrate that the lands in question are eligible for designation as "restored lands." Lands qualify as restored if they satisfy the requirements in 25 CFR § 292.11 "What Are Restored Lands?" Subsection (a) of that rule sets out two alternative methods for Congressionally-restored tribes like the Coquille to prove that newly-acquired lands are restored lands:

> § 292.11 What are ''restored lands?'' For newly acquired lands to qualify as "restored lands'' . . . the tribe acquiring the lands must meet the requirements of paragraph (a), (b), ***or*** (c) of this section.
>
> ***(a) If the tribe was restored by a Congressional enactment of legislation*** . . . restoring the government-to-government relationship between the United States and the tribe, the tribe must show that **either**:
>
> > ***(1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or***

> (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.[2]
>
> ***

(Emphasis added).

When a restoration act authorizes the Secretary to accept lands into trust within a specific geographic area, the trust lands subsequently transferred there qualify as restored. This authorization is precisely what the Restoration Act provides, expressing Congress's intent that the Tribe acquire a restored land base within a five county area as partial remedy for the harms of termination.[3]

The Restoration Act authorizes the Secretary to take land into trust for the Coquille Indian Tribe's benefit within a specific geographic area. This authorization is evident in 25 U.S.C. § 715c. The first part of Section 715c addresses a mandatory 1,000-acre land transfer that is irrelevant to this case.[4]

The final portion, however, is on point:

> § 715c. Transfer of land to be held in trust
>
> (a) Lands to be taken in trust
>
> . . . . **The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984)** [the Indian Reorganization Act]. (Emphasis added)

This language authorizes the Secretary to take land into trust for the benefit of the Tribe within a specific geographic area: the Tribe's five-county service area. Congress defined the Tribe's service area as, "the area composed of Coos, Curry, Douglas, Jackson and Lane Counties in the State of

---

[2] Section 292.12, **inapplicable here**, poses a higher burden for a tribe, with additional threshold requirements before restored land status may be achieved. The Tribe is able to meet these standards and preserves the ability to supplement this request if called upon by the Department to do so. However, it is clear that the bifurcation of 25 CFR § 292.11 is intended to relieve Tribes of such expense and burden when the Congressional Act restoring the Tribe is clear as to the geographic parameters of a restored land base.

[3] The designated service area reflected tribal demographic reality at the time of restoration, but did not, itself provide a restored land base, leaving the Tribe to its own responsibility to rebuild that territory in the years ahead.

[4] That mandatory transfer section reads:

> The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided,* That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. . . . 25 *U.S.C.* § 715c

Oregon." 25 U.S.C. § 715. Because the Coquille Parcel lies within the service area it will qualify as *IGRA Restored Lands once it is transferred into trust.*

CONCLUSION

While many of the "restored lands" applications received by the Department involve difficult analysis as to a tribe's modern, historic and temporal nexus to that land at issue, this application is not among them. The Coquille Tribe's clear status as a restored tribe, and the Restoration Act's unambiguous language establishing the specific geographic area within which the Coquille Tribe may acquire lands for the purpose of restoring its land base provide a clear path within IGRA and the Department's regulations for a favorable determination.

Sincerely,

Brett Kenney, Tribal Attorney
Coquille Indian Tribe

Cc: Coquille Tribal Council
Encl. (see below)

Tab: 1 Tribal Council Resolution
Tab: 2 Deed and Legal Description of the Coquille Parcel
Tab: 3 Coquille Service Area map
Tab: 4 Map showing Tribe's headquarters and existing trust lands
Tab: 5 Medford City Map showing Coquille Parcel
Tab: 6 Jackson County Assessor's Map
Tab: 7 Aerial Photograph showing Coquille Parcel;
Tab: 8 Coquille Restoration Act
Tab: 9 Senate Report 101-50
Tab: 10 Treaty (1855) with Oregon Coast Tribes
Tab: 11 Western Oregon Termination Act
Tab: 12 Solicitor memo

RESOLUTION NO. 2013-68

A RESOLUTION adopting comments for consideration by the Northwest Director of the Bureau of Indian Affairs on the Coquille Tribe's fee-to-trust application to the United States Department of the Interior.

WHEREAS, on February 4, 2013, the City received a letter from Stan Speaks, Northwest Regional Director of the U.S. Department of Interior (DOI) Bureau of Indian Affairs (BIA) giving notice that the Coquille Tribe was applying to the DOI for an order taking property into federal trust for the benefit of the tribe; and

WHEREAS, after receiving the notice from the Director, the City attempted to gather information responsive to the application's impacts, however, due to delays in receiving the tribe's business plan and difficulties scheduling a meeting with the tribe, the City requested and received two successive 30-day extensions of time, making the City's response due on May 6, 2013; and

WHEREAS, on March 7, 2013, staff gave Council a progress report that identified certain legal issues with respect to the fee-to-trust authority and gaming activities and Council encouraged the City Attorney to retain outside counsel to obtain a second opinion; and

WHEREAS, on April 23, 2013, Council had a public meeting work session with the Coquille Tribe at which time the tribe indicated it would be investing $26 million into the projected casino structure, expand the existing bowling alley building by 200 square feet, install approximately 600 (or more) Type II bingo-logic video slot machines and employ approximately 200 people with an annual payroll of $9.65 million; and

WHEREAS, when asked to address provision of services and mitigation of adverse impacts, the Tribe explained that services and impacts would be more completely identified through and Environmental Impact Statement and paid for through a fee-for-services intergovernmental agreement, which would be negotiated subsequently; a copy of the business plan was provided to City staff at the end of the meeting, and not having sufficient time to fully analyze the casino's impacts prior to the deadline for comments; and

WHEREAS, on April 25, 2013, the City Council held a public hearing town hall meeting to receive input from the local community at which time the Cow Creek Band of the Umpqua Tribe presented information counter to that presented by the Coquilles; and

WHEREAS, on advice of legal counsel we have been advised that the land in Medford does not qualify for gaming and thus must be reviewed under the more rigorous two-part determination test set forth in Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(A); now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON, that because we cannot support the tribe's application, we oppose it; and comments for consideration by the Northwest Director of the Bureau of Indian Affairs on the Coquille Tribe's fee-to-trust application to the United States Department of the Interior, attached as Exhibit A and incorporated herein, are hereby adopted.

PASSED by the Council and signed by me in authentication of its passage this 3 day of May, 2013.

ATTEST: Glenda Wilson
City Recorder

Mayor

EXHIBIT A

OFFICE OF THE
MAYOR & CITY COUNCIL
www.ci.medford.or.us

CITY OF MEDFORD
411 WEST 8TH STREET
MEDFORD, OREGON 97501

TELEPHONE
(541) 774-2000
FAX: (541) 618-1700

May 3, 2013

The Honorable Kevin K. Washburn
Assistant Secretary - Indian Affairs
Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Stanley Speaks, Regional Director
Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

Re: Preliminary Response of the City of Medford, Oregon to Coquille Tribe's Proposed Trust Request for Gaming

Dear Mssrs. Washburn and Speaks:

Thank you for granting a 60-day extension for the City of Medford, Oregon to provide comments on the Coquille Indian Tribe's application to have 2.42 acres of land located in Medford acquired in trust for class II gaming. The City has a number of concerns regarding the proposed project. The City's concerns include its loss of regulatory jurisdiction over City land, the impacts a class II casino will have on the City, the potential for future casino expansion at the site and the introduction of class III games, the economic impacts related to substitution effects and problem gambling, and a number of similar issues.

Although it is difficult to see how the Tribe could address all of the City's concerns and mitigate the adverse impacts of its proposed project to the City's satisfaction, the City recognizes that it does not have sufficient information about the Tribe's proposal at this time to reach a final conclusion. Without such information, however, the City cannot take a position in support of the proposed development, and therefore opposes it. The City is also not able to provide complete comments in response to the Bureau of Indian Affairs' ("BIA") February 1, 2013, letter requesting certain information regarding the impacts of the proposed project. The City therefore reserves the right to supplement these very preliminary comments, as it learns more about the Tribe's proposal and continues to meet with the community and nearby tribes to hear their views.

These comments are divided into three sections. First, the City sets forth its concerns regarding the process that the Tribe has argued applies to the acquisition. It is the City's view that the land in Medford does not qualify for gaming and thus must be reviewed under the more rigorous two-part determination test set forth in Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(A). Second, the City provides preliminary responses to the questions BIA posed in its February 1, 2013, letter. Third, the City sets forth other concerns that it has regarding the proposed action.

1. BIA Must Apply the Two-Part Determination Test and Defer to the City's Views Regarding Detrimental Impacts on the Community

The City has been informed that the Tribe has requested a gaming eligibility determination from the Office of Indian Gaming ("OIG") under the restored lands exception to the general prohibition on gaming, 25 U.S.C. § 2719(b)(1)(B)(iii). Upon review of the Coquille Restoration Act, the legal cases concerning the restored lands exception, and the policies behind the equal footing exceptions, it is clear that the Medford Site does not qualify as restored lands.

First, the Coquille Restoration Act itself does not mandate or authorize this acquisition; the Secretary would instead be exercising her discretionary authority to acquire this land pursuant to the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465. There is no basis for claiming that the Restoration Act automatically qualifies any land acquired in trust within the Tribe's service area as restored lands when such land is not acquired pursuant to the Restoration Act, but is instead acquired under the generally applicable IRA.

Second, the Tribe's argument would undermine the purpose of the equal footing exceptions, which embody a policy of promoting parity between restored and other tribes. Here, the Coquille Tribe already has a reservation 170 miles away and a casino, which it has been operating for 17 years. The Tribe's argument, if accepted, would unfairly advantage tribes with restoration act over virtually all other tribes, and particularly those where the restoration act defines the tribe's service area broadly. Such an interpretation is fundamentally inconsistent with the purpose of the equal footing exceptions.

Third, the City notes that the Tribe's proposal to develop a casino in Medford has been highly disruptive to the tribal community. Multiple tribes have contacted the City and have spoken out in public hearings objecting to the Tribe's proposal and claiming that the Coquille Tribe lacks a significant historical connection to Medford. Although the City has not reached a conclusion as to the Tribe's historical connection to Medford, if any, it does note that the City is clearly not within the area that federal courts have identified as the Tribe's territory. Thus, the Tribe's proposal places the City in a difficult position with respect to those Tribes who are already members of the Medford community and are strongly opposed to the Coquille Tribe's application to obtain land outside of its primary territory.

It is the City's view that the only way that gaming can be permitted at the Medford Site is through the two-part determination process, which requires the Secretary to determine that gaming in Medford – 170 miles away from the Tribe's current reservation, tribal offices, and existing casino – is in the best interests of the Tribe and will not be detrimental to the surrounding community *and* the Governor concurs in that determination. *See* 25 U.S.C. § 2719(b)(1)(A). The two-part determination process is critically important to state and local government because it gives local governments a far more significant role in any gaming-related trust request and gaming eligibility determination. *See generally* 25 C.F.R. §§ 292.13-25. To reach a no detriment finding requires the Secretary to conduct extensive consultation with governments within 25 miles of the proposed gaming and a strong, cooperative relationship between the host community and the applicant tribe. In addition, the two-part determination process gives the governor the authority not to concur in the Secretary's determination, thereby preventing gaming (and trust acquisition) for occurring when such proposals might disrupt state policies.

A finding that the Medford Site qualifies as restored lands would circumvent the two-part determination process and deprive the City of critical procedural and substantive rights to which it is entitled. It would also be inconsistent with the statute, the case law, and the policies behind the exceptions. The City therefore strongly opposes any effort to circumvent the procedural and substantial rights Congress granted it through Section 20 of IGRA and will soon be filing its legal analysis with the OIG to ensure that the proper processes are followed.

2. The City Provides the Following Preliminary Responses to BIA's February 1, 2013 Request for Information

As set forth above, the City does not have sufficient information to provide BIA anything other than preliminary responses. The City, therefore, anticipates supplementing these comments as more information is made available.

1) The annual amount of property taxes currently levied on the property:

See attached tax report. Ex. 1.

2) Any special assessments, and amounts thereof, which are currently assessed against the property:

See attached tax report. Ex. 1.

3) Any governmental services which are currently provided to the property by your jurisdiction:

a. Development service: Planning including long-range regional planning, Engineering, Building including administration of building safety codes;

b. Life and Property Safety service: Police and Fire Protection including Emergency Medical Service and administration of Fire codes;

c. Special Event permitting service;

d. Water service – not allowed outside city limits per City Charter;

e. Sewer service;

f. Roadway and Sidewalk Right-of-Way Management service;

g. Parks and Recreation service;

h. Licensing and other Financial Department service;

i. Code Enforcement;

j. Court service including offense prosecution;

k. Emergency Management Disaster Response service;

l. Tourism Promotion service; and

m. Utility Management Franchise service.

4) If subject to zoning, how the property is currently zoned:

See attached. Ex. 2.

3. Additional City Concerns

It is the City's understanding is that the Coquille Tribe has been seeking the City's support for its gaming-related fee-to-trust application. The City has had the opportunity to meet with the Tribe to discuss the proposed facility. Unfortunately, those discussions have been preliminary only and did not occur until April 23, 2013. And although the Tribe provided the City a bit more detail about its business plan at that meeting, the City has not had sufficient time to consult with its various departments to identify areas of concern and potential impacts. Thus, the comments represent the City's initial effort to identify general areas of concern, each of which will require further development. In addition to the procedural questions and comments set forth above, the City provides the following information:

1) The City has been asked by the Coquille Indian Tribe to support its proposed fee-to-trust application for gaming purposes. The Tribe's proposed action would take property out of local control to establish an activity that is not allowed under State or local law. It will be difficult for the City to support such a proposition, regardless of who is proposing it.

2) The Coquille Tribe has stated that it would like to pay its fair share for services and impacts. The Tribe therefore understands that there will be adverse impacts from the proposed development. The Tribe appears to concede that gambling would create or foster addiction, and it has stated that it would pay for programs to rehabilitate the addict. From the testimony the City has heard to date, such rehabilitation does not fully address the damage that takes place. Therefore, it will be difficult for the City to support such an application, regardless of who is proposing it.

3) The Coquille Tribe has explained that that their proposed casino would provide 223 full-time jobs. The City, however, was presented with evidence that suggests that not all jobs would be new jobs. Instead, it is highly likely that some of the jobs would be from existing establishments that would lose customers and employees to the Tribe's proposed Medford casino. Although the City is not against fair competition, when an establishment can have a monopoly, the City does not consider that fair competition. Therefore, it will be difficult for the City to support such an application, regardless of who is proposing it.

4) The Tribe states that its proposed operation would generate revenues which would benefit the community. The City, however, has been presented with a study that indicates that a tribal casino in Medford would reduce the revenues generated by the state lottery. The City is a beneficiary of state lottery revenues, and the local schools are beneficiaries of state lottery revenues. The City would be adversely impacted if state lottery revenues to schools and City programs were diminished.

5) The Tribe has explained that it needs to locate a casino in Medford because its current casino in North Bend will be destroyed by the inevitable Cascadia event. The Tribe provided maps, charts and graphs to show where its current casino is located and what lands would be inundated by Cascadia. The City was provided with additional maps that showed that lands already held in trust for the Tribe within blocks of its existing casino would survive a Cascadia event. Further, in a Cascadia event, there is no guarantee that Medford would be better off than the Coos Bay North Bend area. It will be difficult for the City to support the Tribe's application with the asserted need to game in Medford based on the Cascadia event.

6) The Tribe provided the City with a copy of its trust application for 2.42 acres of land to develop a Class II gaming facility. When questioned about whether the Tribe's leasing of the neighboring 7+

acres of golf course land was for a Class III establishment, the Tribe represented that it did not now have plans for a Class III establishment, but that things may change in the future. The City has received testimony that it is common for Class III establishments to begin as Class II facilities. Based on that testimony, it is likely that the Tribe will eventually offer Class III games at the Medford Site. Not only is it difficult for the City to support Class II gaming in Medford, the strong likelihood that the Medford Site will ultimately have Class III gaming is a major concern for the City.

7) The Tribe has not provided the City with any evidence that it has any historical or aboriginal connection to Medford. The Tribe's Restoration Act establishes Jackson County as part of its service area where tribal members are allowed to receive federal benefits. Service areas, however, are designated on the basis of where Tribal members live today, not their historical locations. The City was also presented with evidence from other Tribes that the Coquille Tribe does not have aboriginal ties to the area. Other Tribes and tribal groups that are part of our community attended the City's public hearing town hall meeting and explained their heritage. People identifying themselves as Shasta Indians and the Cow Creek Band of the Umpqua explained that their ancestors fought and died and were buried in Medford and Jackson County. Those Tribes and tribal groups stated that permitting the Coquille Indian Tribe to obtain trust land and operate a casino in Medford would be an affront to their ancestors and to tribal sovereignty and traditions that exist within and without federal government recognition. It will be difficult for the City to support a casino, when the Tribes that have long been members of the Medford community are so strongly opposed to such development.

8) The City has been asked to address the impacts and costs from the proposed development. When asked what the impacts will be, the Tribe has stated that impacts and costs will be addressed in the environmental review process. The City cannot presently address the impacts based on information that will be developed in some yet-to-occur process. The Tribe also states that it will spend $26 million on improvements. If this project were permitted to go forward under the City's jurisdiction, the City would realize approximately $150,000 in building permits and inspection fees alone. The Tribe has also stated that its North Bend facility generated 89 calls for service last year. Research conducted by the Medford Police Department indicates the number is up to four times that many calls, suggesting that the impact on City services may be great. The Tribe submitted its business plan one week prior to the due date for these comments. That is not enough time to determine the scope of the proposed project's impacts. The City cannot currently support the Tribe's application based on the limited information available, some of which appears to be inaccurate, and the short period it has been given to review information.

9) The City has information that approval of the Tribe's proposed project will establish precedent in the State that would encourage other tribes to seek additional trust land for gaming and allow other such facilities to be placed in major metropolitan areas. Such action will disrupt the equilibrium in the State and will have impacts on other cities, counties and the State. For this reason, the City must oppose the proposed project and the process at least until such impacts are taken into account.

10) The Tribe's trust request asks the Secretary to take a parcel of land out from under City, County and State jurisdiction. However, the Federal government currently owns approximately 48% of the land in Jackson County. We cannot support the federal removal of lands from the State, City and County on this basis.

11) Finally, the Tribe has represented to the City that the BIA will be preparing an environmental impact statement, as is required under the National Environmental Policy Act. The City, of course, has valuable expertise on environmental, land use, and jurisdictional issues within City limits and accordingly, should participate extensively in the review process as a cooperating agency. The City

hereby formally requests designation as a cooperating agency and that it be provided the opportunity to work with BIA to develop the proper scope of the environmental review.

Thank you for the opportunity to provide comments, which the City will develop in greater detail in the coming months. Should you have any questions regarding this matter, please contact John Huttl, our City Attorney, at (541) 774-2020.

Very truly yours,

Gary H. Wheeler
Mayor of the City of Medford, Oregon

Enclosures

cc: Governor John Kitzhaber
Attorney General Ellen F. Rosenblum
U.S. Senator Jeff Merkley
U.S. Senator Ron Wyden
U.S. Representative Greg Walden

REAL PROPERTY TAX STATEMENT
JULY 1, 2012 TO JUNE 30, 2013
JACKSON COUNTY, OREGON
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

ACCOUNT NO: 10568511

PROPERTY DESCRIPTION
CODE: 0407
MAP: 371W32C004701
ACRES: 2.42
SITUS: 2375 SOUTH PACIFIC HWY PHOENIX-TA

SOUTHERN OREGON PROPERTY HOLDINGS LLC
1159 MIRA MAR AVE
MEDFORD, OR 97504

VALUES:	LAST YEAR	THIS YEAR
REAL MARKET (RMV)		
LAND	522,510	491,170
STRUCTURES	1,357,540	1,276,120
TOTAL RMV	1,880,050	1,767,290
TOTAL ASSESSED VALUE	1,244,440	1,281,770
EXEMPTIONS		
NET TAXABLE:	1,244,440	1,281,770
TOTAL PROPERTY TAX:	17,771.85	18,303.80

EDUCATION SERVICE DISTRICT	437.34
ROGUE COMMUNITY COLLEGE	657.29
PHOENIX / TALENT SCHOOL DIST 4	5,437.52
EDUCATION TOTAL:	6,532.15
JACKSON COUNTY	2,494.07
VECTOR CONTROL	53.32
ROGUE VALLEY TRANSIT DISTRICT	219.95
JACKSON COUNTY SOIL & WATER CONS	62.17
CITY OF MEDFORD	6,787.36
MEDFORD URBAN RENEWAL	636.91
GENERAL GOVT TOTAL:	10,253.78
JACKSON COUNTY BONDS	241.10
ROGUE COMMUNITY COLLEGE BONDS	141.38
CITY OF MEDFORD	103.44
PHOENIX / TALENT SCHOOL DIST 4 B	1,031.95
BONDS & OTHER TOTAL:	1,517.87

VALUE QUESTIONS (541) 774-6059
PAYMENT QUESTIONS (541) 774-6541

ALL TAX PAYMENTS ARE NOW PROCESSED LOCALLY - PLEASE DO NOT SEND TO PREVIOUS PORTLAND ADDRESS.

2012-13 TAX (Before Discount) 18,303.80

PAYMENT OPTIONS			
Date Due	3% Option	2% Option	Trimester Option
11/15/12	17,754.69	11,958.48	6,101.27
02/15/13			6,101.27
05/15/13		6,101.27	6,101.26
Total	17,754.69	18,059.75	18,303.80

TOTAL DUE (After Discount and Pre-payments) 17,754.69

↓ Tear Here

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

Tear Here ↓

2012-2013 PROPERTY TAXES — JACKSON COUNTY REAL — ACCOUNT NO. 10568511

PAYMENT OPTIONS	Discount	Date Due	Amount		Date Due	Amount		Date Due	Amount
Full Payment Enclosed	3%							11/15/12	17,754.69
or 2/3 Payment Enclosed	2%			&	05/15/13	6,101.27		11/15/12	11,958.48
or 1/3 Payment Enclosed	0%	05/15/13	6,101.26	&	02/15/13	6,101.27	&	11/15/12	6,101.27

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE ☐ Mailing address change on back

Enter Payment Amount
$

MAKE PAYMENT TO:

SOUTHERN OREGON PROPERTY HOLDIN
1159 MIRA MAR AVE
MEDFORD OR 97504-8578

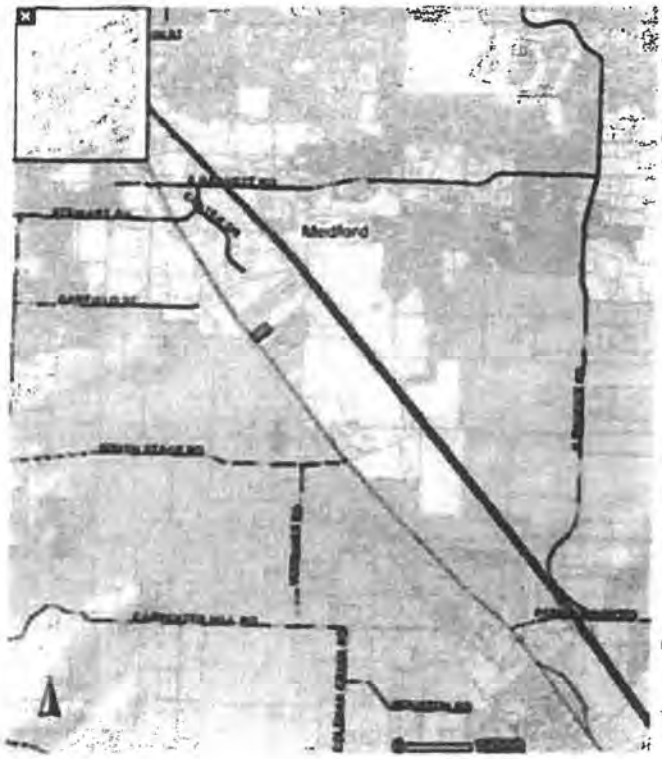
1582461 LLC JACKSON COUNTY TAXATION OFFICE
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

1583 - 013067 - 1830380

1510010568511000061012700011958480001775469 6

EXHIBIT 1

Property Data Online



Text Only Mode

ASSESSMENT & PLANNING DETAILS

Account Detail | Sales | Deed Card
Overlay Report | Permit Details | Tax Report

Zoom map to this taxlot
Bing Google Yahoo

Map & TaxLot	371W32C 4701
Tax Code	4-02
Acreage	2.42
Zoning	C-S
Land Class	UNK 2.42 Ac
Property Class	201
Stat Class	672
Unit ID	160409-1
Maintenance Area	4
Neighborhood	000
Study Area	00
Account Status	ACTIVE
Tax Status	
Sub Type	
Owner	SOUTHERN OREGON PROPERTY HOLDINGS LLC
Situs Address	2375 SOUTH PACIFIC HWY PHOENIX-TALENT/COUNTY
Mailing Address	SOUTHERN OREGON PROPERTY HOLDINGS LLC 1159 MIRA MAR AVE MEDFORD OR, 97504
Taxlot Acreage	2.42
Building # 1	0 23312 SqFt Bowling Alley

EXHIBIT 2

JOHN A. KITZHABER, MD
GOVERNOR

May 6, 2013

VIA HAND DELIVERY

Stan Speaks, Northwest Regional Director
Bureau of Indian Affairs – Division of Realty
911 NE 11th Avenue
Portland, Oregon 97232-4169

RE: Notice of Application of a 2.42-acre tract of land for Class II gaming purposes

Dear Director Speaks:

On behalf of Governor Kitzhaber, I am outlining legal and policy concerns about the proposed acquisition of land to be held in trust for the use and benefit of the Coquille Indian Tribe to operate a Class II gaming facility in Jackson County. This letter further explains the Governor's policy concerns about the expansion of gaming and raises additional concerns about the impact to state and local communities and legal questions surrounding this particular casino proposal.

I. Opening the door to more casinos throughout the State conflicts with longstanding state policy.

As stated in his letter, the Governor has significant concerns about the policy implications and potential for expansion of gaming that are presented by this application. The Governor has long supported each of the nine sovereign tribes' pursuit of a single Class III casino with wide latitude on the types of gaming allowed and the proposed size of the casinos. At the same time, he has consistently opposed other expansion of gaming.

Governor Kitzhaber's position paper on gambling adopted in 1997 gave the following policy direction for tribal-sponsored gambling that included the following: "Agree with each Oregon tribe on one gambling site per tribe. The current compacts are site-specific. In other words, the tribes are limited to offering gambling only at specified sites. The Governor favors explicit agreement on this point in subsequent compacts." *Gambling in Oregon. A Position Paper*. Governor John A. Kitzhaber, M.D., September 24, 1997 (a copy of which is attached). Consistent with that policy direction, each of the tribal-state compacts with Oregon's nine federally recognized tribes is site-specific to a particular location and specifically contains language limiting the circumstances under which a tribe may seek to negotiate regarding another Class III casino.

The Coquille's Compact contains the following language:

> Only Compact between the Tribe and the State. This Compact shall be the only Compact between the Tribe and State pursuant to IGRA and any and all Class III gaming conducted in the Gaming Facility shall be pursuant to this Compact. Section 4.A.
>
> Gaming Location. The Gaming Facility authorized by this Compact shall be located on the Tribe's trust land at North Bend, Oregon. Section 4.C.
>
> Gaming at Another Location or Facility. For a period of five (5) years, the Tribe hereby waives any right it may have under IGRA to negotiate a Compact for Class III gaming at any other location or facility, unless another Tribe that is operating a gaming facility in this State as of December 31, 1997, signs a Compact that authorizes that Tribe to operate more than one gaming facility simultaneously, or unless a physical calamity occurs that makes operation at the existing location unfeasible. Section 13.A.

The context of the remaining compacts – each limiting the right to a casino at an additional location unless another tribe is authorized to do so – along with the State's long time stated policy of "one casino per tribe" provide support for the notion that, as a State, we have consistently attempted to strike a balance between tribal pursuit of economic enterprise and a check on the expansion of casinos in our State. This is a policy that has been well known and well enforced; and the Governor has been vocal in opposing the expansion of casinos in Oregon.

It is important to note that the Governor understands the distinction between Class III and Class II gaming and that the State has no regulatory role in Class II gaming. The State also understands that the restrictions in the Compacts only apply to Class III gaming. The larger policy issue is that casinos – whether Class III or Class II and whether tribal or private – impact our state, and as Governor, he opposes a project that could pave the way to an unprecedented expansion of gambling in casinos throughout the state.

The Coquille's argument that its Reauthorization Act authorizes land to be taken into trust for gaming purposes anywhere within its service area opens up a large geographical area in which the Tribe could open a casino anywhere from Brookings to Newport, from Ashland to Eugene, or anywhere within Coos, Curry, Douglas, Jackson or Lane Counties. In addition, other tribes may follow pursuit of Class II gaming casinos, a trend that would be bad for Oregon.

II. Allowing this Class II casino opens the possibility for conversion to a Class III casino.

An equally problematic aspect of this application is the possibility it provides for conversion to a Class III casino. While the Tribe currently proposes to only engage in Class II gaming at the Jackson County location, once the land is taken into trust for Class II gaming, we understand that the Tribe's position is that the land is then eligible for Class III gaming without additional fee-to-trust processes.

Representatives of the Tribe also have stated that they believe the Tribe is entitled to a second Class III casino, a position with which the State does not agree. The Coquille Compact explicitly prohibits the Tribe from pursuing another casino within five years of the original compact. Although the five years have passed, there is nothing in the Compact that automatically *entitles* the Coquille to a compact for a different or additional site. If this land is taken into trust for gaming, the State will face future conflict with the Tribe regarding this issue if the Tribe later decides it wants to pursue a Class III casino at that site.

We understand that the State has a role in Class III gaming because of the need for an approved tribal-state compact. However, the State's, local communities' and other stakeholder's only meaningful opportunity to object to whether Class III gaming should even occur on this particular land is now.

III. The Secretary has discretion to deny the Coquille's application to take the land into trust for the purposes of gambling.

In addition to policy concerns about the expansion of gaming generally, the Governor also has concerns about this particular proposed casino project. In evaluating the Coquille's application, the Secretary has *discretion* whether to take land into trust in this case. 25 CFR 151.11 states the Secretary shall consider a number of requirements in evaluating tribal requests for the acquisition of lands in trust status when the land is located out of and noncontiguous to the tribe's reservation, and the acquisition is not mandated—as is the case here. Among others, those requirements include:

- The purposes for which the land will be used [25 CFR 151.11(a) and 25 CFR 151.10(c)];
- Input from state and local governments on the potential impacts on regulatory jurisdiction, real property taxes and special assessments [25 CFR 151.11(d)]; and
- The distance between the tribe's reservation and the land to be acquired, giving greater scrutiny to the tribe's justification and giving greater weight to concerns of state and local governments as the distance between the tribe's reservation and the land to be acquired increases [25 CFR 151.11(b)].

Consistent with the requirements in 25 CFR 151.11, the Secretary should consider the following factors in exercising discretion in evaluating the current application. First, the Tribe is not seeking to take the land into trust for the provision of governmental services, such as to provide a health care clinic or housing for members in the Jackson County area; the explicit and primary purpose of the land is to conduct gaming. While the casino could provide economic benefits to the Tribe, this is not a case of a tribe that has no casino; the Coquille already operates a Class III casino in North Bend. The purpose for which the land will be used and the value added (or detracted) should be considered when exercising discretion.

Second, the proposed casino raises regulatory, fiscal, social and public safety concerns including potential for increased crime and the corresponding need for increased public safety resources; traffic congestion and the corresponding need for additional transportation and traffic control;

and drug and alcohol abuse and gambling addiction and the corresponding need for additional social services. The proposed casino could lead not only to increased burden on social services but also environmental impacts such as pollution and increased demand on local infrastructures including water, sewer and power. Additional concerns may be identified through the NEPA process. Because the facility would be a Class II casino, the State would not have the opportunity to address such impacts to the community in a gaming compact. For instance, under a Class III compact, the State and local governments have an opportunity to negotiate memoranda of understanding and other agreements to help address concerns about law enforcement resources, traffic mitigation and other burdens on the community and local infrastructure. No such opportunity is afforded here.

Although the Coquille have offered to discuss such issues, other than in a very general fashion, the Tribe has not outlined how it intends to mitigate these types of burdens to the local area and that the State is not convinced that the level of engagement with local partners has been sufficient to adequately address these concerns. The Governor also considers the City of Medford's and Jackson County's concerns a significant factor and would encourage the Secretary to do the same, especially considering the significant distance between the Tribe's current tribal headquarters and the proposed casino site in Medford.

IV. It is questionable whether the land meets the "restored lands" exception of IGRA.

Finally, there is also a question about whether the land in question is even eligible for gaming. As a general matter, gambling is prohibited on land taken into trust after the Indian Gaming Regulatory Act (IGRA) was enacted (October 17, 1988) unless it meets some exception under IGRA.

In its application, the Coquille asserts that it qualifies under the "restored lands" exception of IGRA. Under the "restored lands" regulations, a tribe may demonstrate that its restoration legislation either: 1. "requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area" (25 CFR 292.11); or 2. show that the tribe can demonstrate "modern connections to the land," "significant historical connection to the land," and a "temporal connection between the date of the acquisition of the land the date of the tribe's restoration" (25 CFR 292.12). The Coquille has not demonstrated that it meets the requirements to be considered as "restored lands."

A. It is questionable that the Coquille Restoration Act automatically qualifies the land as "restored lands" under 25 CFR 292.11.

The Coquille asserts that it meets the exception in 25 CFR 292.11 by contending that the Coquille Restoration Act "authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area" and therefore meets the definition of "restored lands" under 25 CFR 292.11. While the Coquille Restoration Act required the Secretary to take 1000 acres of land into trust is Coos and Curry Counties at the time of restoration, the question is whether the Act's authorization that the Secretary "may" take additional land into trust in the future within a five-county service area automatically qualifies additional land taken into trust as "restored lands."

The Coquille Restoration Act, enacted in 1989, provides:

> "The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary; Provided, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C.A. S 461 et seq.]." 25 USC Sec. 715c(a).

The Act provides that the Tribe's "service area" "means the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon[.]" 25 USC Sec. 715 (5). The Coquille appear to be concluding that since Jackson County is located within the Tribe's "service area," that the land taken into trust automatically qualifies as "restored lands."

This is not a foregone conclusion, however. The Coquille Restoration Act does two specific things with respect to land acquisition. First, it states that the Secretary is required to take into trust for the benefit of the Tribe up to 1000 acres of land in Coos and Curry Counties. Second, it states that the Secretary "may"—but is not required to—acquire additional land in the Tribe's service area. The Act dictates that any additional land beyond the 1000 acres taken into trust at the time of restoration may be taken into trust not under the terms of the Coquille Restoration Act itself, but pursuant to "the Act of June 18, 1934" which is the Indian Reorganization Act (IRA). The Act further states that the Indian Reorganization Act, "[t]he Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C.A. S 461 et seq.], shall be applicable to the Tribe and its Members." 25 USC Sec. 715a.(e). These provisions provide that land is not being taken into trust pursuant to the restoration act itself but through the IRA, reasonably implying that the IRA governs (and limits) the process through which land is taken into trust.

Unlike the land that was mandated to be taken into trust in the Coquille Restoration Act itself, it is questionable whether land taken into trust pursuant to the discretionary authority under the IRA automatically qualifies the land as "restored lands" that would be eligible for gaming under IGRA pursuant to 25 CFR 292.11.

Even if 25 CFR 292.11 was interpreted to apply here, it is not clear that meeting that regulatory standard – standing alone – would be consistent with the intent of IGRA. IGRA's "restored lands" provision, and the caselaw interpreting it, may require a greater showing, such as that required by 25 CFR 292.12, especially where the Restoration Act refers to lands encompassing as broad an area as does the Coquille's Act.

B. The Coquille has submitted no information to demonstrate that the land qualifies under 25 CFR 292.12.

Absent restoration legislation that requires or authorizes the Secretary to take land into trust as restored lands, under the regulations a tribe can meet the "restored lands" exception if it demonstrates "modern connections to the land," "significant historical connection to the land,"

and a "temporal connection between the date of the acquisition of the land the date of the tribe's restoration" as required under 25 CFR 292.12. Caselaw interpreting IGRA suggests that such showings may be required regardless of restoration legislation. In any event, the Tribe has submitted no information that suggests it would meet the requirements under 25 CFR 292.12.

V. Conclusion

For the reasons articulated in this letter, the Governor adamantly opposes any casinos – Class II or Class III – cropping up all throughout our state and encourages the Secretary to consider this risk in evaluating the Coquille's application. The Governor urges the Secretary to use her discretion to deny the Coquille's application to take the land into trust for the purposes of conducting gaming.

Thank you for the opportunity for the Governor to comment on this application. I am also including a copy of a letter from the Oregon Department of Transportation (ODOT) dated February 25, 2013, noting transportation and traffic mitigation concerns. ODOT's February 25, 2013 letter, the Governor's May 6, 2013 letter and this letter should all be considered as the State's response to BIA's request for comments on the Coquille's application.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Liani J. Reeves
General Counsel

cc: Sherry Johns (sherry.johns@bia.gov)

LJR/jja

KITZHABER
ERNOR

GAMBLING IN OREGON

A Position Paper

Governor John A. Kitzhaber, M.D.
September 24, 1997

TATE CAPITOL, SALEM 97310-0370 (503) 378-3111 FAX (503) 378-4863 TDD (503) 378-4859

Gambling in Oregon

Legalized gambling in the state of Oregon has a long history, beginning with legalization of *pari-mutuel* (race track) gambling in 1931. Over the next 45 years, it came to include social gambling, whereby citizens could play "friendly" games in public by local option, and statutes allowing charities to raise funds for good causes through an occasional casino night. Until recently, Oregonians have had no reason to regard such scaled-down, controlled gambling as anything more than an infrequent and harmless diversion.

In 1984, when voters authorized a state-run Lottery, gambling in Oregon acquired a new dimension. And now a further complication has arisen, in the form of a large and growing tribal-sponsored gambling industry. Taken together, the expansion of state-run and tribal-sponsored gambling raises a number of serious concerns about Oregon's social and economic future, and about how the good of the public is protected and preserved within this context.

Governor Kitzhaber's Response

In 1995, motivated by concern about the long-term social and economic implications of the expansion of state-run and tribal-sponsored gambling opportunities, Governor Kitzhaber appointed a task force charged with examining the history, nature, and effects of gambling in Oregon. Among the preliminary findings of this task force, chaired by then Oregon Attorney General Ted Kulongoski, was concern about addictive behavior which, in turn, was having a visible but unquantified social impact in communities throughout the state. But the data necessary to make an accurate determination about the true effect of this rapid expansion was not available. As a result, the Task Force made the following recommendations:

1. Oregon should avoid expansion of Lottery gambling until the long-term social impact of gambling can be more accurately measured.
2. The state should establish a research council charged with producing the necessary data for Oregon decision makers.[1]
3. Oregon law should be revised to reflect the changes in gambling which have occurred in the last 25 years and to attack illegal gambling.

[1] This recommendation resulted in the Volberg Study, jointly funded by the State Lottery, the Grande Ronde tribe and the treatment community. Its report on the demographics of gambling, addiction levels, and relative social costs of increased gambling was released in August 1997.

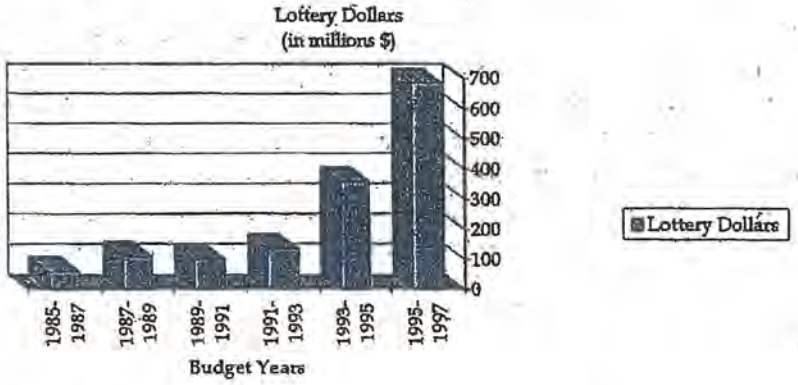
These are sound recommendations which require serious attention before the state commits to actions which continue to contribute to social and economic instability. Citizens, the Lottery Commission, the Legislature, and the Governor must all have an opportunity to provide meaningful solutions to the very real problems that we associate with gambling.

The following policy discussion outlines the history of state-run and tribal-sponsored gambling in Oregon and, for each, the Governor identifies his adopted policy framework for managing these issues. The Governor's actions to manage gambling will be pursued consistent with these policies

The State-Run Lottery

Thirteen years ago, when the Lottery was born, Oregon was struggling to combat the recession of the early 1980s. The original idea behind the Lottery was to develop an additional revenue source in lieu of taxes with the limited (though conveniently vague) purpose of providing funds "to create jobs and further economic development." Since then, both Lottery offerings and Lottery proceeds have steadily grown. And the state's dependence on Lottery revenues has grown as well.

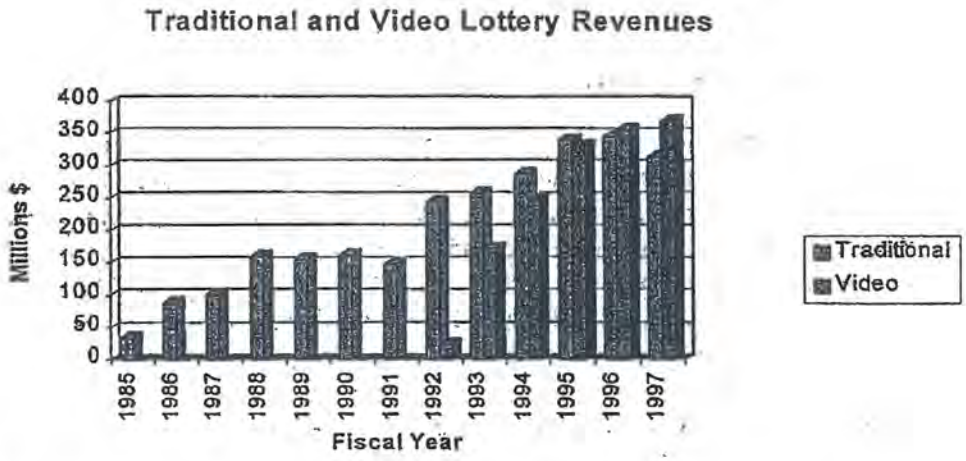
Lottery offerings, which began with scratch tickets in 1985, have expanded to include weekly and daily drawings, keno, sports betting, and national lotteries offering millions of dollars in prizes each week. As a result, Lottery revenues have grown from $60 million in its first year to nearly $700 million in the biennium ending June 30, 1997.



Source: Governor's Task Force on Gaming, 1996

Legislative introduction of video poker in 1991 created the potential for much larger revenues than was originally envisioned. In fact, proceeds from video poker have literally doubled total Lottery revenues for the past four fiscal years.

The increase in lottery dollars flowing to the State General Fund was made possible, in part, by the partnership between the State Lottery and many private retail establishments. These new General Fund dollars have brought benefits to the people of Oregon from educating our children to providing much needed rural infrastructure.



Source: Oregon State Lottery, June 6,1997

Nonetheless, as the dollars grew, state government and some private businesses began to rely more and more heavily on this revenue source. For example, the placement of video poker machines in OLCC-licensed establishments led to a greater dependence in the restaurant and bar business on the revenues that these machines could produce. Recently, we have even seen a new kind of business spring up: retail stores which receive a majority of their revenues from Lottery machines. At the state level, the unanticipated windfall of Lottery dollars was soon being allocated not just to job creation and economic development, but to natural resources, transportation, public safety, and even to local government. In 1995, voters approved a constitutional amendment adding the "financing of public education" to the list of allowable uses for Lottery proceeds.

Today, Oregon depends on gambling resources for nearly 10 percent of its budget, and state legislators have even begun making proposals based on Lottery dollars that have not yet materialized.

Given these facts, the time has come to re-examine the Oregon Lottery, to clarify the policy it reflects, and to determine whether it remains consistent with its original mandate: to maximize revenues commensurate with the public good.

Policy Directions: State-Run Lottery

The mandate for the Oregon Lottery Commission under the law is clear: to produce "the maximum amount of net revenues to benefit the public purpose described [in the Constitution], *commensurate with the public good.*" The Commission has done an exceptional job of "maximizing revenue" but, unfortunately, there has been no policy framework to ensure that their actions have been "commensurate with the public good."

This is not meant to fault the Commission. It is the responsibility of state policy-makers, not the Commission, to provide the context for balancing "revenue" with the "public good." This white paper reflects Governor Kitzhaber's position on how this balance should be struck.

There are three categories of gambling "addiction" or dependency in Oregon: (1) gambling addiction among individuals; (2) dependence on Lottery proceeds by certain retailer establishments, and (3) dependence on Lottery proceeds by the State of Oregon itself. Governor Kitzhaber believes that **it is not commensurate with the public good to increase addiction or dependency in any of these three categories.** Rather, we should take steps to reduce current levels of addiction and dependency.

Therefore, the following policy recommendations are set forth:

1. Reduce gambling addiction among Oregonians by increasing funding for identification, outreach, and treatment, and other measures
2. Reduce the dependence of certain retail establishments on Lottery proceeds by developing a narrower definition of "dominant use."
3. Reduce the dependence of the State of Oregon on Lottery proceeds by: (a) requiring a statutory ending balance for Lottery revenues, and (b) begin moving Lottery revenues out of operating budgets and dedicating them to "one-time" projects such as capital construction, basic infrastructure, equipment acquisition, etc.
4. Halt the expansion of the Oregon Lottery by prohibiting video line games and imposing a freeze on the number of Lottery machines until recommendations 1-3 (above) have been addressed.

Tribal-Sponsored gambling

The relation of tribal-sponsored gambling to legalized gambling policy in Oregon is more complex. To begin with, it has been well established under federal law that Indian tribes are "sovereign nations," entitled to their own form

of self-governance which is largely separate from and independent of state authority. Although Congress has extended criminal law jurisdiction of the states onto Indian lands, the tribes retain a high degree of independence in other areas, among which is the matter of gambling on tribal territory.

The role of the states in regard to gambling on tribal lands within their boundaries was clarified by a 1987 Supreme Court ruling and by the Indian Gaming Regulatory Act of 1988 (IGRA). The former held that tribes could offer any type of gambling not expressly prohibited by state law. The latter allowed Indian tribes to conduct casino-style house-banked games[2] on tribal land as approved by the Department of Interior, provided that the tribes and the state first negotiate a compact specifying how – not whether – such games will be conducted.

Beginning in 1992, the Roberts Administration entered into a series of compacts with eight of the nine federally-recognized tribes. The compacts allowed Video Lottery Terminals (VLTs) – the Lottery had been authorized to field VLTs since 1989 – but limited them to 15 percent of total floor space. Other so-called Class III, or house-banked games, were not authorized in the first compacts.[3]

A look at these compacts indicates that at the time they were executed neither the state nor the tribes had a very clear conception of how the industry would grow or the impact it might have on the state as a whole. Moreover, the compacts give little attention to developing security standards across the industry and allow the Oregon State Police only a minimal security role.

Since taking office in 1995, Governor Kitzhaber has negotiated only one original compact with a tribe. However, negotiations with the tribes early in the Kitzhaber Administration resulted in a series of blackjack amendments[4] to the earlier compacts that accomplished the following:

1. Clarification of the legitimate security role of the Oregon State Police in connection with tribal-sponsored gambling.
2. Payment by the tribes of all OSP Gaming Unit costs associated with tribal-sponsored gambling operations.

[2] The house-banked format is the one familiar to visitors to Las Vegas and Reno. It includes craps, roulette, blackjack and other table games where the players game against the house.

[3] In general, the distinction between Class III games and other types of Indian gambling is the house-banked feature. Tribes may offer Class II games (bingo, pull-tabs, etc.) without a compact.

[4] Under the original compacts, both the state and the tribes believed that blackjack could be offered in a Class II (i.e., non-house-banked) format. It was later determined that blackjack could only be offered in a Class III format.

In 1993, the first Indian casino in Oregon opened its doors. When Governor Kitzhaber took office in January 1995, there were two Indian casinos operating in Oregon. By September of that year there were six. In May 1997, a seventh casino commenced operations and an eighth tribe has begun to seek financing for a gambling venture, although operations are not expected to begin for at least two years.

Policy Directions: Tribal-Sponsored Gambling

Governor Kitzhaber supports the principle of tribal economic self-sufficiency and respects the sovereignty of the tribal governments. At the same time, he recognizes that the state has a vital interest in remaining actively involved in a growing casino industry within its boundaries.

The Governor has established the following guidelines to shape policy development in the field of tribal-sponsored gambling.

1. Agree with each Oregon tribe on one gambling site per tribe. The current compacts are site-specific. In other words, the tribes are limited to offering gambling only at specified sites. The Governor favors explicit agreement on this point in subsequent compacts.

2. Ensure the security of tribal-run games so that they are conducted safely and honestly.

3. Promote charitable grants from Indian casinos in order to build stronger ties between tribes and surrounding communities. Consider using some of these grants to combat gambling addiction.

Gambling Conclusion

This white paper points out that we face a challenge in how we will choose to approach the growth of tribal-sponsored gambling and state-sponsored gambling in Oregon.

Governor Kitzhaber believes that while this challenge has been evident over the past several years, the public debate about gambling has not concerned itself with answering the essential question of what defines "the public good." Governor Kitzhaber proposes in this paper a definition of the public good based on decreasing personal, commercial, and governmental addiction and dependence on gambling. He is hopeful that his policies will help foster a wider debate about what is meant by the directive to operate gambling "commensurate with the public good."

Oregon
John A. Kitzhaber, M.D., Governor

Department of Transportation
Region 3 Planning
3500 NW Stewart Parkway
Roseburg, OR, 97470-1687
Phone: 541.957.3692 / Fax: 541.672.6148
Thomas.Guevara@odot.state.or.us

February 25, 2013

National Regional Director
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, OR 97232-4169

Re: Coquille Indian Tribe's Class II Gaming Trust Acquisition

Thank you for sending agency notice of a proposed application to include a 2.42 acre +/- tract in trust for the use and benefit of the Coquille Indian Tribe for Class II gaming purposes. The Secretary of Interior requested information of any services which are currently provided to the property by governmental agencies. The Oregon Department of Transportation (ODOT) currently operates and maintains state transportation facilities that provide transportation services and access to the site.

In general, we need to assure that OR 99 can continue to provide safe and efficient transportation services to the site for Class II gaming purposes, and identify traffic mitigation that will be needed at the time of development. We recommend that a traffic impact analysis be prepared to assess development impacts at all access points to OR 99, and at OR 99 intersections with Garfield Street and Charlotte Ann Road as well as Garfield Street with Center Drive. Depending on the vehicular trip generation for this facility, components of the I-5 South Medford interchange may be required in the analysis. A TIA will provide the necessary traffic information for ODOT and the Secretary of Interior to assess the impact of the removal of this property from the tax rolls.

Please send me a copy of the Bureau of Indian Affair's decision to approve or deny the application. You may contact me if you have questions or require additional information.

Sincerely,

Thomas Guevara Jr.

THOMAS GUEVARA JR.
Development Review Planner

CC: RVDRT
Gary Fish, DLCD
Alex Georgevitch, City of Medford

JOHN A. KITZHABER, MD
GOVERNOR

May 6, 2013

VIA HAND DELIVERY

Stan Speaks, Northwest Regional Director
Bureau of Indian Affairs – Division of Realty
911 NE 11th Avenue
Portland, Oregon 97232-4169

RE: Notice of Application of a 2.42-acre tract of land for Class II gaming purposes

Dear Director Speaks:

On behalf of Governor Kitzhaber, I am outlining legal and policy concerns about the proposed acquisition of land to be held in trust for the use and benefit of the Coquille Indian Tribe to operate a Class II gaming facility in Jackson County. This letter further explains the Governor's policy concerns about the expansion of gaming and raises additional concerns about the impact to state and local communities and legal questions surrounding this particular casino proposal.

I. Opening the door to more casinos throughout the State conflicts with longstanding state policy.

As stated in his letter, the Governor has significant concerns about the policy implications and potential for expansion of gaming that are presented by this application. The Governor has long supported each of the nine sovereign tribes' pursuit of a single Class III casino with wide latitude on the types of gaming allowed and the proposed size of the casinos. At the same time, he has consistently opposed other expansion of gaming.

Governor Kitzhaber's position paper on gambling adopted in 1997 gave the following policy direction for tribal-sponsored gambling that included the following: "Agree with each Oregon tribe on one gambling site per tribe. The current compacts are site-specific. In other words, the tribes are limited to offering gambling only at specified sites. The Governor favors explicit agreement on this point in subsequent compacts." *Gambling in Oregon. A Position Paper.* Governor John A. Kitzhaber, M.D., September 24, 1997 (a copy of which is attached). Consistent with that policy direction, each of the tribal-state compacts with Oregon's nine federally recognized tribes is site-specific to a particular location and specifically contains language limiting the circumstances under which a tribe may seek to negotiate regarding another Class III casino.

The Coquille's Compact contains the following language:

> Only Compact between the Tribe and the State. This Compact shall be the only Compact between the Tribe and State pursuant to IGRA and any and all Class III gaming conducted in the Gaming Facility shall be pursuant to this Compact. Section 4.A.
>
> Gaming Location. The Gaming Facility authorized by this Compact shall be located on the Tribe's trust land at North Bend, Oregon. Section 4.C.
>
> Gaming at Another Location or Facility. For a period of five (5) years, the Tribe hereby waives any right it may have under IGRA to negotiate a Compact for Class III gaming at any other location or facility, unless another Tribe that is operating a gaming facility in this State as of December 31, 1997, signs a Compact that authorizes that Tribe to operate more than one gaming facility simultaneously, or unless a physical calamity occurs that makes operation at the existing location unfeasible. Section 13.A.

The context of the remaining compacts – each limiting the right to a casino at an additional location unless another tribe is authorized to do so – along with the State's long time stated policy of "one casino per tribe" provide support for the notion that, as a State, we have consistently attempted to strike a balance between tribal pursuit of economic enterprise and a check on the expansion of casinos in our State. This is a policy that has been well known and well enforced; and the Governor has been vocal in opposing the expansion of casinos in Oregon.

It is important to note that the Governor understands the distinction between Class III and Class II gaming and that the State has no regulatory role in Class II gaming. The State also understands that the restrictions in the Compacts only apply to Class III gaming. The larger policy issue is that casinos – whether Class III or Class II and whether tribal or private – impact our state, and as Governor, he opposes a project that could pave the way to an unprecedented expansion of gambling in casinos throughout the state.

The Coquille's argument that its Reauthorization Act authorizes land to be taken into trust for gaming purposes anywhere within its service area opens up a large geographical area in which the Tribe could open a casino anywhere from Brookings to Newport, from Ashland to Eugene, or anywhere within Coos, Curry, Douglas, Jackson or Lane Counties. In addition, other tribes may follow pursuit of Class II gaming casinos, a trend that would be bad for Oregon.

II. Allowing this Class II casino opens the possibility for conversion to a Class III casino.

An equally problematic aspect of this application is the possibility it provides for conversion to a Class III casino. While the Tribe currently proposes to only engage in Class II gaming at the Jackson County location, once the land is taken into trust for Class II gaming, we understand that the Tribe's position is that the land is then eligible for Class III gaming without additional fee-to-trust processes.

Representatives of the Tribe also have stated that they believe the Tribe is entitled to a second Class III casino, a position with which the State does not agree. The Coquille Compact explicitly prohibits the Tribe from pursuing another casino within five years of the original compact. Although the five years have passed, there is nothing in the Compact that automatically *entitles* the Coquille to a compact for a different or additional site. If this land is taken into trust for gaming, the State will face future conflict with the Tribe regarding this issue if the Tribe later decides it wants to pursue a Class III casino at that site.

We understand that the State has a role in Class III gaming because of the need for an approved tribal-state compact. However, the State's, local communities' and other stakeholder's only meaningful opportunity to object to whether Class III gaming should even occur on this particular land is now.

III. The Secretary has discretion to deny the Coquille's application to take the land into trust for the purposes of gambling.

In addition to policy concerns about the expansion of gaming generally, the Governor also has concerns about this particular proposed casino project. In evaluating the Coquille's application, the Secretary has *discretion* whether to take land into trust in this case. 25 CFR 151.11 states the Secretary shall consider a number of requirements in evaluating tribal requests for the acquisition of lands in trust status when the land is located out of and noncontiguous to the tribe's reservation, and the acquisition is not mandated—as is the case here. Among others, those requirements include:

- The purposes for which the land will be used [25 CFR 151.11(a) and 25 CFR 151.10(c)];
- Input from state and local governments on the potential impacts on regulatory jurisdiction, real property taxes and special assessments [25 CFR 151.11(d)]; and
- The distance between the tribe's reservation and the land to be acquired, giving greater scrutiny to the tribe's justification and giving greater weight to concerns of state and local governments as the distance between the tribe's reservation and the land to be acquired increases [25 CFR 151.11(b)].

Consistent with the requirements in 25 CFR 151.11, the Secretary should consider the following factors in exercising discretion in evaluating the current application. First, the Tribe is not seeking to take the land into trust for the provision of governmental services, such as to provide a health care clinic or housing for members in the Jackson County area; the explicit and primary purpose of the land is to conduct gaming. While the casino could provide economic benefits to the Tribe, this is not a case of a tribe that has no casino; the Coquille already operates a Class III casino in North Bend. The purpose for which the land will be used and the value added (or detracted) should be considered when exercising discretion.

Second, the proposed casino raises regulatory, fiscal, social and public safety concerns including potential for increased crime and the corresponding need for increased public safety resources; traffic congestion and the corresponding need for additional transportation and traffic control;

and drug and alcohol abuse and gambling addiction and the corresponding need for additional social services. The proposed casino could lead not only to increased burden on social services but also environmental impacts such as pollution and increased demand on local infrastructures including water, sewer and power. Additional concerns may be identified through the NEPA process. Because the facility would be a Class II casino, the State would not have the opportunity to address such impacts to the community in a gaming compact. For instance, under a Class III compact, the State and local governments have an opportunity to negotiate memoranda of understanding and other agreements to help address concerns about law enforcement resources, traffic mitigation and other burdens on the community and local infrastructure. No such opportunity is afforded here.

Although the Coquille have offered to discuss such issues, other than in a very general fashion, the Tribe has not outlined how it intends to mitigate these types of burdens to the local area and that the State is not convinced that the level of engagement with local partners has been sufficient to adequately address these concerns. The Governor also considers the City of Medford's and Jackson County's concerns a significant factor and would encourage the Secretary to do the same, especially considering the significant distance between the Tribe's current tribal headquarters and the proposed casino site in Medford.

IV. It is questionable whether the land meets the "restored lands" exception of IGRA.

Finally, there is also a question about whether the land in question is even eligible for gaming. As a general matter, gambling is prohibited on land taken into trust after the Indian Gaming Regulatory Act (IGRA) was enacted (October 17, 1988) unless it meets some exception under IGRA.

In its application, the Coquille asserts that it qualifies under the "restored lands" exception of IGRA. Under the "restored lands" regulations, a tribe may demonstrate that its restoration legislation either: 1. "requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area" (25 CFR 292.11); or 2. show that the tribe can demonstrate "modern connections to the land," "significant historical connection to the land," and a "temporal connection between the date of the acquisition of the land the date of the tribe's restoration" (25 CFR 292.12). The Coquille has not demonstrated that it meets the requirements to be considered as "restored lands."

A. It is questionable that the Coquille Restoration Act automatically qualifies the land as "restored lands" under 25 CFR 292.11.

The Coquille asserts that it meets the exception in 25 CFR 292.11 by contending that the Coquille Restoration Act "authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area" and therefore meets the definition of "restored lands" under 25 CFR 292.11. While the Coquille Restoration Act required the Secretary to take 1000 acres of land into trust is Coos and Curry Counties at the time of restoration, the question is whether the Act's authorization that the Secretary "may" take additional land into trust in the future within a five-county service area automatically qualifies additional land taken into trust as "restored lands."

The Coquille Restoration Act, enacted in 1989, provides:

> "The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary; Provided, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C.A. S 461 et seq.]." 25 USC Sec. 715c(a).

The Act provides that the Tribe's "service area" "means the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon[.]" 25 USC Sec. 715 (5). The Coquille appear to be concluding that since Jackson County is located within the Tribe's "service area," that the land taken into trust automatically qualifies as "restored lands."

This is not a foregone conclusion, however. The Coquille Restoration Act does two specific things with respect to land acquisition. First, it states that the Secretary is required to take into trust for the benefit of the Tribe up to 1000 acres of land in Coos and Curry Counties. Second, it states that the Secretary "may"—but is not required to—acquire additional land in the Tribe's service area. The Act dictates that any additional land beyond the 1000 acres taken into trust at the time of restoration may be taken into trust not under the terms of the Coquille Restoration Act itself, but pursuant to "the Act of June 18, 1934" which is the Indian Reorganization Act (IRA). The Act further states that the Indian Reorganization Act, "[t]he Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C.A. S 461 et seq.], shall be applicable to the Tribe and its Members." 25 USC Sec. 715a.(e). These provisions provide that land is not being taken into trust pursuant to the restoration act itself but through the IRA, reasonably implying that the IRA governs (and limits) the process through which land is taken into trust.

Unlike the land that was mandated to be taken into trust in the Coquille Restoration Act itself, it is questionable whether land taken into trust pursuant to the discretionary authority under the IRA automatically qualifies the land as "restored lands" that would be eligible for gaming under IGRA pursuant to 25 CFR 292.11.

Even if 25 CFR 292.11 was interpreted to apply here, it is not clear that meeting that regulatory standard – standing alone – would be consistent with the intent of IGRA. IGRA's "restored lands" provision, and the caselaw interpreting it, may require a greater showing, such as that required by 25 CFR 292.12, especially where the Restoration Act refers to lands encompassing as broad an area as does the Coquille's Act.

B. The Coquille has submitted no information to demonstrate that the land qualifies under 25 CFR 292.12.

Absent restoration legislation that requires or authorizes the Secretary to take land into trust as restored lands, under the regulations a tribe can meet the "restored lands" exception if it demonstrates "modern connections to the land," "significant historical connection to the land,"

and a "temporal connection between the date of the acquisition of the land the date of the tribe's restoration" as required under 25 CFR 292.12. Caselaw interpreting IGRA suggests that such showings may be required regardless of restoration legislation. In any event, the Tribe has submitted no information that suggests it would meet the requirements under 25 CFR 292.12.

V. Conclusion

For the reasons articulated in this letter, the Governor adamantly opposes any casinos – Class II or Class III – cropping up all throughout our state and encourages the Secretary to consider this risk in evaluating the Coquille's application. The Governor urges the Secretary to use her discretion to deny the Coquille's application to take the land into trust for the purposes of conducting gaming.

Thank you for the opportunity for the Governor to comment on this application. I am also including a copy of a letter from the Oregon Department of Transportation (ODOT) dated February 25, 2013, noting transportation and traffic mitigation concerns. ODOT's February 25, 2013 letter, the Governor's May 6, 2013 letter and this letter should all be considered as the State's response to BIA's request for comments on the Coquille's application.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Liani J. Reeves
General Counsel

cc: Sherry Johns (sherry.johns@bia.gov)

LJR/jja

KITZHABER
ERNOR

GAMBLING IN OREGON

A Position Paper

Governor John A. Kitzhaber, M.D.
September 24, 1997

TATE CAPITOL, SALEM 97310-0370 (503) 378-3111 FAX (503) 378-4863 TDD (503) 378-4859

Gambling in Oregon

Legalized gambling in the state of Oregon has a long history, beginning with legalization of *pari-mutuel* (race track) gambling in 1931. Over the next 45 years, it came to include social gambling, whereby citizens could play "friendly" games in public by local option, and statutes allowing charities to raise funds for good causes through an occasional casino night. Until recently, Oregonians have had no reason to regard such scaled-down, controlled gambling as anything more than an infrequent and harmless diversion.

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1. Oregon should avoid expansion of Lottery gambling until the long-term social impact of gambling can be more accurately measured.
2. The state should establish a research council charged with producing the necessary data for Oregon decision makers.[1]
3. Oregon law should be revised to reflect the changes in gambling which have occurred in the last 25 years and to attack illegal gambling.

[1] This recommendation resulted in the Volberg Study, jointly funded by the State Lottery, the Grande Ronde tribe and the treatment community. Its report on the demographics of gambling, addiction levels, and relative social costs of increased gambling was released in August 1997.

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The State-Run Lottery

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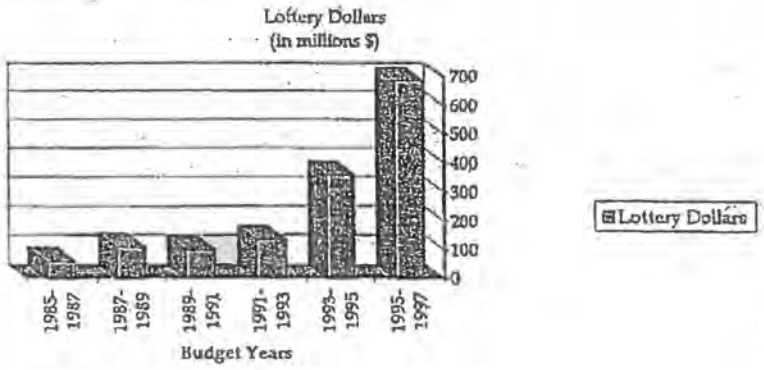

Source: Governor's Task Force on Gaming, 1996

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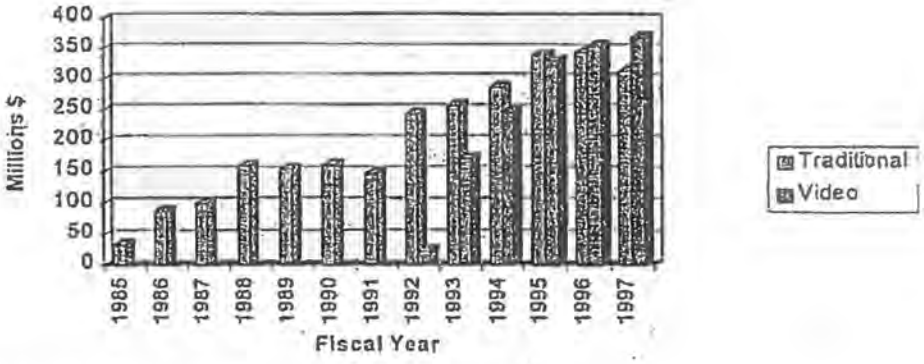
The increase in lottery dollars flowing to the State General Fund was made possible, in part, by the partnership between the State Lottery and many private retail establishments. These new General Fund dollars have brought benefits to the people of Oregon from educating our children to providing much needed rural infrastructure.

Traditional and Video Lottery Revenues



Source: Oregon State Lottery, June 6,1997

Nonetheless, as the dollars grew, state government and some private businesses began to rely more and more heavily on this revenue source. For example, the placement of video poker machines in OLCC-licensed establishments led to a greater dependence in the restaurant and bar business on the revenues that these machines could produce. Recently, we have even seen a new kind of business spring up: retail stores which receive a majority of their revenues from Lottery machines. At the state level, the unanticipated windfall of Lottery dollars was soon being allocated not just to job creation and economic development, but to natural resources, transportation, public safety, and even to local government. In 1995, voters approved a constitutional amendment adding the "financing of public education" to the list of allowable uses for Lottery proceeds.

Today, Oregon depends on gambling resources for nearly 10 percent of its budget, and state legislators have even begun making proposals based on Lottery dollars that have not yet materialized.

Given these facts, the time has come to re-examine the Oregon Lottery, to clarify the policy it reflects, and to determine whether it remains consistent with its original mandate: to maximize revenues commensurate with the public good.

Policy Directions: State-Run Lottery

The mandate for the Oregon Lottery Commission under the law is clear: to produce "the maximum amount of net revenues to benefit the public purpose described [in the Constitution], *commensurate with the public good.*" The Commission has done an exceptional job of "maximizing revenue" but, unfortunately, there has been no policy framework to ensure that their actions have been "commensurate with the public good."

This is not meant to fault the Commission. It is the responsibility of state policy-makers, not the Commission, to provide the context for balancing "revenue" with the "public good." This white paper reflects Governor Kitzhaber's position on how this balance should be struck.

There are three categories of gambling "addiction" or dependency in Oregon: (1) gambling addiction among individuals; (2) dependence on Lottery proceeds by certain retailer establishments, and (3) dependence on Lottery proceeds by the State of Oregon itself. Governor Kitzhaber believes that it is not commensurate with the public good to increase addiction or dependency in any of these three categories. Rather, we should take steps to reduce current levels of addiction and dependency.

Therefore, the following policy recommendations are set forth:

1. Reduce gambling addiction among Oregonians by increasing funding for identification, outreach, and treatment, and other measures
2. Reduce the dependence of certain retail establishments on Lottery proceeds by developing a narrower definition of "dominant use."
3. Reduce the dependence of the State of Oregon on Lottery proceeds by: (a) requiring a statutory ending balance for Lottery revenues, and (b) begin moving Lottery revenues out of operating budgets and dedicating them to "one-time" projects such as capital construction, basic infrastructure, equipment acquisition, etc.
4. Halt the expansion of the Oregon Lottery by prohibiting video line games and imposing a freeze on the number of Lottery machines until recommendations 1-3 (above) have been addressed.

Tribal-Sponsored gambling

The relation of tribal-sponsored gambling to legalized gambling policy in Oregon is more complex. To begin with, it has been well established under federal law that Indian tribes are "sovereign nations," entitled to their own form

of self-governance which is largely separate from and independent of state authority. Although Congress has extended criminal law jurisdiction of the states onto Indian lands, the tribes retain a high degree of independence in other areas, among which is the matter of gambling on tribal territory.

The role of the states in regard to gambling on tribal lands within their boundaries was clarified by a 1987 Supreme Court ruling and by the Indian Gaming Regulatory Act of 1988 (IGRA). The former held that tribes could offer any type of gambling not expressly prohibited by state law. The latter allowed Indian tribes to conduct casino-style house-banked games[2] on tribal land as approved by the Department of Interior, provided that the tribes and the state first negotiate a compact specifying how – not whether – such games will be conducted.

Beginning in 1992, the Roberts Administration entered into a series of compacts with eight of the nine federally-recognized tribes. The compacts allowed Video Lottery Terminals (VLTs) – the Lottery had been authorized to field VLTs since 1989 – but limited them to 15 percent of total floor space. Other so-called Class III, or house-banked games, were not authorized in the first compacts.[3]

A look at these compacts indicates that at the time they were executed neither the state nor the tribes had a very clear conception of how the industry would grow or the impact it might have on the state as a whole. Moreover, the compacts give little attention to developing security standards across the industry and allow the Oregon State Police only a minimal security role.

Since taking office in 1995, Governor Kitzhaber has negotiated only one original compact with a tribe. However, negotiations with the tribes early in the Kitzhaber Administration resulted in a series of blackjack amendments[4] to the earlier compacts that accomplished the following:

1. Clarification of the legitimate security role of the Oregon State Police in connection with tribal-sponsored gambling.
2. Payment by the tribes of all OSP Gaming Unit costs associated with tribal-sponsored gambling operations.

[2] The house-banked format is the one familiar to visitors to Las Vegas and Reno. It includes craps, roulette, blackjack and other table games where the players game against the house.
[3] In general, the distinction between Class III games and other types of Indian gambling is the house-banked feature. Tribes may offer Class II games (bingo, pull-tabs, etc.) without a compact.
[4] Under the original compacts, both the state and the tribes believed that blackjack could be offered in a Class II (i.e., non-house-banked) format. It was later determined that blackjack could only be offered in a Class III format.

In 1993, the first Indian casino in Oregon opened its doors. When Governor Kitzhaber took office in January 1995, there were two Indian casinos operating in Oregon. By September of that year there were six. In May 1997, a seventh casino commenced operations and an eighth tribe has begun to seek financing for a gambling venture, although operations are not expected to begin for at least two years.

Policy Directions: Tribal-Sponsored Gambling

Governor Kitzhaber supports the principle of tribal economic self-sufficiency and respects the sovereignty of the tribal governments. At the same time, he recognizes that the state has a vital interest in remaining actively involved in a growing casino industry within its boundaries.

The Governor has established the following guidelines to shape policy development in the field of tribal-sponsored gambling.

1. Agree with each Oregon tribe on one gambling site per tribe. The current compacts are site-specific. In other words, the tribes are limited to offering gambling only at specified sites. The Governor favors explicit agreement on this point in subsequent compacts.

2. Ensure the security of tribal-run games so that they are conducted safely and honestly.

3. Promote charitable grants from Indian casinos in order to build stronger ties between tribes and surrounding communities. Consider using some of these grants to combat gambling addiction.

Gambling Conclusion

This white paper points out that we face a challenge in how we will choose to approach the growth of tribal-sponsored gambling and state-sponsored gambling in Oregon.

Governor Kitzhaber believes that while this challenge has been evident over the past several years, the public debate about gambling has not concerned itself with answering the essential question of what defines "the public good." Governor Kitzhaber proposes in this paper a definition of the public good based on decreasing personal, commercial, and governmental addiction and dependence on gambling. He is hopeful that his policies will help foster a wider debate about what is meant by the directive to operate gambling "commensurate with the public good."

Oregon
John A. Kitzhaber, M.D., Governor

Department of Transportation
Region 3 Planning
3500 NW Stewart Parkway
Roseburg, OR, 97470-1687
Phone: 541.957.3692 / Fax: 541.672.6148
Thomas.Guevara@odot.state.or.us

February 25, 2013

National Regional Director
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, OR 97232-4169

Re: Coquille Indian Tribe's Class II Gaming Trust Acquisition

Thank you for sending agency notice of a proposed application to include a 2.42 acre +/- tract in trust for the use and benefit of the Coquille Indian Tribe for Class II gaming purposes. The Secretary of Interior requested information of any services which are currently provided to the property by governmental agencies. The Oregon Department of Transportation (ODOT) currently operates and maintains state transportation facilities that provide transportation services and access to the site.

In general, we need to assure that OR 99 can continue to provide safe and efficient transportation services to the site for Class II gaming purposes, and identify traffic mitigation that will be needed at the time of development. We recommend that a traffic impact analysis be prepared to assess development impacts at all access points to OR 99, and at OR 99 intersections with Garfield Street and Charlotte Ann Road as well as Garfield Street with Center Drive. Depending on the vehicular trip generation for this facility, components of the I-5 South Medford interchange may be required in the analysis. A TIA will provide the necessary traffic information for ODOT and the Secretary of Interior to assess the impact of the removal of this property from the tax rolls.

Please send me a copy of the Bureau of Indian Affair's decision to approve or deny the application. You may contact me if you have questions or require additional information.

Sincerely,

Thomas Guevara Jr.

THOMAS GUEVARA JR.
Development Review Planner

CC: RVDRT
Gary Fish, DLCD
Alex Georgevitch, City of Medford

JACKSON COUNTY
Oregon

Board of Commissioners

Don Skundrick (541) 774-6118
John Rachor (541) 774-6117
Doug Breidenthal (541) 774-6119
Fax: (541) 774-6705

10 South Oakdale, Room 214
Medford, Oregon 97501

April 30, 2013

Mr. Stan Speaks
Northwest Regional Director
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

RE: Coquille Indian Tribe Application for Acquisition of Trust Property
Jackson County Comments

Dear Director Speaks:

Thank you for granting a 60-day extension for the Jackson County Board of Commissioners ("Board") to submit comments on the application of the Coquille Indian Tribe for acquisition of property to be held in trust by the Bureau of Indian Affairs for Class II gaming. The extension allowed the Board to meet with representatives from the Coquille Tribe and the Cow Creek Band of the Umpqua Tribe in an effort to better understand the issues related to this application.

Although these meetings were helpful in providing the Board some limited, additional insight into the proposal, the Coquille Tribe has not, from the Board's perspective, meaningfully or satisfactorily responded to the many concerns Jackson County raised in its letter requesting an extension or to the questions raised during the meeting. The Coquille Tribe has not adequately identified or quantified the scope of potential adverse effects this proposal may have on law enforcement services, regional infrastructure, and various community social and mental health services. The Coquille Tribe has also not directly addressed the financial and administrative concerns raised by the Board, and has not proposed any specific measures to mitigate the adverse community impacts which are certain to accompany the casino operations.

The Board also has concerns about the legal issues related to this application. The Coquille Tribe claims it is entitled to approval of this application under §2719(b)(1)(B)(iii) of the Indian Gaming Regulatory Act ("IGRA") relating to "restored lands." However, Jackson County's legal advisors have concluded that this application should be processed as an off-reservation request under §2719(b)(1)(A), which requires the Governor of this State to concur with the Secretary's determination that this proposed gaming activity "would not be detrimental to the surrounding community . . ." and provides for the opportunity to mitigate those potential detriments through fee for service agreements. The application is not being processed in accordance with these provisions and clearly should be.

In addition to the foregoing concerns, a majority of the Board is philosophically opposed to any expansion of casino gaming in this community. Further, the Board believes it is inappropriate for casino gaming to be perpetuated throughout the State by individual tribes expanding into communities that were not part of the tribe's ancestral territory.

For a number of reasons, including, but not limited to the concerns noted in this letter, Jackson County is opposed to the application of the Coquille Indian Tribe for acquisition of a 2.42 acre parcel to be held in trust by the Bureau of Indian Affairs for Class II gaming. The Jackson County Board of Commissioners is further requesting that this application be processed under §2719(b)(1)(A) of the IGRA and, should the application not be immediately denied, that the Secretary postpone making a decision until the Environmental Impact Statement (EIS) is completed and all of the stakeholders, including Jackson County, are given an additional opportunity to provide comments in light of the EIS findings.

If you have any questions regarding this matter, please contact County Administrator Danny Jordan at (541)774-6035, or County Counsel Rick Whitlock at (541)774-6160.

Respectfully,

JACKSON COUNTY BOARD OF COMMISSIONERS

Don Skundrick, Chair

John Rachor, Commissioner

Doug Breidenthal, Commissioner

cc: Office of Indian Gaming, U.S. Department of the Interior
Coquille Indian Tribe
Cow Creek Band of Umpqua Tribe
Liani J. Reeves, Governor's General Counsel
Eric Swanson, Medford City Manager
Danny Jordan, County Administrator
Rick Whitlock, County Counsel

January 9, 2015

VIA U.S. MAIL AND FAX

Paula L. Hart
Director, Office of Indian Gaming-Indian Affairs
U.S. Department of the Interior
MS-3657-MIB
1849 C Street, N.W.
Washington, D.C. 20240
Fax: (202) 273-3153

Dear Ms. Hart:

Thank you again for meeting with representatives of the Cow Creek Band of Umpqua Tribe of Indians in Washington, DC early last month. We write in follow up to that conversation and to more formally express our concerns about the Coquille Indian Tribe's efforts to have certain fee lands, located in Medford, Oregon, taken into trust for purposes of Indian gaming.

In January of 2013 the Coquille Indian Tribe ("Coquille") sought an opinion from your office ("OIG") that its fee lands in Medford "qualify as 'restored lands' eligible for gaming." Simultaneously, Coquille applied with the Bureau of Indian Affairs ("BIA") to take the same land into trust, indicating that the "statutory authority for conversion" was both the Indian Reorganization Act of 1934[1] ("IRA") and Coquille's Restoration Act[2] ("CRA").

We write today to urge that OIG deny Coquille's request. To be frank, Coquille's request that its fee lands, located roughly 140 miles from Coquille's nearest reservation lands, be taken into trust for gaming purposes disregards the letter and intent of the Indian Gaming Regulatory Act[3] ("IGRA")'s "restored land" exception to the general prohibition against gaming on post-1988 acquired lands.[4] In passing this exception, Congress did not intend to "advantage restored tribes relative to other tribes."[5] On the contrary, the "restored land" exception "embodies a policy of promoting parity between restored and other tribes."[6] The restored lands exception was intended to create parity—it was not

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[1] 25 U.S.C. § 461 *et seq.*
[2] Coquille Restoration Act, Pub. L. No. 101-42, June 28, 1989, 103 Stat 91.
[3] 25 U.S.C. §§ 2701-21.
[4] 25 U.S.C. § 2719(a).
[5] *Redding Rancheria v. Salazar*, 881 F. Supp. 2d 1104, 1104 (N.D. Cal. 2012).
[6] *Id.*; *see also City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003) ("[T]he exceptions in IGRA § [2719](b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones."); *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S Attorney for the Western District of Michigan*, 198 F. Supp. 2d, 920, 935 (W D. Mich. 2002) (noting that the term "restoration maybe read in numerous ways to place belatedly restored

meant to create an advantage for restored tribes by granting them the sole ability to game on lands roughly 140 miles away from their present reservation lands, or to operate multiple casinos throughout the state.[7] Reading the restored lands exception in the manner urged by Coquille is at odds with the goal of parity, and puts that exception at risk of being legislated out of the IGRA, to the detriment of all restored tribes, such as the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek"), who do not abuse it.[8]

If Coquille wants to game on its fee lands in Medford, it should pursue IGRA's "two-part determination."[9] That way, OIG could evaluate whether any Class II or III gaming upon these lands is "in the best interest of the Indian tribe and its members," and "would not be detrimental to the surrounding community," and in turn the Governor of the State of Oregon could consider rendering a concurrence.[10] But rather than go through this process—as Congress intended[11]—Coquille requests that OIG read into its CRA[12] the broad authority of the Secretary to take land into trust outside of Coos and Curry Counties, without complying with Section 5 of the IRA.[13] The CRA cannot be so read. While the CRA did "authorize the Secretary to take land into trust"[14] in Coos and Curry Counties, the taking of land into trust in other counties must be authorized **"pursuant to his authority under the [IRA]."**[15] The CRA, in other words, granted authority to take certain lands into trust, and pointed to the IRA as the authority that might allow the Secretary to take other lands into trust.[16] The latter proclamation, of course, on its own, does not "authorize the Secretary" to do anything.[17] As discussed in more detail below,

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tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.").

[7] As it stands, the furthest from trust land that a gaming facility had been approved under this exception is 30 miles. Kelsey J. Waples, *Extreme Rubber-Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934*, 40 PEPP. L. REV. 251, 278 (2013).

[8] *See e.g. Off-Reservation Tribal Gaming: Hearing before the House Committee on Resources*, 114th Cong. (Jun. 6, 2005) (Statement of Valerie Brown, Supervisor, Sonoma County, Northern California Counties Tribal Matters Consortium), *available at* 2005 WL 1351038 ("As the 'restored lands' exception appears to be fueling much of the reservation shopping effort, it may be appropriate to consider, at this point in IGRA's history, elimination or narrowing of the provision and to require local government approval of a facility . . . .").

[9] 25 U.S.C. § 2719(b)(1)(A).

[10] *Id.*

[11] *See Oregon v. Norton*, 271 F. Supp. 2d 1270, 1277 (D. Or. 2003) ("Congress has delegated sweeping authority to the Secretary in interpreting and administering laws governing Indian tribes. . . . Moreover, IGRA contains no restriction on the Secretary's general authority to interpret laws governing Indian tribes.").

[12] Coquille Restoration Act, § 5(a).

[13] 25 U.S.C. § 461 *et seq.*

[14] 25 C.F.R. § 292.11(a)(1).

[15] Coquille Restoration Act, § 5(a) (emphasis added). "Service area" means the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon. *Id.* at §2(5).

[16] The CRA is almost identical to the United Auburn Indian Community's Restoration Act, 25 U.S.C. § 1300l-2(a). That statute was analyzed in *City of Roseville v. Norton*, where it was held that "the second clause of the subsection, which provides that the Secretary may take additional acreage in the Tribe's service area pursuant to the [IRA], *simply emphasizes that the section should not be read to limit the Secretary's more general authority under the [IRA].*" 219 F. Supp. 2d 130, 161-62 (D.D.C. 2002), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003).

[17] 25 C.F.R. § 292.11(a)(1).

Coquille's assertion to the contrary cannot withstand scrutiny, and neither OIG nor the Assistant Secretary of Indian Affairs should indulge it any further.

A. IGRA

As you know, 25 U.S.C. § 2719(a) prohibits gaming unless the tribe can meet one of two exceptions:

> (A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or
> (B) lands are taken into trust as part of—
>
> (i) a settlement of a land claim,
>
> (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or
>
> (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.[18]

The most frequently utilized exceptions, and the ones relevant here, are 25 U.S.C. § 2719(b)(1)(A)—the so-called "two-part determination" [19] —and 25 U.S.C. § 2719(b)(1)(B)(iii)—the so-called "restored lands exception."[20]

To meet the "restored lands" exception, a tribe must be an "Indian tribe that is restored to Federal recognition," and the acquisition of the land into trust must be part of a "restoration of lands" for the tribe.[21] According to BIA regulations:[22]

> Gaming may occur on newly acquired lands under this exception only when **all** of the following conditions in this section are met:

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[18] 25 U.S.C. § 2719(b)(1)(A)-(B).

[19] *See e.g. Citizens Against Casino Gambling in Erie Cnty. v. Hogen*, No. 07-0451, 2008 WL 2746566, at *63 (W.D.N.Y. Jul. 8, 2008) (referring to 25 U.S.C. § 2719(b)(1)(A) as the "two-part determination").

[20] *See e.g. Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Attorney For W. Dist. of Michigan*, 198 F. Supp. 2d 920, 922 (W.D. Mich. 2002), *aff'd sub nom.*, 369 F.3d 960 (6th Cir. 2004).

[21] 25 U.S.C. § 2719(b)(1)(B).

[22] These terms were originally not defined in the IGRA or the NIGC's implementing regulations. In *Grand Traverse Band of Ottawa & Chippewa Indians v. Office of U.S. Atty. for W. Div. of Michigan*, 369 F.3d 960 (6th Cir. 2004), and subsequent cases, *see e.g. TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 866 (D.C. Cir. 2006), it was held that a tribe is a "restored tribe" if it (1) has history of governmental recognition, (2) recognition is withdrawn, and (3) recognition is reinstated. *Grand Traverse*, 369 F.3d at 967. And lands are "restored lands" if, considering the "factual circumstances of the acquisition, the location of the acquisition, [and] the temporal relationship of the acquisition to the restoration, [the] land that could be considered part of such restoration." *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 164 (D.D.C. 2000).

> (a) The tribe at one time was federally recognized . . . ;
> (b) The tribe at some later time lost its government-to-government relationship . . . ;
> (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition . . . ; and
> (d) The newly acquired lands meet the criteria of "restored lands" . . . .[23]

As to (a), "**one** of the following must be true": (1) The United States at one time entered into treaty negotiations with the tribe; (2) The Interior Department determined that the tribe could organize under the IRA; (3) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed; (4) The United States at one time acquired land for the tribe's benefit; or (5) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.[24]

As to (b), the tribe "must show that its government-to-government relationship was terminated" by any "**one** of the following means": (1) Legislative termination; (2) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or (3) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.[25]

As to (c), "the tribe must show **at least one** of the following": (1) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe—which showing is "required for tribes terminated by Congressional action"; (2) Recognition through the administrative Federal Acknowledgment Process under 25 C.F.R. § 83.8; or (3) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.[26]

As to (d), if the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, "the tribe must show that **either**": (1) The legislation "**requires or authorizes** the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area"; or (2) If the legislation does not provide a specific

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[23] 25 C.F.R. § 292.7; *see also Redding Rancheria v. Salazar*, 881 F. Supp. 2d 1104, 1121 (N.D. Cal. 2012) (upholding the regulations found at 25 C.F.R. § 292, *et seq.*).
[24] 25 C.F.R. § 292.8 (emphasis added).
[25] 25 C.F.R. § 292.9 (emphasis added).
[26] 25 C.F.R. § 292.10 (emphasis added).

geographic area for the restoration of lands, the tribe must meet all of the requirements of 25 C.F.R. § 292.12.[27]

B. Analysis

Coquille has submitted an application to OIG urging that its fee lands near Medford, Oregon qualify as "restored lands" pursuant to 25 C.F.R. § 292. While Coquille may meet some of the requirements under that regulation, it cannot meet the necessary condition of 25 C.F.R. § 292.11(a), which requires that the Secretary's authority to take land into trust for Coquille derive from the CRA.

1. Is Coquille An Indian Tribe That Was Restored To Federal Recognition?

Although there appears to be no federal court precedent applying 25 C.F.R. § 292.7(a)-(c), it seems that Coquille meets the requirements of a "restored tribe."[28] First, at minimum, the United States at one time entered into treaty negotiations with Coquille.[29] Second, Coquille were legislatively terminated.[30] And third, Coquille were legislatively restored.[31] For purposes of this letter, we presume Coquille is a "restored tribe."

2. Does The CRA Require Or Authorize The Secretary To Take Land Into Trust For The Benefit Of Coquille Within A Specific Geographic Area?

Where a tribe's restoration statute "requires **or authorizes** the Secretary to take land into trust for the benefit of a tribe within a specific geographic area," it is assumed that "Congress has made a determination which lands are restored" for the purpose of the restored lands exception.[32] Here, though, the CRA did not "authorize" the Secretary to take the subject land into trust. Indeed, the CRA specifically stated the opposite—that the IRA, not the CRA, authorizes the Secretary to take lands outside of Coos and Curry Counties—*e.g.* in Medford—into trust:

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[27] 25 C.F.R. § 292.11(a) (emphasis added); *see also e.g. Redding Rancheria*, 881 F. Supp. 2d 1104 (upholding BIA's determination that a tribe did not meet *all* of these requirements, as required by 25 C.F.R. § 292.11).

[28] There is some question, though, as to Congress' attention to history when it decided to recognize Coquille, as the Acting Assistant Secretary of the Bureau of Indian Affairs testified that in passing the CRA "Congress would be recognizing a tribe that had no legitimate claim to tribal sovereignty." S. Rep. No. 101-50, at 11 (1989).

[29] *See Alcea Band of Tillamooks v. United States*, 59 F. Supp. 934 (Ct. Cl. 1945), *aff'd*, 329 U.S. 40 (1946) ("[The] Coquilles . . . were parties to the treaty of August 11, 1855, in the form of a written report to the Commissioner of Indian Affairs, accompanied with a detailed report from J.L. Parrish, Indian agent, in which was set out the location of the various tribes and bands of Indians.").

[30] Oregon Indians, Termination of Federal Supervision, 68 Stat. 724 (codified at 25 U.S.C. § 691); S. Rep. No. 101-50, at 1 (1989).

[31] Coquille Restoration Act, 103 Stat 91.

[32] *Gaming on Trust Lands Acquired After October 17, 1988*, 73 Fed. Reg. 29,364 (May 20, 2008).

> The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: Provided, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area *pursuant to his authority under the [IRA]*.[33]

First, the inclusion of language clarifying that the authority to take these lands into trust was derived from the IRA would be mere surplusage if the CRA itself gave this authorization. Generally, decisionmakers "should not interpret a statute so as to make parts of it surplusage unless no other construction is reasonably possible; a construction which would render a section or clause superfluous is to be avoided."[34]

Second, it is clear that the intent of Congress in legislating of this provision was to limit the Secretary's ability to take land into trust outside of Coos and Curry Counties. If the Secretary wanted to take land into trust outside of these counties, but inside of Coquille's service area, he would need to derive the authority from elsewhere—the IRA, specifically. Indeed, as introduced, the restored lands provision in the CRA was drafted as follows:

> The Secretary shall accept real property within the service area for the benefit of the tribe if conveyed or otherwise transferred to the Secretary. Such property shall be subject to all valid existing rights including liens, outstanding taxes (local and State), and mortgages. Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the tribe and shall be part of its reservation. The transfer of real property authorized by this section shall be exempt from all local, State, and Federal taxation as of the date of transfer.[35]

The fact that, initially, the CRA *alone* authorized the taking of land into trust for Coquille within its service area indicates that, as originally drafted, the CRA was one of those statutes that "authorize[d] the Secretary to take land into trust for the benefit of a tribe within a specific geographic area."[36] The subsequent removal of that authority, and insertion of the phrase "pursuant to his authority under the [IRA]," indicates that Congress intended to remove the original CRA authorization and inject IRA authorization as to all real property not "located in Coos and Curry Counties." Indeed, Coquille has even admitted as much, stating "[t]he Restoration Act's unique language

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[33] Coquille Restoration Act, § 5(a) (emphasis added).

[34] *Brantley v. Augusta Ice & Coal Co.*, 52 F. Supp. 158, 160 (S.D. Ga. 1943).

[35] *Introduction of the Coquille Restoration Act*, 134 Cong. Rec. E1938, 1988 WL 171307 (1988); *see also* S. Rep. No. 101-50, at 1 (1989) ("The purpose of [the CRA] is to restore the Federal trust relationship with the Coquille Tribe of Indians in the State of Oregon . . . and to provide for the transfer of certain lands *within Coos and Curry Counties* to the Secretary of the Interior in trust for the benefit for the Coquille Tribe.") (emphasis added).

[36] 25 C.F.R. § 292.11(a)(1).

clearly authorizes the Bureau of Indian Affairs to accept land into trust for the Tribe within a designated five county area . . . *pursuant to his authority under the [IRA]*."[37]

Third, a comparison of other tribes' restoration acts supports an interpretation that is at odds with what Coquille urges:

- **Texas Band of Kickapoo Indians**: "The Secretary is authorized and directed to accept no more than one hundred acres of land in Maverick County, Texas which shall be offered for the benefit of the Band with the approval of the Tribe. Nothing in this subsection shall be construed as limiting the authority of the Secretary under [the IRA]."[38] In *Kickapoo Tribe of Oklahoma v. Superintendent, Shawnee Agency*,[39] the Interior Board of Indian Appeals held that this provision *mandated* that the BIA take one hundred acres of land in Maverick County, Texas into trust, and, in addition, that the "Bureau of Indian Affairs, acting for the Secretary, has authority to take *more* than 100 acres in Maverick County, Texas, into Indian trust status for the benefit of the Texas Band of Kickapoo Indians . . . by, in effect, *reaching back and exercising the authority of Section 5 of the Indian Reorganization Act*."[40] Like the CRA, this statute mandates that the Secretary take some land into trust, while leaving it to the discretion of the BIA to take other lands into trust, presumably pursuant to the IRA and its implementing regulations.

- **Pokagon Band of Potawatomi Indians**: "The Band's tribal land shall consist of all real property, including the land upon which the Tribal Hall is situated, now or on and after September 21, 1994, held by, or in trust for, the Band. *The Secretary shall acquire real property for the Band. Any such real property shall be taken by the Secretary in the name of the United States in trust for the benefit of the Band* and shall become part of the Band's reservation. . . . The Band's service area shall consist of the Michigan counties of Allegan, Berrien, Van Buren, and Cass and the Indiana counties of La Porte, St. Joseph, Elkhart, Starke, Marshall, and Kosciusko."[41] This statute essentially authorizes the Secretary to take into trust any lands, at its discretion, without restriction. In 1997, the U.S. Department of the Interior's Office of the Solicitor issued an Opinion stating that any lands acquired pursuant to this authorization constituted gaming-eligible "restored lands."[42] In 2002 the D.C.

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[37] Letter from Brenda Meade, Chairperson, Coquille Indian Tribe, to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs (Nov. 2, 2014) (quotation omitted, emphasis added).

[38] 25 U.S.C. § 1300b-14(b).

[39] 13 IBIA 339 (1985).

[40] *Id.* at 341, 343 (emphasis added).

[41] 25 U.S.C. §§ 1300j(5)-(6) (emphasis added).

[42] In the Restoration Act, Congress found that the Band is the political successor to the signatories of numerous treaties that ceded vast amounts of territory. These cessions included ten counties in two states described as the Band's "service area." In addition, Congress mandated that the Secretary acquire land in trust for the Band. Since the lands proposed for acquisition lie within this ten county area and are thus part of the territory the Bands' predecessors ceded to the U.S. in earlier treaties, these proposed **acquisitions made pursuant to the Restoration Act** are properly characterized as "restored" lands.

In re: Pokagon Band of Potawatomi Indians, Opinion No. M-36991, 1997 WL 34590751, at *6 (Sept. 19, 1997) (citation omitted, emphasis added).

District court agreed,[43] as did the D.C. Circuit Court of Appeals.[44] Importantly, unlike the CRA, the authority to take land into trust derives directly from the Band's Restoration Act—much like the first draft of the CRA (but unlike the final version of the CRA and, *e.g.* the Texas Band of Kickapoo's Restoration Act discussed above), the statute itself directly grants the authority to take land into trust, and there is no mention of the IRA.

- **Keweenaw Bay Indian Community**: This statute mandates that the Secretary take into trust "all lands located in Gogebic County, Michigan" currently owned by the Tribe in fee but are subsequently deeded to the United States.[45] The statute also states that "[t]he Secretary may place such other land into trust for the benefit of the Band *pursuant to the provisions of the [IRA], or any other Act . . .*."[46] This statute parallels the CRA in that it grants authority to take some specific lands into trust, and points to authority that might allow the Secretary to take other lands into trust.

- **Little Traverse Bay Bands of Odawa Indians; Little River Band of Ottawa Indians:** The statute mandates that the Secretary take in to trust lands located in specific counties for each Tribe.[47] The statute also states that the "[t]he Secretary may accept any additional acreage in each of the Bands' service area . . . pursuant to his authority under the [IRA]."[48] Again, this statute parallels the CRA in that it grants authority to take some specific lands into trust, and points to authority that might allow the Secretary to take other lands into trust.

- **United Auburn Indian Community**: "The Secretary may accept any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary . . . . The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the [IRA]."[49] This statute is almost identical to the CRA and was analyzed in *City of Roseville*.[50] In *City of Roseville*, the Tribe requested that the BIA take land into trust for gaming in Placer County, pursuant to the authority granted in the statute.[51] The Court held that this was permissible: "[T]he fact that lands in Placer County are mentioned in the Auburn Indian Restoration Act is sufficient to characterize those lands as 'restored.' . . . [T]he second clause of the subsection, which provides that the Secretary may take additional acreage in the Tribe's service area pursuant to the [IRA], *simply emphasizes that the section should not be read to*

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[43] *TOMAC v. Norton*, 193 F. Supp. 2d 182, 194 (D.D.C. 2002) ("[T]he taking of land in trust **pursuant to the Pokagon restoration act** qualifies as the 'restoration of lands for an Indian tribe that is restored to Federal recognition' under IGRA.") (emphasis added).
[44] *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 867 (D.C. Cir. 2006).
[45] 25 U.S.C. § 1300h-5(a).
[46] *Id.* at § 1300h-5(b).
[47] 25 U.S.C. § 1300k-4(a)-(b).
[48] *Id.* at § 1300k-4(c).
[49] 25 U.S.C. § 1300l-2(a).
[50] 219 F. Supp. 2d 130.
[51] *Id.* at 139.

limit the Secretary's more general authority under the [IRA]."[52] The same can be said about the CRA — the CRA does not "authorize" the Secretary to take land into trust; it merely emphasizes that the CRA should not be read to limit the Secretary's more general authority under the IRA.

- **Paskenta Band of Nomlaki Indians**: "The Secretary shall accept any real property located in Tehama County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary . . . . The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the [IRA]."[53] In 2000, the BIA took roughly 1,635 acres into trust for gaming, located within Tehama County.[54] Presumably, the Tribe did not take land into trust in the more populous and easier accessible Glenn County because, although in its "service area,"[55] the lands would not have qualified as "restored" pursuant to 25 C.F.R. § 292.11(a)(1).

Read as a whole, each and every one of these restoration statutes (1) mandate that the Secretary take specific lands into trust, and/or (2) make explicit that the mandatory provision "should not be read to limit the Secretary's more general authority under the [IRA]" to take other lands into trust.[56] The CRA does precisely this as well. Although it mandates that the Secretary take lands in Coos and Curry into trust, it does not, on its own, "authorize" the taking of any other lands into trust—it simply makes clear that the CRA does not limit the Secretary's authority to take other lands into trust, pursuant to the authority granted under the IRA.

Finally, as a matter of legislative intent, the purpose of 25 C.F.R. § 292 was to create parity for newly restored, landless tribes, given IGRA's general prohibition of gaming on lands acquired after October 17, 1988.[57] As explained in Congressional testimony given on the subject:

> The problem was that not all tribes held tribal lands in 1988 and, in fact, not all tribes even enjoyed federal recognition in 1988. . . . Congress very specifically intended to assist such disadvantaged tribes by providing that, when they finally obtained recognition and land, their land would be treated as if it effectively had been in trust since before October 17, 1988. In other the words, Congress provided the initial reservation and restored lands exceptions so that eligible tribes could be placed closer to the position they would have been in had they been recognized and held trust lands in 1988. By so doing, Congress provided a mechanism by which newly recognized/restored tribes would be on a more level playing field with the tribes that were lucky enough to have been recognized and to

[52] *Id.* at 161-62
[53] 25 U.S.C. § 1300m-3(a).
[54] Land Acquisitions; Paskenta Band of Nomlaki Indians of California, 65 Fed. Reg. 76275, 76276 (Dec. 6, 2000).
[55] 25 U.S.C. § 1300m(7).
[56] *City of Roseville*, 219 F. Supp. 2d at 161-62.
[57] *Redding Rancheria*, 881 F. Supp. 2d at 1104.

> have had a land base on the date of IGRA's enactment. . . . Congress knew that locking newly recognized and restored tribes out of the economic development opportunities made available by IGRA would do an incredible injustice to those tribes.[58]

Reading into the CRA an exception that would allow Coquille to operate a casino roughly 140 miles from its reservation lands is the opposite of parity. It would read into the CRA an exception to the rule that every other tribe in the Nation must comply with; it would provide Coquille with an unprecedented advantage. This was not what Congress intended.

Instead, Congress intended that the Secretary take land into trust for Coquille pursuant to its general authority under the IRA. This subjects the Secretary's decision to a more rigorous 25 C.F.R. § 292.12 or 25 U.S.C. § 2719(b)(1)(A) analysis, and, in addition, triggers compliance with 25 C.F.R. § 151.11,[59] the National Environmental Protection Act ("NEPA"), and other federal procedural laws.[60]

C. Conclusion

Cow Creek asks that OIG deny Coquille's request. Coquille's request that its fee lands, located roughly 140 miles from Coquille's nearest reservation lands, attempts to abuse IGRA's "restored lands" exception by reading language into the CRA that simply is not there.

While the CRA did "authorize the Secretary to take land into trust"[61] in Coos and Curry Counties, the taking of land into trust in other counties must be authorized "pursuant to his authority under the [IRA]."[62] The CRA granted authority to take some specific lands into trust, pointed to authority that might allow the Secretary to take other lands into trust, and made clear that the later authority remained in tact. Coquille's request that OIG interpret the CRA in a manner that cannot be squared with the text, has been found not to trigger the "restored lands" exception in other similar instances,[63] and is contrary to Congressional intent, should be denied.

D. Consultation Request

Finally, Cow Creek further requests ongoing consultation regarding Coquille's efforts to have its fee lands in Medford taken into trust for gaming purposes. We of

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[58] *Off-Reservation Gaming: Hearing before the Senate Committee on Indian Affairs*, 115th Cong. (Feb. 1, 2006) (statement of Philip Harju, Councilman, Cowlitz Indian Tribe), *available at* 2006 WL 243775.
[59] *City of Roseville*, 348 F.3d at 1031; *Manistee County Bd. Comm. v. Midwest Regional Director*, 53 IBIA 293, 296, 2011 WL 4193177, at *3 (2011).
[60] *See Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995) ("[NEPA's] procedural requirements are triggered by a discretionary federal action."); *see also e.g. RESTORE: The N. Woods v. U.S. Dep't of Agric.*, 968 F. Supp. 168, 175 (D. Vt. 1997) (same).
[61] 25 C.F.R. § 292.11(a)(1).
[62] Coquille Restoration Act, § 5(a).
[63] *City of Roseville*, 219 F. Supp. 2d at 161-62.

course previously requested consultation with your office under various federal laws but that request was denied, at least formally. Still, Department of the Interior policy requires tribal consultation regarding any "Departmental Action with Tribal Implications," which is defined as: "Any Departmental . . . operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to . . . [t]he ability of an Indian Tribe to govern or provide services to its members . . ."[64] Needless to say, Coquille's efforts in Medford would impact—negatively impact—Cow Creek's ability to govern or provide services to our members. As such, Cow Creek renews our request for ongoing consultation, pursuant to your agency's own policy. And if OIG does not deny Coquille's request, we intend to also seek ongoing consultation with the Bureau of Indian Affairs as their review proceeds, per other federal law and policy.[65] Cow Creek has far too much at risk not to have its voice be heard.

Thank you kindly for your additional time and for your and OIG's consideration of Cow Creek's concerns. Please do not hesitate to contact us should you need any additional information or have any questions.

Very truly yours,

Dirk Doyle
Legal Counsel
Cow Creek Band of Umpqua Tribe of Indians

[64] U.S. DEP'T OF THE INTERIOR, DEPARTMENT OF THE POLICY ON CONSULTATION WITH INDIAN TRIBES (2011), *available at* http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=269697.
[65] BUREAU OF INDIAN AFFAIRS, GOVERNMENT-TO-GOVERNMENT CONSULTATION POLICY (2010), *available at* http://www.bia.gov/cs/groups/public/documents/text/idc-002000.pdf; 40 C.F.R. § 1501.7.

United States Senate

WASHINGTON, DC 20510

October 21, 2013

Kevin K. Washburn
Assistant Secretary
Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Assistant Secretary Washburn,

We are writing in regard to the Coquille Indian Tribe's application for land to be taken into trust by the Secretary of the Interior for the purposes of Class II gaming in Jackson County, Oregon. While we applaud the Coquille Indian Tribe in their efforts to build their economy and become ever more self-sufficient, and while we naturally respect the tribe's sovereignty and support the ideals of tribal self-determination, this application has far reaching effects for the State of Oregon.

In Oregon, we have a long history of striking a balance between the pursuit of gaming revenues, which benefits tribal members enormously, and the risks associated with a significant increase in the number of gaming facilities which would have negative consequences in many of our communities.

Before voters authorized a state-run lottery in 1984, the only gambling legally permitted in the state was in the form of well-controlled *pari-mutuel* (race track) gambling and occasional locally-permitted charity events. Oregon's Governor, John Kitzhaber, who has negotiated many of the current tribal compacts with federally-recognized tribes in order to support tribal self-sufficiency, has long adhered to the policy of "one casino per tribe." The precedent of a second significant gaming facility for any one tribe, whether it is a Class II or Class III, is a clear expansion of that policy and would have serious implications for further expansions to be made by other tribes. Oregon's careful balance between producing gambling revenues and a focus on the public good of our citizens could be seriously compromised.

In addition, the situation is greatly complicated by the evolving technology of gaming. In the past, a Class II gaming facility was essentially a bingo hall. Now, however, modern computer technology enables Class II facilities to include machines that do not have much distinction from those in Class III facilities. We are concerned that what the Coquille tribe is proposing would in reality turn out to be more akin to what is contemplated when establishing a Class III facility in Oregon, rather than a Class II facility.

Noting that you have already received communications regarding this issue from the Governor of Oregon, the Jackson County Board of Commissioners and the City of Medford, we join them in

opposing this application. If you have questions regarding this issue, please contact Cisco Minthorn at 202-224-4971 in Senator Wyden's office and Elizabeth Cooney at 202-224-7967 in Senator Merkley's office.

Sincerely,

Ron Wyden
U.S. Senator

Jeffrey Merkley
U.S. senator

cc: Sally Jewell, Secretary of the Interior
Stanley M. Speaks, Bureau of Indian Affairs Northwest Regional Director

SAL ESQUIVEL
STATE REPRESENTATIVE
DISTRICT 6

HOUSE OF REPRESENTATIVES
900 COURT ST NE
SALEM, OR 97301

May 8, 2013

The Honorable Kevin K. Washburn
Assistant Secretary – Indian Affairs
Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington D.C. 20240

Stanley Speaks, Regional Director
Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, OR 97232-4169

Re: Preliminary Response of the Southern Oregon Legislative Delegation to Coquille Tribe's Proposed Trust Request for Gaming

Honorable Washburn and Director Speaks,

We, the members of the Southern Oregon Legislative Delegation, would like to go on the record as opposing the Coquille Indian Tribe's application to have 2.42 acres of land located in Medford, Oregon to be acquired in trust for the purpose of Class II gaming.

This proposal is also being opposed by the Jackson County Board of Commissioners and multiple other Indian tribes. Furthermore, officials from the City of Medford have stated publicly that they cannot support the proposal and therefore oppose it.

A number of concerns have been brought forth by the City of Medford with regards to this proposal. They include the loss of regulatory jurisdiction over city land, impacts on the city, the potential for future casino expansion and the economic impacts of problem gambling.

The City of Medford has been contacted by representatives from multiple tribes, who have also spoken out against this proposal in public hearings. Their objections include the fact that the Coquille Tribe lacks a significant historical connection to Medford and the city is not within the area that federal courts have identified as the tribe's territory.

Although the tribe's restoration act establishes Jackson County as part of its service area where members are allowed to receive federal benefits, those designations are based on where tribal members live today, not historical locations.

Office Phone: 503-986-1406 rep.salesquivel@state.or.us
District Address: 711 Medford Center #178 Medford OR 97504 Phone: 541-734-4369

Members of the Shasta and Cow Creek band of the Umpqua Indian Tribe have presented evidence to the Medford City Council that the Coquille Tribe does not have aboriginal ties to the area. They also stated that their ancestors fought, died and were buried in Medford and Jackson County, and that permitting the Coquille Tribe to pursue this proposal would be an affront to their ancestors and to the tribal sovereignty and traditions that exist within and without federal government recognition. It is also feared that approval of this proposal would establish a precedent that would encourage other tribes to seek additional trust land for gaming.

Some of the concerns raised by the City of Medford and its officials are very specific. They include the fact that the land in question does not quality for gaming. The proposed action would take the property out of local control to establish an activity that is not allowed under state or local law.

Another issue is that the federal government already owns 48 percent of the land in Jackson County, and because of that, we cannot support the further removal of lands from the state, city or the county.

Overall, we object to this proposal on the aforementioned grounds. We do not feel that this proposal fits the community. It is on a piece of land 170 miles from the tribe's designated territory, and it also violates an agreement that each tribe should have only one casino.

Because of all these reasons, we want to state our objections on the record, and hope that you consider them when deliberating on this matter.

Sincerely,

Rep. Sal Esquivel

Sen. Herman Baertschiger

Sen. Doug Whitsett

Sen. Jeff Kruse

Sen. Alan Bates

Rep. Mike McLane

Rep. Wayne Krieger

Rep. Bruce Hanna

Rep. Peter Buckley

Rep. Dennis Richardson

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June 4, 2013

The Honorable Kevin K. Washburn
Assistant Secretary - Indian Affairs
Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Paula L. Hart, Director
Office of Indian Gaming
Office of the Deputy Assistant Secretary
MS-3657-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Dear Assistant Secretary Washburn and Director Hart:

The Coquille Indian Tribe (the "Tribe") has informed the City of Medford, Oregon ("Medford" or the "City") that it has requested a gaming eligibility determination from the Office of Indian Gaming ("OIG") under the restored lands exception to Section 20 of the Indian Gaming Regulatory Act ("IGRA") for a certain parcel of land within City limits. The land involved consists of a 2.42-acre parcel located on South Pacific Highway adjacent to Interstate-5. The Tribe has identified class II gaming as the purpose of its request, but it has not ruled out class III gaming in the future. On behalf of the City, this letter sets forth the reasons why the Medford site does not qualify as restored lands for purposes of IGRA.

The City has had the opportunity to meet with the Tribe, other nearby tribes, including the Cow Creek Band of Umpqua Tribe of Indians and the Shasta Indian Tribe, business leaders and the community to discuss the Tribe's application and proposed development. In addition, the City has reviewed the Tribe's history and its Restoration Act, the Tribe's establishment of its tribal headquarters, governmental offices, gaming casino and other economic ventures located on its reservation in North Bend, and the Tribe's historic and modern relationship to Medford. These are factors that the Department of the Interior (the "Department"), the National Indian Gaming

Commission ("NIGC"), and federal courts have consistently applied to limit the application of the restored lands exception.

After careful consideration of the factual circumstances and applicable authorities, the City has concluded that there is no basis for OIG to determine that the Medford site would qualify for gaming under the restored lands exception. Accordingly, gaming on the Medford site is prohibited under federal law unless the Secretary determines that a gaming establishment is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community. In addition, the Governor must concur in the Secretary's determination.

Congress requires the Secretary to comply with the two-part determination process under circumstances such as these to ensure that the Department balances legitimate local concerns with the Tribe's goals of promoting tribal economic development and tribal self-sufficiency. As the City has previously stated, the City strongly opposes any effort to circumvent the two-part determination process and will take action to ensure that the proper standards are applied.

As set forth below, the Tribe's argument that the Medford site qualifies as restored lands is inconsistent with the plain language of the Tribe's Restoration Act, the Department's regulations, and long-standing federal policies. Adopting the interpretation the Tribe has advanced would not only violate IGRA, it would unfairly advantage the Tribe at the expense of all other Oregon tribes and undermine the equilibrium that exists not just in Oregon, but in any state with congressionally restored tribes. The Tribe's request must be denied.

ANALYSIS

The Coquille Indian Tribe has sought a determination from the OIG that land in Medford, Oregon qualifies as the Tribe's "restored lands" under Section 20 of IGRA. The Medford site, however, does not meet the requirements for that exception.

The Department, the NIGC, and federal courts limit the application of the restored lands exception by evaluating whether the applicant tribe has both modern and historical connections to the proposed land as well as the temporal connection between the acquisition of the land and the tribe's restoration. In no case has the Department ever concluded that a parcel of land located 170 miles from a tribe's existing reservation, tribal headquarters, governmental offices, and operating casino, which the tribe acquired 18 years ago as part of its first post-restoration effort to rebuild its land base, qualified as restored lands eligible for gaming. In fact, the Department has promulgated regulations that codify the limitations the Department and NIGC have established and the courts have upheld. The regulations make immediately apparent that the Medford site does not qualify as the Tribe's restored lands.

The Tribe, however, has asked the OIG to disregard basic limits on the restored lands exception and to adopt an interpretation of its regulations that would allow the Tribe to game on any land the Department acquires in trust on its behalf. The Tribe's argument is based on a misreading of the regulations and its Restoration Act and should be rejected.

A. The Plain Language of the Coquille Restoration Act Prevents a Determination that the Medford Site Qualifies as "Restored Lands"

1. Summary of the Tribe's Argument

The Tribe has summarized its argument to the City, as follows:

1. The Coquille Restoration Act provides that the Secretary may acquire land in trust under the IRA (as defined below) in a specific service area that includes Jackson County, where Medford is located. 25 U.S.C. § 715c (citing 25 U.S.C. § 461).[1]

2. The Department's Section 20 regulations state that land qualifies as "restored lands" if the tribe's restoration act "requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area." 25 C.F.R. § 292.11(a).

3. No further analysis of the factual circumstances of the proposed acquisition is needed. The Restoration Act allows the Secretary to acquire land in Medford; ergo, it qualifies as restored lands under 25 C.F.R. § 292.11(a).

The Tribe's argument, however, fails on several counts as discussed below.

2. The Tribe's Argument Fails as a Matter of Statutory Interpretation

The Tribe has misread both departmental regulations and its own Restoration Act. For congressionally restored tribes such as the Tribe, later-acquired lands qualify as "restored lands" only if:

> (1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or

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[1] This memorandum does not address whether the Secretary has any authority under the IRA to acquire land in trust for the Tribe. Whether the Tribe was under federal jurisdiction is a question that the Department will have to consider, though it appears from the legislative history to the IRA that the Department did not consider the Tribe to have qualified as a tribe, making it highly questionable whether they would satisfy concerns raised by *Carcieri v. Salazar*, 555 U.S. 329 (2009).

> (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.

25 C.F.R. § 292.11(a).

The Tribe cites to Section 292.11(a)(1) to support a restored lands determination and argues that Section 292.12 — which imposes additional requirements — does not apply. The Tribe, however, misunderstands how its Restoration Act works and what Section 292.11(a)(1) means.

The Coquille Restoration Act provides:

> The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: Provided, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed.
>
> The Secretary may accept any additional acreage in the Tribe's service area [Coos, Curry, Douglas, Jackson, and Lane Counties] pursuant to his authority under [the Indian Reorganization Act (IRA)].

25 U.S.C. § 715c. The Restoration Act thus identifies two counties — Coos and Curry — and requires the Secretary to acquire up to 1,000 acres of land in those counties in trust *without relying on any other authority*. That is, the Restoration Act *itself* is the source of the Secretary's authority to acquire the land in trust. And indeed, the Tribe applied for and the Secretary acquired land in trust pursuant to 25 U.S.C. § 715c.

By contrast, the authority for acquiring land in trust in Coos and Curry Counties in excess of 1,000 acres or in Douglas, Jackson, or Lane Counties is the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. § 465. Thus, the Restoration Act itself does not authorize or mandate the acquisition of land in Jackson County, where the City of Medford is located. Rather, the Restoration Act merely extends the Secretary's authority to acquire land under the IRA to the Tribe, while imposing limits on that otherwise general authority.

Although this issue has not been squarely addressed in a dispositive decision, the dissenting opinion in an Eighth Circuit case interpreted a materially identical restoration act and likewise concluded that land acquired pursuant to the IRA, even if explicitly referenced in a restoration act, does not automatically qualify as restored lands when the act itself mandates acquisition of certain land. The dissent concluded that there was no need to remand the question of whether a parcel of land would qualify as restored lands for the Ponca Tribe because the law quite clearly demonstrated that it did not qualify. *See Neb. ex rel. Bruning v. U.S. Dep't of Interior*, 625 F.3d 501, 514-115 (8th Cir. 2010). Like the Tribe's Restoration Act, the Ponca Tribe's restoration act has a mandatory trust

acquisition provision under the restoration act itself and a discretionary provision that permits the Secretary to acquire land under the IRA for the tribe:

> The Secretary shall accept not more than 1,500 acres of any real property located in Knox or Boyd Counties, Nebraska, that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary ... in trust for the benefit of the Tribe...The Secretary may accept any additional acreage in Knox or Boyd Counties pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

Id. at 514-15 (internal quotation marks and citation emitted). The dissent stated that remand was unnecessary because the language of the Ponca Tribe's restoration act was clear:

> *While the Secretary may, pursuant to the Indian Reorganization Act, 25 U.S.C. § 465, take any land into trust for the benefit of an Indian tribe, such land so taken cannot qualify for the "restored lands" exception to the general prohibition of gaming on trust lands.* Land taken into trust pursuant to the Ponca Tribe's restoration, and upon which gaming is authorized, can only be trust lands in Knox or Boyd Counties in Nebraska.

Id. at 515 (emphasis added). The language in the Ponca Tribe's restoration act obviously parallels that of the Coquille Restoration Act; the dissent's interpretation of the law is equally applicable to this case.[2]

The history of the Coquille Restoration Act supports this interpretation. The fact that Congress mandated the acquisition of up to 1,000 acres in Coos and Curry Counties is indicative of what Congress considered adequate to "restore" to the Tribe as a land base *and where*. Congress selected Coos and Curry Counties for a reason, and identified what acreage it considered appropriate. The legislative history behind the Restoration Act notes that, aboriginally, the Tribe "inhabited the South Coast of Oregon," H. Rep. 101-61 (Pub. L. 101-42) at 3, which includes both Coos and Curry Counties. The House Report also states that "the Tribe has about 550 members, many of whom remain around Coos Bay, Oregon," *id.*, which unsurprisingly is where the Tribe established its reservation, headquarters, tribal office and casino. Indeed, the Acting Assistant Secretary opposed the Restoration Act and explained that many Coquille Indians moved to the Siletz Reservation in 1855,

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[2] Similarly, the NIGC reached the same conclusion in Memorandum re: Paskenta Band of Nomlaki Indians – determination of lands in Tehama County under Section 20 of IGRA (Apr. 18, 2000). The restoration act for the Paskenta Band likewise contained a mandatory provision requiring the Secretary to acquire land in Tehama County under the restoration act itself and a discretionary provision to acquire land in the tribe's service area under the IRA. *Id.* at 3. The NIGC concluded that "any real property within Tehama County that are acquired into trust by the Secretary on behalf of the Tribe qualifies as 'the restoration of lands' within the meaning of Section 20 of IGRA." *Id.* at 4.

> [w]here they took up residence with other bands and tribes from the area. Substantial doubt exists as to whether there was a federally recognized Coquille Tribe away from the Siletz reservation subsequent to 1855. The Coquille Tribe that resided on the Siletz Reservation eventually assimilated into the other bands and tribes that were also living on the reservation, and the tribe ceased to exist as a separate entity.

Id. at 8. The only land the Assistant Secretary identified as even potentially important to the Tribe, besides the Siletz Reservation (which is located on the coast east of Siletz) was six acres of land in Empire, Oregon, which ultimately consolidated with Coos Bay in 1965. Under the Restoration Act, the only land that qualifies as restored lands for purposes of IGRA are the 1,000 acres of land the Tribe had acquired in trust pursuant to the Restoration Act itself and no other authority.

B. The Tribe's Argument Is Inconsistent with Prior Cases and Federal Policy

Not only does the plain language of the Tribe's Restoration Act fail to support the Tribe's argument, the argument conflicts with the Department's stated policies and intent to limit the application of the "restored lands" exception.

1. Background on the Restored Lands Exception

The purpose of the restored lands exception is not to advantage a few tribes over all others, but to ensure that newly recognized or landless tribes were not disadvantaged. IGRA permits tribes to engage in gaming on "Indian lands" under certain circumstances. 25 U.S.C. § 2710(b)(1); *see also* 25 U.S.C. § 2710(d)(1) ("Class III gaming activities shall be lawful on Indian lands only…."). Generally, "Indian lands" are those within any Indian reservation and lands whose title is held in trust by the United States for the benefit of any Indian tribe. 25 U.S.C. § 2703(4); *see also* 25 C.F.R. § 502.12. Section 20 of IGRA, however, prohibits gaming "on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988." 25 U.S.C. § 2719(a).

Many tribes had no land in 1988 due to termination, lack of recognition or other factors. *See City of Roseville v. Norton*, 348 F.3d 1020, 1022 (D.C. Cir. 2003) (describing most recent period); *see also Cnty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 253-254 (1992) (previous periods). To "ensur[e] that tribes lacking reservations when IGRA was enacted [were] not disadvantaged relative to more established ones," Congress provided mechanisms by which restored tribes could be permitted to conduct gaming on later-acquired lands, notwithstanding IGRA's general prohibition. *City of Roseville*, 348 F.3d at 1030.

These mechanisms include the three "equal footing" exceptions, which provide that the gaming prohibition does not apply when—

> (B) lands are taken into trust as part of—

> (i) a settlement of a land claim,
>
> (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or
>
> (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

25 U.S.C. § 2719(b)(1)(B)(i-iii). If one of these three exceptions does not apply, gaming is permissible only if:

> [T]he Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

25 U.S.C. § 2719(b)(1)(A).

2. The Cases Interpreting the "Restored Lands" Exception

Courts early on acknowledged that because IGRA did not define "restored lands," the act contains no limiting principle and could be read to allow restored tribes, and only restored tribes, to conduct gaming on any and potentially all lands that they acquire after their return to federal recognition. *Redding Rancheria v. Salazar*, 881 F. Supp. 2d 1104, 1117 (N.D. Cal. 2012); *cf. Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Att'y for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 934-35 (W.D. Mich. 2002) ("*Grand Traverse II*") (rejecting interpretation that would impose one kind of limitation on meaning of "restoration of lands" but suggesting other kinds), *aff'd*, 369 F.3d 960 (6th Cir. 2004) ("*Grand Traverse III*").

The Department, however, has not interpreted the exception so broadly. Because the exceptions were enacted to promote parity between restored and other tribes, *see City of Roseville*, 348 F.3d at 1030, the Department and the NIGC have consistently limited the application of the exception:

> We believe [t]hat to apply [the] dictionary definition to the restored lands provision without temporal or geographic limitations would give restored tribes an unintended advantage over tribes who are bound to limitations in IGRA that prohibit gaming on lands acquired after October 17, 1988. Moreover, we believe that, in examining the overall statutory scheme of IGRA, Congress intended some limitations on gaming on restored lands.

Memorandum re: *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155 (D.D.C. 2000) in regard to proposed gaming on the Hatch Tract in Lane, County, Oregon (Dec. 5, 2001) ("Coos Opinion"), at 6. *See also* Memorandum re: Whether the Turtle Creek Casino Site that is held in trust by the United States for the benefit of the Grand Traverse Band of Ottawa and Chippewa Indians is exempt from the [IGRA's] general prohibition of gaming on lands acquired after October 17, 1988 (Aug. 31, 2001) ("[W]e believe the phrase 'restoration of lands' is a difficult hurdle and may not necessarily be extended, for example, to any lands that the tribe conceivably once occupies throughout its history.").

Courts have articulated a three-factor test to determine whether a parcel was taken into trust as part of the restoration of land to a tribe that looks to "the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration." *Grand Traverse II*, 198 F. Supp. 2d at 935 (W.D. Mich. 2002); *see also Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Attorney for W. Dist. Of Mich.*, 46 F. Supp. 2d 689, 700 (W.D. Mich. 1999) ("*Grand Traverse I*"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 164 (D.D.C. 2000) (concurring with the analysis as set forth in *Grand Traverse I*).

The Department and the NIGC have consistently applied the three-factor test to impose limits on the application of the restored lands exception. *See* Coos Opinion (evaluating the geographic nexus, tribal presence in the area, the fact that the tribe was recognized prior to the passage of IGRA, and the time it took to obtain the land); In re: Whether gaming may take place on lands taken into trust after Oct. 17, 1988, by Bear River Band of Rohnerville Rancheria (Aug. 5, 2002) (taking into account the fact that the tribe was landless, the site was six miles from terminated Rancheria within historic villages, tribe had historical nexus, and temporal lapse explained by availability of land); Meechoopa Indian Lands Opinion, at 12 (Mar. 14, 2003) ("nine-year gap between the Tribe's restoration and the land's acquisition is a sufficient 'temporal relationship' to establish lands as 'restored.' More importantly, the acquisition of the parcel was the first (with the exception of the unusable almond orchard) for this restored tribe"); NIGC Final Decision and Order, In re: Wyandotte Nation Amended Gaming Ordinance, at 12-14 (Sept. 10, 2004) (property acquired eighteen years after tribe's restoration did not meet temporal connection where Tribe acquired three other parcels within one year and six years of restoration); Mem. from P. Coleman, NIGC, to P. Hogen, NIGC, regarding Sault Ste. Marie Tribe of Chippewa Indians, at 15-16 (July 31, 2006) (determining tribe did not meet *Grand Traverse II's* temporal test and noting that "newly restored tribes have been very conscious of how the IGRA's limitations on after-acquired land will impact their first acquisitions of trust or reservation land"); Mem. regarding Elk Valley Lands Determination from K. Arha, Interior, to C. Artman, Interior, at 9 (July 13, 2007) ("The fact that the Tribe applied to have all of the acquisitions taken into trust at the same time and that they were the first parcels requested by the Tribe to be acquired into trust is a clear indication of the Tribe's intent to reestablish a land base.").

3. The Department Codified the Three-Factor Test in Its Regulations

In 2000, the Department published a proposed rule to establish "procedures that an Indian tribe must follow in seeking a Secretarial determination [under § 2719(b)(1)(A)]" that a gaming establishment on newly acquired land would be in the best interest of the tribe and its members, and would not be detrimental to the surrounding community gaming on trust lands acquired after October 17, 1988. Gaming on Trust Lands Acquired After October 17, 1988, 65 Fed. Reg. 55,471 (Aug. 25, 2000). The proposed rule only addressed the two-part determination process; application of the three exceptions was not included. Comments on the proposed rule were permitted until November 13, 2000, and later reopened and extended until March 27, 2002. Comment period reopening, 66 Fed. Reg. 66,847 (Dec. 27, 2001); Correction to comment period reopening, 67 Fed. Reg. 3,846 (Jan. 28, 2002). Thereafter, the proposal lay dormant for several years.

On October 5, 2006, the Department published an amended proposed rule, with the expanded purpose of setting out "procedures that the Department of the Interior will use to determine whether class II or class III gaming can occur on land acquired in trust for an Indian tribe after October 17, 1988." Notice of proposed rulemaking, 71 Fed. Reg. 58,769, 58,772 (Oct. 5, 2006). The Department explained that it was expanding the rule to address the settlement of a land claim, initial reservation, and restored lands exceptions "in order to explain to the public how the Department interprets these exceptions." *Id.* at 58,770. The Department published the final rule — which addresses the three exceptions and the two-part determination process — on May 20, 2008, and the rule took effect on August 25, 2008. Final rule, 73 Fed. Reg. 29,354 (May 20, 2008); Final Rule; correction and stay of effective date, 73 Fed. Reg. 35,579 (June 24, 2008).

The preamble to the rule makes clear that the Department did not intend to relax the definition of "restored lands" that the Secretary, the NIGC and the courts developed. *See* Gaming on Trust Lands Acquired after October 17, 1988, 73 Fed. Reg. at 29,354-74 (May 20, 2008). The Department stated that it imposed the temporal limitation to "effectuate[ ] IGRA's balancing of the gaming interests of newly acknowledged and/or restored tribes with the interests of nearby tribes and the surrounding community." *Id.* at 29,367. Indeed, the Department's stated purpose for promulgating the regulations was to clarify its policies and impose consistency on its future determinations. *See id.* at 29,354.

The regulations, in fact, incorporate the limitations that the Department, the NIGC and federal courts have long imposed on the application of the restored lands exception. The regulations require a tribe to demonstrating a modern connection to land by showing that:

1) The land is within reasonable commuting distance of the tribe's existing reservation;

2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;

3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or

4) Other factors demonstrate the tribe's current connection to the land.

25 C.F.R. § 292.12(a). A tribe must also show that it has a "significant historical connection to the land" and a "temporal connection between the date of the acquisition of the land and the date of the tribe's restoration," such as the land being included in the tribe's first trust request or submitted within 25 years of restoration and no other gaming facility. *Id.* § 292.12(b), (c).

4. The Medford Site Cannot Meet the Factors The Department Requires

The Tribe cannot meet any of these limitations. It is for that reason that the Tribe has advocated that the OIG treat 25 C.F.R § 292.11(a) as a loophole. But doing so would require the Secretary to embrace an interpretation that would qualify any land the Secretary were to acquire for the Tribe within a five county area as "restored lands," no matter what the circumstances of its acquisition. Moreover, the loophole would benefit a very small class of tribes that have similar restoration acts, while leaving the rest of tribes limited as Congress intended. The Tribe's request to game in Medford is nothing more than a garden-variety off-reservation request. It should be treated as such. The circumstances of the proposed acquisition here underscore why the Secretary should not adopt the interpretation that the Tribe has advocated.

a. The Tribe Has No Modern Connection to Medford

The Tribe does not have any modern connection to Medford. For purposes of the restored lands exception, the Tribe must show that the land is: (1) "within reasonable commuting distance of [its] existing reservation"; (2) "near where a significant number of tribal members reside," if the tribe does not have a reservation; (3) "within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed for at least 2 years"; or (4) other factors to demonstrate a connection. 25 C.F.R. § 292.12(a). It cannot meet any of these requirements.

The Tribe's headquarters is located in North Bend, Oregon. There, the Tribe has a 6,512-acre reservation located on numerous noncontiguous parcels of land in southern Coos County, mostly in and to the southeast of the Coos Bay-North Bend urban area. Parts of the communities of Bandon, Barview, Coos Bay, and North Bend extend onto reservation lands. Pursuant to the Oregon Resource Conservation Act of 1996 (part of Pub. L. No. 104-208), the Tribe also manages approximately 5,400 acres of forest in Coos County, Oregon.

The Tribe's economic development corporation and its Tribal Members Services are located in downtown North Bend. The Coquille Tribe Health Clinic and Housing Authority are located in Coos Bay. The Tribe operates its class III casino — the Mill Casino — on Highway 101 in North Bend, overlooking Coos Bay, where it offers over 700 slot machines and Vegas-style table games, including black jack, roulette and craps, and which opened for business on May 15, 1995. In fact, the Tribe expanded the casino just five years ago when it opened the Hotel Tower, which added 92 rooms including six suites, an executive suite, a pool and hot tubs, a fitness center, five new meeting rooms and a full-service banquet kitchen. *See* A Look Back on Seventeen Years of the Mill Casino, Mill Casino Blog (Mar. 30, 2013). http://www.themillcasino.com/blog/index.php/2012/03/a-look-back-on-seventeen-years-of-the-mill-casino/.

The Tribe operates several other businesses in and around North Bend, including, but not limited to, Coquille Cranberries, a twelve-acre organic cranberry farm; ORCA Communications, which provides low-cost fiber optic/broadband access to link Bay Area businesses and institutions to national and global markets; and the Coquille Tribal Community Fund, which annually distributes grants to eligible organizations in Southwestern Oregon in the areas of health, public safety, education, environment, and arts.

The drive from the Tribe's extensive operations in North Bend is obviously not commutable; the 170-mile distance takes over three hours to drive. Because the Tribe already has a reservation, it makes no difference whether a significant number of tribal members live in Medford, but the City has no information that a significant number does. Nor is Medford within a 25-mile radius of tribal headquarters or any other governmental facility. There are simply no factors to demonstrate that the Tribe currently has any connection to Medford.

b. The Tribe Has No Historic Connection to Medford

For purposes of the restored lands exception, the Tribe must also show that it has a "significant historical connection" to Medford, which means that "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty," or that there are tribal villages, burial grounds, occupancy or subsistence use in the vicinity of the land. 25 C.F.R. § 292.2; *see also id.* § 292.12(b). Again, the Tribe fails to meet this requirement.

The Tribe's historic territory is located to the north and west of Medford, as definitively established by the Federal Court of Claims. The Tribe ceded it aboriginal land in its entirety to the United States government by treaty dated August 11, 1855. *Alcea Band of Tillamooks v. United States*, 103 Ct. Cl. 494 (1945). The land ceded does not include Medford, but rather runs along the crest of the Cascades to the west of Medford. The Treaty was submitted to the Senate on February 11, 1857 for ratification. The Senate did not reject the Treaty, but instead the Committee on Indian Affairs simply failed to report it out for ratification. *Id.*

In 1945, the Court of Claims determined that the Tribe had standing to sue for damages for "any and all legal and equitable claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon the whole or any part of the lands and their appurtenances occupied by the Indian tribes and bands described" in the unratified treaty of August 11, 1855. *Id.* Having concluded that the Tribe had never been compensated for it aboriginal land, the court determined the Tribe's area of exclusive use and occupation for the purposes of assigning damages as follows:

> All that land lying between the easterly and westerly boundary of the land described in the unratified treaty lying between the northerly line of the land hereinbefore described as belonging to said Too-too-to-neys and a line commencing at Cut Creek or Whiskey Run about three miles north of the mouth of the Coquille River, thence in a northeasterly direction following the divide between South Slough, Island Slough, and Sumner Slough, on the north, and the drainage of the lower Coquille River on the south, thence along the divide between the south fork of Coos River on the north and the Drainage of upper Coquille River on the south in a southeasterly direction to the east line of the land described in the unratified treaty, at Camas Valley.

Id. The Tribe's area of exclusive use and occupancy is depicted in http://memory.loc.gov/cgi-bin/query/D?hlaw:9:./temp/~ammem_fDPY; Oregon map, and http://usgwarchives.org/maps/cessions/ilcmap51.htm.

Medford is clearly not within the Tribe's area of historic area. In fact, according to the Royce maps, Medford falls within the territory of the Rogue River Indians. http://memory.loc.gov/cgi-bin/query/D?hlaw:1:./temp/~ammem_nume:::; *see also* Oregon map, http://usgwarchives.org/maps/cessions/ilcmap51.htm. Land immediately to the northwest was Umpqua (Cow Creek band) territory. *See* http://memory.loc.gov/cgi-bin/query/D?hlaw:2:./temp/~ammem_yN7z:::. And land to the west was Chasta, Sco-ton, and Grave Creek territory. http://memory.loc.gov/cgi-bin/query/D?hlaw:4:./temp/~ammem_evd3:::. The Tribe has not provided any information to support a finding that the Tribe has any connection to Medford, which in fact seems to be separated by territory of several other tribes.

c. The Tribe Fails the Temporal Requirement

Finally, the Tribe fails to meet the temporal requirement the regulations impose. That requirement requires a tribe to demonstrate a "temporal connection between the date of the acquisition of the land and the date of the tribe's restoration" by either the land being included in the tribe's first request for newly acquired lands since restoration or the tribe submitting an application to take the land into trust within 25 years of restoration and the tribe is not gaming on other lands. 25 C.F.R. § 292.12(c). Again, the Tribe fails the Department's test.

The Tribe already has a reservation *and* a casino in North Bend. It has been 19 years since the Tribe acquired the North Bend site. As soon as the Tribe was restored, it sought land in North Bend and was successful. A portion of those lands was determined to be the Tribe's restored lands by the Secretary. *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Portland Are a Director*, 27 IBIA 48, 53 (Nov. 30, 1994) (indicating that the Area Director determined that land in Coos qualified as restored lands). The Medford site simply does not qualify.

CONCLUSION

The Tribe is asking the Department to adopt an interpretation of its regulations that is contrary to all prior cases, the regulations and the long-standing policy of the Department and would create a loophole for a very small number of tribes. There is no evidence that the Department intended to create such a loophole in promulgating the Section 20 regulations. What the Tribe is asking is for the Department to uniquely advantage it over all other tribes in the State of Oregon and to grant it carte blanche to skip the two-part determination that Congress enacted to balance legitimate local concerns with the goals of promoting tribal economic development and tribal self-sufficiency, both of which are reflected in IGRA. The Tribe's request for a restored lands determination should be denied.

Should you have any questions, do not hesitate to contact me at (202) 434-1648.

Sincerely,

Jena A. MacLean

cc: Governor John Kitzhaber
Attorney General Ellen F. Rosenblum
U.S. Senator Jeff Merkley
U.S. Senator Ron Wyden
U.S. Representative Greg Walden
Jackson County Administrator Danny Jordan
Chairman Dan Courtney, Cow Creek Band of the Umpqua Tribe
Chairwoman Brenda Meade , Coquille Indian Tribe

EXHIBIT A

OFFICE OF THE
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May 3, 2013

The Honorable Kevin K. Washburn
Assistant Secretary - Indian Affairs
Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Stanley Speaks, Regional Director
Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

Re: Preliminary Response of the City of Medford, Oregon to Coquille Tribe's Proposed Trust Request for Gaming

Dear Mssrs. Washburn and Speaks:

Thank you for granting a 60-day extension for the City of Medford, Oregon to provide comments on the Coquille Indian Tribe's application to have 2.42 acres of land located in Medford acquired in trust for class II gaming. The City has a number of concerns regarding the proposed project. The City's concerns include its loss of regulatory jurisdiction over City land, the impacts a class II casino will have on the City, the potential for future casino expansion at the site and the introduction of class III games, the economic impacts related to substitution effects and problem gambling, and a number of similar issues.

Although it is difficult to see how the Tribe could address all of the City's concerns and mitigate the adverse impacts of its proposed project to the City's satisfaction, the City recognizes that it does not have sufficient information about the Tribe's proposal at this time to reach a final conclusion. Without such information, however, the City cannot take a position in support of the proposed development, and therefore opposes it. The City is also not able to provide complete comments in response to the Bureau of Indian Affairs' ("BIA") February 1, 2013, letter requesting certain information regarding the impacts of the proposed project. The City therefore reserves the right to supplement these very preliminary comments, as it learns more about the Tribe's proposal and continues to meet with the community and nearby tribes to hear their views.

These comments are divided into three sections. First, the City sets forth its concerns regarding the process that the Tribe has argued applies to the acquisition. It is the City's view that the land in Medford does not qualify for gaming and thus must be reviewed under the more rigorous two-part determination test set forth in Section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(A). Second, the City provides preliminary responses to the questions BIA posed in its February 1, 2013, letter. Third, the City sets forth other concerns that it has regarding the proposed action.

1. BIA Must Apply the Two-Part Determination Test and Defer to the City's Views Regarding Detrimental Impacts on the Community

The City has been informed that the Tribe has requested a gaming eligibility determination from the Office of Indian Gaming ("OIG") under the restored lands exception to the general prohibition on gaming, 25 U.S.C. § 2719(b)(1)(B)(iii). Upon review of the Coquille Restoration Act, the legal cases concerning the restored lands exception, and the policies behind the equal footing exceptions, it is clear that the Medford Site does not qualify as restored lands.

First, the Coquille Restoration Act itself does not mandate or authorize this acquisition; the Secretary would instead be exercising her discretionary authority to acquire this land pursuant to the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465. There is no basis for claiming that the Restoration Act automatically qualifies any land acquired in trust within the Tribe's service area as restored lands when such land is not acquired pursuant to the Restoration Act, but is instead acquired under the generally applicable IRA.

Second, the Tribe's argument would undermine the purpose of the equal footing exceptions, which embody a policy of promoting parity between restored and other tribes. Here, the Coquille Tribe already has a reservation 170 miles away and a casino, which it has been operating for 17 years. The Tribe's argument, if accepted, would unfairly advantage tribes with restoration act over virtually all other tribes, and particularly those where the restoration act defines the tribe's service area broadly. Such an interpretation is fundamentally inconsistent with the purpose of the equal footing exceptions.

Third, the City notes that the Tribe's proposal to develop a casino in Medford has been highly disruptive to the tribal community. Multiple tribes have contacted the City and have spoken out in public hearings objecting to the Tribe's proposal and claiming that the Coquille Tribe lacks a significant historical connection to Medford. Although the City has not reached a conclusion as to the Tribe's historical connection to Medford, if any, it does note that the City is clearly not within the area that federal courts have identified as the Tribe's territory. Thus, the Tribe's proposal places the City in a difficult position with respect to those Tribes who are already members of the Medford community and are strongly opposed to the Coquille Tribe's application to obtain land outside of its primary territory.

It is the City's view that the only way that gaming can be permitted at the Medford Site is through the two-part determination process, which requires the Secretary to determine that gaming in Medford – 170 miles away from the Tribe's current reservation, tribal offices, and existing casino – is in the best interests of the Tribe and will not be detrimental to the surrounding community *and* the Governor concurs in that determination. *See* 25 U.S.C. § 2719(b)(1)(A). The two-part determination process is critically important to state and local government because it gives local governments a far more significant role in any gaming-related trust request and gaming eligibility determination. *See generally* 25 C.F.R. §§ 292.13-25. To reach a no detriment finding requires the Secretary to conduct extensive consultation with governments within 25 miles of the proposed gaming and a strong, cooperative relationship between the host community and the applicant tribe. In addition, the two-part determination process gives the governor the authority not to concur in the Secretary's determination, thereby preventing gaming (and trust acquisition) for occurring when such proposals might disrupt state policies.

A finding that the Medford Site qualifies as restored lands would circumvent the two-part determination process and deprive the City of critical procedural and substantive rights to which it is entitled. It would also be inconsistent with the statute, the case law, and the policies behind the exceptions. The City therefore strongly opposes any effort to circumvent the procedural and substantial rights Congress granted it through Section 20 of IGRA and will soon be filing its legal analysis with the OIG to ensure that the proper processes are followed.

2. The City Provides the Following Preliminary Responses to BIA's February 1, 2013 Request for Information

As set forth above, the City does not have sufficient information to provide BIA anything other than preliminary responses. The City, therefore, anticipates supplementing these comments as more information is made available.

1) The annual amount of property taxes currently levied on the property:

See attached tax report. Ex. 1.

2) Any special assessments, and amounts thereof, which are currently assessed against the property:

See attached tax report. Ex. 1.

3) Any governmental services which are currently provided to the property by your jurisdiction:

a. Development service: Planning including long-range regional planning, Engineering, Building including administration of building safety codes;

b. Life and Property Safety service: Police and Fire Protection including Emergency Medical Service and administration of Fire codes;

c. Special Event permitting service;

d. Water service – not allowed outside city limits per City Charter;

e. Sewer service;

f. Roadway and Sidewalk Right-of-Way Management service;

g. Parks and Recreation service;

h. Licensing and other Financial Department service;

i. Code Enforcement;

j. Court service including offense prosecution;

k. Emergency Management Disaster Response service;

l. Tounsm Promotion service; and

m. Utility Management Franchise service.

4) If subject to zoning, how the property is currently zoned:

See attached. Ex. 2.

3. Additional City Concerns

It is the City's understanding is that the Coquille Tribe has been seeking the City's support for its gaming-related fee-to-trust application. The City has had the opportunity to meet with the Tribe to discuss the proposed facility. Unfortunately, those discussions have been preliminary only and did not occur until April 23, 2013. And although the Tribe provided the City a bit more detail about its business plan at that meeting, the City has not had sufficient time to consult with its various departments to identify areas of concern and potential impacts. Thus, the comments represent the City's initial effort to identify general areas of concern, each of which will require further development. In addition to the procedural questions and comments set forth above, the City provides the following information:

1) The City has been asked by the Coquille Indian Tribe to support its proposed fee-to-trust application for gaming purposes. The Tribe's proposed action would take property out of local control to establish an activity that is not allowed under State or local law. It will be difficult for the City to support such a proposition, regardless of who is proposing it.

2) The Coquille Tribe has stated that it would like to pay its fair share for services and impacts. The Tribe therefore understands that there will be adverse impacts from the proposed development. The Tribe appears to concede that gambling would create or foster addiction, and it has stated that it would pay for programs to rehabilitate the addict. From the testimony the City has heard to date, such rehabilitation does not fully address the damage that takes place. Therefore, it will be difficult for the City to support such an application, regardless of who is proposing it.

3) The Coquille Tribe has explained that that their proposed casino would provide 223 full-time jobs. The City, however, was presented with evidence that suggests that not all jobs would be new jobs. Instead, it is highly likely that some of the jobs would be from existing establishments that would lose customers and employees to the Tribe's proposed Medford casino. Although the City is not against fair competition, when an establishment can have a monopoly, the City does not consider that fair competition. Therefore, it will be difficult for the City to support such an application, regardless of who is proposing it.

4) The Tribe states that its proposed operation would generate revenues which would benefit the community. The City, however, has been presented with a study that indicates that a tribal casino in Medford would reduce the revenues generated by the state lottery. The City is a beneficiary of state lottery revenues, and the local schools are beneficiaries of state lottery revenues. The City would be adversely impacted if state lottery revenues to schools and City programs were diminished.

5) The Tribe has explained that it needs to locate a casino in Medford because its current casino in North Bend will be destroyed by the inevitable Cascadia event. The Tribe provided maps, charts and graphs to show where its current casino is located and what lands would be inundated by Cascadia. The City was provided with additional maps that showed that lands already held in trust for the Tribe within blocks of its existing casino would survive a Cascadia event. Further, in a Cascadia event, there is no guarantee that Medford would be better off than the Coos Bay North Bend area. It will be difficult for the City to support the Tribe's application with the asserted need to game in Medford based on the Cascadia event.

6) The Tribe provided the City with a copy of its trust application for 2.42 acres of land to develop a Class II gaming facility. When questioned about whether the Tribe's leasing of the neighboring 7+

acres of golf course land was for a Class III establishment, the Tribe represented that it did not now have plans for a Class III establishment, but that things may change in the future. The City has received testimony that it is common for Class III establishments to begin as Class II facilities. Based on that testimony, it is likely that the Tribe will eventually offer Class III games at the Medford Site. Not only is it difficult for the City to support Class II gaming in Medford, the strong likelihood that the Medford Site will ultimately have Class III gaming is a major concern for the City.

7) The Tribe has not provided the City with any evidence that it has any historical or aboriginal connection to Medford. The Tribe's Restoration Act establishes Jackson County as part of its service area where tribal members are allowed to receive federal benefits. Service areas, however, are designated on the basis of where Tribal members live today, not their historical locations. The City was also presented with evidence from other Tribes that the Coquille Tribe does not have aboriginal ties to the area. Other Tribes and tribal groups that are part of our community attended the City's public hearing town hall meeting and explained their heritage. People identifying themselves as Shasta Indians and the Cow Creek Band of the Umpqua explained that their ancestors fought and died and were buried in Medford and Jackson County. Those Tribes and tribal groups stated that permitting the Coquille Indian Tribe to obtain trust land and operate a casino in Medford would be an affront to their ancestors and to tribal sovereignty and traditions that exist within and without federal government recognition. It will be difficult for the City to support a casino, when the Tribes that have long been members of the Medford community are so strongly opposed to such development.

8) The City has been asked to address the impacts and costs from the proposed development. When asked what the impacts will be, the Tribe has stated that impacts and costs will be addressed in the environmental review process. The City cannot presently address the impacts based on information that will be developed in some yet-to-occur process. The Tribe also states that it will spend $26 million on improvements. If this project were permitted to go forward under the City's jurisdiction, the City would realize approximately $150,000 in building permits and inspection fees alone. The Tribe has also stated that its North Bend facility generated 89 calls for service last year. Research conducted by the Medford Police Department indicates the number is up to four times that many calls, suggesting that the impact on City services may be great. The Tribe submitted its business plan one week prior to the due date for these comments. That is not enough time to determine the scope of the proposed project's impacts. The City cannot currently support the Tribe's application based on the limited information available, some of which appears to be inaccurate, and the short period it has been given to review information.

9) The City has information that approval of the Tribe's proposed project will establish precedent in the State that would encourage other tribes to seek additional trust land for gaming and allow other such facilities to be placed in major metropolitan areas. Such action will disrupt the equilibrium in the State and will have impacts on other cities, counties and the State. For this reason, the City must oppose the proposed project and the process at least until such impacts are taken into account.

10) The Tribe's trust request asks the Secretary to take a parcel of land out from under City, County and State jurisdiction. However, the Federal government currently owns approximately 48% of the land in Jackson County. We cannot support the federal removal of lands from the State, City and County on this basis.

11) Finally, the Tribe has represented to the City that the BIA will be preparing an environmental impact statement, as is required under the National Environmental Policy Act. The City, of course, has valuable expertise on environmental, land use, and jurisdictional issues within City limits and accordingly, should participate extensively in the review process as a cooperating agency. The City

hereby formally requests designation as a cooperating agency and that it be provided the opportunity to work with BIA to develop the proper scope of the environmental review.

Thank you for the opportunity to provide comments, which the City will develop in greater detail in the coming months. Should you have any questions regarding this matter, please contact John Huttl, our City Attorney, at (541) 774-2020.

Very truly yours,

Gary H. Wheeler
Mayor of the City of Medford, Oregon

Enclosures

cc: Governor John Kitzhaber
Attorney General Ellen F. Rosenblum
U.S. Senator Jeff Merkley
U.S. Senator Ron Wyden
U.S. Representative Greg Walden

REAL PROPERTY TAX STATEMENT
JULY 1, 2012 TO JUNE 30, 2013
JACKSON COUNTY, OREGON
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

ACCOUNT NO: 10568511

PROPERTY DESCRIPTION
CODE: 0407
MAP: 371W32C004701
ACRES: 2.42
SITUS: 2375 SOUTH PACIFIC HWY PHOENIX-TA

SOUTHERN OREGON PROPERTY HOLDINGS LLC
1159 MIRA MAR AVE
MEDFORD, OR 97504

VALUES:	LAST YEAR	THIS YEAR
REAL MARKET (RMV)		
LAND	522,510	491,170
STRUCTURES	1,357,540	1,276,120
TOTAL RMV	1,880,050	1,767,290
TOTAL ASSESSED VALUE	1,244,440	1,281,770
EXEMPTIONS		
NET TAXABLE:	1,244,440	1,281,770
TOTAL PROPERTY TAX:	17,771.85	18,303.80

EDUCATION SERVICE DISTRICT	437.36
ROGUE COMMUNITY COLLEGE	657.29
PHOENIX / TALENT SCHOOL DIST 4	5,437.51
EDUCATION TOTAL:	6,532.15
JACKSON COUNTY	2,496.07
VECTOR CONTROL	53.32
ROGUE VALLEY TRANSIT DISTRICT	219.95
JACKSON COUNTY SOIL & WATER CON'S	62.17
CITY OF MEDFORD	6,787.36
MEDFORD URBAN RENEWAL	636.91
GENERAL GOVT TOTAL:	10,253.78
JACKSON COUNTY BONDS	241.10
ROGUE COMMUNITY COLLEGE BONDS	141.38
CITY OF MEDFORD	103.44
PHOENIX / TALENT SCHOOL DIST 4 B	1,031.95
BONDS & OTHER TOTAL:	1,517.87

VALUE QUESTIONS (541) 774-6059
PAYMENT QUESTIONS (541) 774-6541

ALL TAX PAYMENTS ARE NOW PROCESSED LOCALLY - PLEASE DO NOT SEND TO PREVIOUS PORTLAND ADDRESS.

2012-13 TAX (Before Discount) 18,303.80

PAYMENT OPTIONS			
Date Due	3% Option	2% Option	Trimester Option
11/15/12	17,754.69	11,958.48	6,101.27
02/15/13			6,101.27
05/15/13		6,101.27	6,101.26
Total	17,754.69	18,059.75	18,303.80

TOTAL DUE (After Discount and Pre-payments) 17,754.69

Tear Here — PLEASE RETURN THIS PORTION WITH YOUR PAYMENT — Tear Here

2012-2013 PROPERTY TAXES — JACKSON COUNTY REAL — ACCOUNT NO. 10568511

PAYMENT OPTIONS	Discount	Date Due	Amount	Date Due	Amount	Date Due	Amount
Full Payment Enclosed	3%					11/15/12	17,754.69
or 2/3 Payment Enclosed	2%			& 05/15/13	6,101.27	11/15/12	11,958.48
or 1/3 Payment Enclosed	0%	05/15/13	6,101.26	& 02/15/13	6,101.27	& 11/15/12	6,101.27

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE ☐ Mailing address changes on back

Enter Payment Amount
$

MAKE PAYMENT TO:

SOUTHERN OREGON PROPERTY HOLDIN
1159 MIRA MAR AVE
MEDFORD OR 97504-8578

LLC JACKSON COUNTY TAXATION OFFICE
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

1583 - 013067 - 1830380

1510010568511000061012700011958480001775469 6

EXHIBIT 1

Property Data Online

ASSESSMENT & PLANNING DETAILS

Account Detail | Sales | Deed Card
Overlay Report | Permit Details | Tax Report

Zoom map to this taxlot
Bing Google Yahoo

Map & Taxlot	[illegible]
Tax Code	4-02
Acreage	2.42
Zoning	C-R
Land Class	UNK 2.42 Ac
Property Class	201
Stat Class	877
UNIT ID	160409-1
Maintenance Area	4
Neighborhood	000
Study Area	00
Account Status	ACTIVE
Tax Status	[illegible]
Sub Type	[illegible]
Owner	SOUTHERN OREGON PROPERTY HOLDINGS LLC
Situs Address	2275 SOUTH PACIFIC HWY PHOENIX-TALENT/COUNTY
Mailing Address	SOUTHERN OREGON PROPERTY HOLDINGS LLC 1359 MIRA MAR AVE MEDFORD OR, 97504
Taxlot Acreage	2.42
Building # 1	0 23312 Soft Bowling Alley

EXHIBIT 2

9th Cir. No. 12-15817

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REDDING RANCHERIA,
Plaintiff-Appellant

v.

KENNETH SALAZAR, in his official capacity as Secretary of the Department of the Interior; DEL LAVERDURE, in his official capacity as Acting Assistant Secretary – Indian Affairs,
Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANSWERING BRIEF OF FEDERAL APPELLEES

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Assistant Attorney General

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JURISDICTIONAL STATEMENT

Appellant Redding Rancheria (the "Tribe") sued the Secretary and Assistant Secretary of the United States Department of the Interior, pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq*, challenging Interior's decision that certain parcels of land owned by the Tribe would not be eligible for gaming were the United States to take that land into trust for the Tribe. The United States District Court for the Northern District of California had jurisdiction over the Tribe's complaint pursuant to 28 U.S.C. § 1331 (federal question) and § 1362 (granting original jurisdiction to district courts for any federal question raised by an Indian Tribe). The district court entered summary judgment for the Federal Appellees on all claims on February 16, 2012. ER 1.[1] The Tribe filed a timely notice of appeal on April 10, 2012. Fed. R. App. P. 4(a)(1)(B) (notice of appeal is timely within 60 days of judgment when United States is a party). This Court has jurisdiction over this final judgment of a district court pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

On December 22, 2010, the Assistant Secretary of the Interior sent a letter to the Tribe explaining Interior's final determination that it would not take certain parcels of land into trust for the Tribe for gaming purposes. ER 268. As a general

[1] The Excerpts of Record accompanying the Brief of Appellant are referred to herein as "ER." The Appellees' Supplemental Excerpts of Record are designated "SER."

rule, tribes are prohibited by the Indian Gaming Regulatory Act ("IGRA") from gaming on lands acquired after October 17, 1988. 25 U.S.C. § 2719(a). In this case, Interior determined that the "restored lands exception" to that general prohibition did not apply. 25 U.S.C. § 2719(b)(1)(B)(iii). Interior relied in part on regulations promulgated by the Secretary of the Interior in 2008, which clarify and interpret the restored lands exception. 25 C.F.R. Part 292. Those regulations provide that a tribe may conduct a gaming operation under this exception if the tribe's request to take lands into trust is the first such request after the tribe is "restored to Federal recognition," 25 C.F.R. § 292.12(c)(1), or if the tribe's request is submitted within 25 years of its restoration and the tribe is not already gaming on other lands. 25 C.F.R. § 292.12(c)(2).

The issues presented on appeal are:

1. Whether the Secretary of the Interior's interpretation of the restored lands exception of IGRA, as promulgated by regulations, is a permissible construction of the statutory provision that contains ambiguous and undefined terms?

2. Whether the Secretary of the Interior was arbitrary or capricious in his denial of the Redding Rancheria's request for specific lands to be taken into trust for gaming purposes under the restored lands exception?

STATEMENT OF THE CASE

The Redding Rancheria was restored to Federal recognition in 1984. Since then, Interior has taken several parcels of land into trust status on behalf of the Tribe, and the Tribe has operated a casino on some of those parcels since 1999. In 2003, the Tribe asked Interior to take another parcel of land into trust for gaming purposes. Interior denied the request because the new lands are not lands "taken into trust as part of . . . the restoration of lands for an Indian tribe that is restored to Federal recognition" under IGRA. 25 U.S.C. § 2719(b)(1)(B)(iii). Those lands lack the necessary "temporal connection" to the Tribe's restoration because they are neither the first lands acquired by the Tribe after its restoration nor the first lands on which the Tribe intends to engage in gaming activity. 25 C.F.R. §§ 292.12(c)(1)-(2); ER 274-75.

Shortly after receiving the adverse decision from Interior, the Tribe filed suit in the Northern District of California. ER 313. The Complaint seeks an array of injunctive and declaratory relief. The Tribe first argued that Congress had delegated no authority in IGRA to the Secretary to promulgate the Part 292 regulations, instead granting that authority only to the National Indian Gaming Commission ("NIGC"). ER 319. The Tribe next argued that the Part 292 regulations were arbitrary or capricious, as applied to the Tribe, for two reasons: 1) because 25 C.F.R. § 292.12(c) "imposes conditions for the restored lands determination that Congress never

intended and conflicts with judicial interpretations of the IGRA;" and 2) because the Tribe alleged that the regulations could be read to make two independent provisions of IGRA "mutually exclusive" in a manner not intended by Congress. ER 320-323. The Tribe further argued that Interior's December 22, 2010 decision was arbitrary or capricious because it relies on invalid regulations and failed to address an alternative argument of the Tribe. ER 323-325. Finally, the Tribe argued that because the Secretary did not "construe the meaning of the phrase 'newly acquired lands' [as defined in 25 C.F.R. § 292.9] broadly, as the Tribe understands that phrase," this interpretation "constitutes a direct breach of the United States government's trust duty owed to the Tribe." ER 325.

The parties filed cross-motions for summary judgment, and the district court granted summary judgment to the United States on all claims. ER 1. The district court first found that the Secretary possessed the requisite authority to promulgate the Part 292 regulations. ER 14-15 (citing, *inter alia*, 5 U.S.C. § 301; 25 U.S.C. §§ 2 & 9; 25 U.S.C. § 2719(c)).

Turning to the substance of the regulations, the district court upheld them as a permissible interpretation of ambiguous terms found in the IGRA. ER 20-23. The court held that the phrase "restoration of lands," as used in the statute's "restored lands exception," is undefined and susceptible to multiple interpretations. ER 20-21. Furthermore, IGRA does not provide a clear explanation of which lands are encompassed by the provision, and it is therefore ambiguous. ER 21. The district

court held that it must defer to Interior's interpretation of these ambiguous terms, applying *Chevron U.S.A., Inc. v. Natural Resources Def. Council*, 467 U.S. 837, 843 (1984). ER 21. The Tribe argued that the district court should instead apply the "Indian canon of statutory construction" that counsels that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." ER 13 (quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985)). The district court declined, for the simple reason that "the ambiguity of the Restored Lands Exception does not lead to one potential reading that benefits Indians and another potential reading that does not." ER 21. The court held that the regulations were a permissible construction of the statute, deserved the high level of deference required by *Chevron*, and were not arbitrary or capricious. ER 26-28.

The district court also found that Interior's application of the Part 292 regulations in this particular case was not arbitrary or capricious. ER 30. The court found that the decision letter did not fail to address the Tribe's alternative arguments – rather, the letter explained why addressing those arguments was unnecessary because they could not change the outcome. ER 31. The court explained that "[t]he Tribe's real objection to the Decision appears to be not how Interior applied the Regulations but rather that Interior applied them at all." *Id.* Finally, the district court held that the United States had not breached any fiduciary duty to the Tribe.

The district court entered judgment for the United States, and the Tribe appealed. ER 35.

STATEMENT OF THE FACTS

I. Statutory and Regulatory Background

A. IGRA and the restored lands exception

Congress enacted IGRA in 1988 to provide a statutory basis for the operation and regulation of Indian gaming, finding that existing federal law did not "provide clear standards or regulations for the conduct of gaming on Indian lands," 25 U.S.C. § 2701(3). *See, e.g., Seminole Tribe of Florida v. State of Florida*, 11 F.3d 1016, 1019 (11th Cir. 1994) ("In an attempt to supply some much needed regulation, and after contentious debate concerning the appropriate state role in the regulation of Indian gaming, Congress enacted the [IGRA].").

IGRA regulates gaming conducted on "Indian lands," which includes both lands that are part of a tribe's reservation, 25 U.S.C. § 2703(4)(A), and lands held in trust by the United States on behalf of an Indian tribe or individual. *Id.* § 2703(4)(B). The general authority to take land into trust long predates IGRA, and is found in the Indian Reorganization Act, enacted in 1934. 25 U.S.C. §§ 465, 467. The Indian Reorganization Act authorizes the Secretary of the Interior to take land into trust "for the purpose of providing land for Indians," 25 U.S.C. § 465, and to declare and add to reservations. *Id.* § 467.

As a general matter, IGRA prohibits gaming activities conducted on Indian lands that are taken into trust after the date of IGRA's passage (October 17, 1988). 25

U.S.C. § 2719. However, several exceptions apply. For example, the prohibition on gaming on these "later-acquired lands" does not apply if those lands are "located within or contiguous to the boundaries of the reservation of the Indian tribe" as of IGRA's passage date. 25 U.S.C. § 2719(a)(1).

But some tribes did not have a reservation on that date. ER 7 (citing *City of Roseville v. Norton*, 348 F.3d 1020, 1022 (D.C. Cir. 2003); *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 253-54 (1992)). In order to protect the interests of these tribes, while balancing them against the interests of the more established tribes, *see City of Roseville*, 348 F.3d at 1030, Congress included the "restored lands exception" to the general prohibition on gaming on later-acquired lands. This particular provision is the focus of this appeal. It provides that the general prohibition on gaming on later-acquired lands does not apply when "lands are taken into trust as part of . . . the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). However, IGRA provides no definition of "restoration of lands," nor does it provide any mechanisms by which the Secretary might "restore" lands to an Indian tribe.

B. The Secretarial determination provision

In addition to these exceptions (and others) established in IGRA Section 2719, Congress provided a general, catch-all provision that could permit any tribe to game

on lands taken into trust after October 17, 1988. This process, known as a "Secretarial determination," permits a tribe to engage in gaming on a particular parcel of later-acquired lands if the Secretary finds that gaming would "be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A). The Governor of the State in which gaming will occur must concur in the Secretary's determination. *Id.* The Redding Rancheria has not sought a Secretarial Determination for the properties at issue in this case, but other tribes in California have done so successfully and received the Governor's concurrence.

C. The Part 292 regulations

1. The regulations underwent extensive notice and comment.

For many years, Interior implemented the restored lands exception on a case-by-case basis. In March 2006, the Secretary notified Tribal governments that Interior intended to propose new regulations that would provide procedures and additional clarity for all of the exceptions found in 25 U.S.C. § 2719. SER 18-20. The Secretary provided a draft of the proposed regulations and sought comment both by letter and at four public meetings across the country. SER 19. The administrative record in this case contains 74 letters, presentations, and policy papers providing extensive Tribal comments on these draft regulations even before they were published for public

comment several months later. *See* SER 1-17 [Index to the administrative record]. The Redding Rancheria was among these commenters. SER 21-22. Interior began the formal notice and comment period on the new Part 292 regulations on October 5, 2006. *Gaming on Trust Lands Acquired After October 17, 1988*, 71 Fed. Reg. 58,769 (Oct. 5, 2006).

A year and a half later, Interior promulgated its Final Rule, codifying its interpretation of 25 U.S.C. § 2719. *Gaming on Trust Lands Acquired After October 17, 1988*, 73 Fed. Reg. 29,354 (May 20, 2008). The regulations implement this section of IGRA by articulating the standards that Interior "will follow in interpreting the various exceptions to" IGRA's general prohibition on gaming on lands acquired after October 17, 1988. *Id.* at 29,354.

2. The Part 292 regulations interpret ambiguous statutory terminology.

The Part 292 Regulations clearly establish "[w]hat must be demonstrated to meet the 'restored lands' exception" found at 25 U.S.C. § 2719(b)(1)(B)(iii)." 25 C.F.R. § 292.7. For a tribe to be eligible to game on "newly acquired lands" under this exception, four conditions must apply to the tribe: 1) it was federally recognized at one time; 2) it subsequently lost that recognition in one of the ways specified elsewhere in the regulations; 3) it later "was restored to Federal recognition" in one of the regulatorily-defined manners; and finally 4) "the newly acquired lands meet the

criteria of 'restored lands' in § 292.11." 25 C.F.R. §§ 292.7(a)-(d). There is no dispute in this case that the Redding Rancheria has satisfied the first three criteria – the issue is whether its newly acquired lands can be considered "restored lands" as defined by 25 C.F.R. § 292.11.

The regulations define "newly acquired lands" as any "land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988." 25 C.F.R. § 292.2. This definition was added in response to a number of comments expressing confusion over the possible applicability to this section to restricted fee lands or trust lands held by individuals. 73 Fed. Reg. at 29,356. *See also id.* at 29,358 (explaining that the definition of "newly acquired lands" addressed ambiguities in the definition of "trust land" in the regulations). There is no dispute in this case that, were Interior to take the two parcels at issue (known as the "Strawberry Fields" and "Adjacent 80 Acres" parcels) into trust for the Redding Rancheria for gaming purposes, these parcels would qualify as "newly acquired lands" as defined by 25 C.F.R. § 292.2.

Those regulations then provide a number of criteria to be used in determining whether newly-acquired lands are "restored lands" on which gaming may be conducted. 25 C.F.R. § 292.11. For a tribe such as the Redding Rancheria, which "was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States," *id.* § 292.11(c), the property must meet the requirements of 25 C.F.R. § 292.12. This

provision requires that the tribe must demonstrate a "modern" connection to the land, *id.* § 292.12(a), a "significant historical connection, *id.* § 292.12(b), and "a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration." *Id.* § 292.12(c). This last provision is the crux of the case before this Court.

To demonstrate this temporal connection, and thus to establish that gaming may be conducted on these newly-acquired lands, a tribe need satisfy only one of two possible criteria:

> (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
>
> (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

25 C.F.R. § 292.12(c)(1)-(2).

II. The Redding Rancheria's request to take newly-acquired lands into trust for gaming

A. The Redding Rancheria is a "restored tribe" for purposes of the restored lands exception.

The history of the Redding Rancheria, including its termination as a federally-recognized tribe by the United States in 1962, is told in the Brief of Appellant. *See* Br. of Appellant at 3-12. The Tribe was restored to federally-recognized status pursuant to a court-approved settlement agreement with the United States on June 11, 1984. *See*

ER 164-77, 269; SER 35 (restoring federal status to 17 California Rancherias). Interior determined in the decision document challenged in this case that the Redding Rancheria is therefore a "restored tribe" for purposes of the "restored lands exception." ER 272.

B. The Redding Rancheria submitted a number of previous land-into-trust requests.

The Redding Rancheria submitted several requests for the Secretary to take land into trust for the tribe following its restoration and after the enactment of IGRA, thus making each of those properties "newly acquired lands" as defined by 25 C.F.R. § 292.2. The Tribe acquired its first trust holdings in 1992, through the transfer of the beneficial interest in approximately 8.5 acres of trust lands (lots 4, 5, and 6) formerly held by Interior in trust for individual tribal members. *See* ER 198, 269. The Redding Rancheria currently operates a casino, known as the Win-River Casino, on these lands. ER 275, 317 ¶¶ 14-16.

In 1995, the Tribe submitted a fee-to-trust request for an additional 1.06 acres that it wished the United States to take into trust. SER 24. The complete fee-to-trust application was submitted in 2008, ER 202, and Interior took the property into trust on January 21, 2009. ER 202, 269. This property is the site of the Tribe's Head Start facility. ER 202.

The Tribe further sought to have four additional parcels of land taken into trust in late 2000. SER 25-31. At the time that Interior accepted the Head Start property into trust, it also accepted one of these four parcels into trust, ER 269, and that property is currently used as the Tribal Burial Grounds. Interior did not take the other three parcels into trust – these are owned by the Tribe in fee, and are used as parking lots for the Win-River Casino. The Tribe submitted another trust acquisition request for three small parcels totaling 3.65 acres of land, on which the Tribe maintains its administration building. ER 202. Interior granted this request in June 2010, taking this property into trust for the Tribe. SER 32-34 [Grant Deeds for these three parcels]. Of the approximately 30.89 acres of the Redding Rancheria's original reservation purchased for the Tribe in 1922, the United States now holds approximately 8.5 acres in trust for the Tribe. ER 268.

C. The Redding Rancheria requested that Interior take the Strawberry Fields and Adjacent 80 Acres parcels into trust for gaming purposes.

In 2003, almost 20 years after the Tribe was restored to Federal recognition, the Tribe purchased approximately 150 acres of property in Shasta County, California, less than a four mile drive from the Redding Rancheria and adjacent to Interstate 5. ER 268. The Tribe passed a resolution declaring its intent to use the property "for the multiple purpose of Developing a Casino with related Economic Development

Activities, while preserving and protecting aboriginal and sacred Sacramento River lands for the members of the Redding Rancheria Tribe," and that the Tribe would request that the Bureau of Indian Affairs take the land into trust for the Tribe. ER 264. It then submitted this request to Interior sometime thereafter.[2]

In April 2010, before Interior had acted on the Tribe's request, the Tribe purchased an additional three parcels of land (the "Adjacent 80 Acres") directly to the south of the Strawberry Fields property, and amended its request to include this additional property as well.

D. Interior denied the Tribe's request.

On December 22, 2010, the Assistant Secretary of the Interior for Indian Affairs (on behalf of the Secretary) wrote a letter to the Chairman of the Redding Rancheria, denying the Tribe's requests to take the Strawberry Fields and Adjacent 80 Acres into trust for the Tribe's proposed gaming activities. ER 268. The Secretary found "that the Tribe is a restored tribe, but the tribe's prior requests for trust acquisitions and its current gaming operation preclude a finding under the regulations that the Parcels are eligible for the restored lands exception." *Id.*

[2] The administrative record is unclear on the exact date that the Tribe submitted its request to Interior, but this is not a dispositive fact. The Tribe may have submitted its request in April 2004, SER 36-37, and Interior certainly had received the tribal resolution no later than April 2006. *See* SER 23.

The Secretary explained that the subject parcels were not "included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition," ER 274, as required by 25 C.F.R. § 292.12(c)(1). The Tribe had argued to Interior that it should not consider the trust-to-trust transfers of land in 1992 to be "newly acquired land" because the lands were already held in trust before October 17, 1988 (the cutoff date established in IGRA). ER 274. The Secretary explained that it was unnecessary to resolve this issue, because even if the Tribe was correct on that point, the Tribe had submitted two subsequent requests for newly acquired lands prior to asking Interior to take the Strawberry Fields property into trust. *Id.* The Tribe's requests to take into trust the properties where the Head Start facility and the Tribal burial grounds were located both predated the Tribe's request that Interior take the Strawberry Fields property into trust. *Id.* Therefore, neither the Strawberry Fields request nor the later request for the Adjacent 80 Acres was the Tribe's "first request for newly acquired lands," and they could not be eligible for the exception established by 25 C.F.R. § 292.12(c)(1).

The Secretary also determined that the second exception in that provision did not apply. *Id.* (citing 25 C.F.R. § 292.12(c)(2)). That provision requires both that a tribe submit its land-into-trust application within 25 years of restoration to Federal recognition, *and* that "the tribe is not gaming on other lands." *Id.* While the request to take the Strawberry Fields property was submitted within 25 years of the Tribe's restoration in 1984, the Tribe was indisputably operating a casino on its other

properties at the time of its request and at the time of the Secretary's determination. ER 274-75.

As the restored lands exception did not apply (and the Tribe had not sought a determination under any other exception), the Secretary denied the Tribe's request to take those properties into trust for gaming purposes. ER 275. The Secretary pointed out, however, that "[t]his decision does not preclude the Tribe from considering alternative non-gaming uses for the land," because Congress's prohibition on gaming "should not be interpreted as a prohibition against acquiring the land in trust for any other purposes." *Id.* The Secretary also highlighted IGRA's "Secretarial determination" provision as a potential avenue by which the Tribe might game on those lands. *Id.* The Tribe did not amend its request, but instead filed this lawsuit.

SUMMARY OF ARGUMENT

The opening brief frames this entire case as a question of whether or not the Secretary of the Interior's interpretation of IGRA, as reflected in regulations promulgated after formal notice-and-comment rulemaking, is subject to *Chevron* deference or to the Indian canon of construction that statutes are to be construed liberally in ways favorable to Indian interests. But that question has already been asked, and answered, by this Court. It is black-letter law in the Ninth Circuit that "the liberal construction rule must give way to agency interpretations that deserve *Chevron* deference because *Chevron* is a substantive rule of law." *Williams v. Babbitt*, 115 F.3d

657, 663 n. 5 (9th Cir. 1997). The Tribe's disagreement with this statement is of no import – this panel is bound by this Court's precedent, and it must uphold the Secretary's interpretation of IGRA so long as it is a permissible understanding of the statute.

But even if the matter were not so easily settled, the Tribe's opening brief fails to establish that it could prevail under an application of the Indian canon of statutory construction on which the Tribe relies. There is no canon of construction that requires an Indian plaintiff to prevail in all questions of statutory interpretation. Missing from the many pages of criticism aimed at the Secretary's decision, and the district court's review of that decision, is the single argument necessary for the Tribe to prevail in this case: a specific, alternative interpretation of the statutory term "part of – the restoration of lands" as used by Congress in the "restored lands exception" of IGRA. Construing the statute "liberally" produces no such interpretation, as there is no single understanding of this phrase that is favorable to all Indian interests. The Indian canon of construction could not alter the outcome of this case even if it was applicable.

The Secretary's interpretation of that phrase, which is the only interpretation presented in this case, is eminently reasonable. The Part 292 regulations ensure that the "restored lands exception" is given meaning, and that the general prohibition on gaming on later-acquired lands does not unfairly prevent tribes with no reservation lands in 1988 from ever engaging in gaming activity. At the same time, the regulations

constrain the exception so that restored tribes are not given unlimited opportunity to game on later-acquired lands, an opportunity not afforded by Congress to any tribe that had established Indian lands when IGRA was enacted.

The Secretary reasonably determined that a tribe could establish a temporal connection to later-acquired lands that were eligible for gaming in one of two ways. The tribe can game on the first land that it asks the United States to take into trust on the tribe's behalf (no matter when that request is made). 25 C.F.R. § 292.12(c)(1). Alternatively, the tribe's trust request can be for its first gaming lands, regardless of how many previous land-into-trust requests it has submitted, so long as the gaming lands request comes within the first 25 years of the tribe's restoration to Federal recognition. 25 C.F.R. § 292.12(c)(2). These provisions, which are the result of the Secretary's years of experience interpreting and applying the "restored lands exception," are a reasonable interpretation of an otherwise ambiguous and undefined statutory provision, and this Court's precedents require that it defer to the Secretary's interpretation.

Finally, the Tribe's objections to the Secretary's application of these regulations to the Tribe's request are completely unsupported. The key facts are not in dispute. The Tribe submitted other land-into-trust requests to Interior prior to submitting its request for the lands at issue here; therefore, 25 C.F.R. § 292.12(c)(1) did not apply. Also, the Tribe was (and is still currently) operating a gaming facility on other lands. Therefore, 25 C.F.R. § 292.12(c)(2) did not apply. As neither prong of the "temporal

connection" test could be met, Interior properly denied the Tribe's request. The district court's opinion should be affirmed.

ARGUMENT

I. Standard of Review

This Court reviews *de novo* the district court's grant of summary judgment to the United States, and its denial of summary judgment to the Tribe. *Russell County Sportsmen v. United States Dept. of Agriculture Forest Service*, 668 F.3d 1037, 1041 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2439 (2012). Because this Court must rely solely on the administrative record for the challenged agency decision, this Court may direct that summary judgment be granted to either party based upon its review of that record. *Karuk Tribe of California v. United States Dept. of Agriculture Forest Service*, 681 F.3d 1006, 1017 (9th Cir. 2012) (*en banc*) (citing *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005)).

II. This Court must defer to the Secretary of the Interior's permissible construction of IGRA.

"*Chevron* provides the guiding principles for according deference to an agency's interpretation of a statute it administers." *MacClarence v. United States Environmental Protection Agency*, 596 F.3d 1123, 1130 (9th Cir. 2010) (citing *Chevron USA, Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984)). On appeal, the Tribe

now concedes that Congress delegated the requisite authority to the Secretary of the Interior to promulgate the Part 292 regulations. *See also* ER 11-18 (addressing this argument and concluding that "Congress unambiguously authorized the Secretary to promulgate the Regulations," ER 17 n.5). Furthermore, the Secretary's interpretation of the statutory provisions at issue here is expressed in regulations that were formally promulgated subject to public notice and comment. *See United States v. Mead Corp.*, 533 U.S. 218, 230-31 (2000) (explaining that *Chevron* deference is particularly applicable to formal notice-and-comment rulemaking by agencies). IGRA is a statute that the Department of the Interior administers, and Interior's interpretations of that statute as codified in formal rulemaking are subject to the familiar two-step *Chevron* inquiry.

A. Both "restoration of lands" and "restored to Federal recognition" are ambiguous statutory terms subject to interpretation.

The first step of the *Chevron* inquiry is to determine "whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842. Here, Congress has not – the "restored lands exception" contains a number of undefined and ambiguous terms, as several courts have recognized. IGRA provides that the general prohibition on gaming on later-acquired trust lands "will not apply when -- lands are taken into trust as part of -- the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). The Tribe does not

dispute that key terms in that provision are ambiguous. *See* Br. of Appellant at 42 ("[T]he Indian canons should be employed to resolve the admitted ambiguity in the term 'restored lands.'"). Many courts have recognized that the statute does not define the terms "restoration of lands" or "restored to Federal recognition." *See, e.g., Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 46 F.Supp.2d 689, 695-702 (W.D. Mich. 1999) ("Neither 'restored' nor 'restoration' is defined under § 2719(b)(1)(B)(iii)."); *Confederated Tribes of Coos v. Babbitt*, 116 F.Supp.2d 155, 161 (D.D.C. 2000) ("'Restoration' is not defined in the statute."); *Oregon v. Norton*, 271 F.Supp.2d 1270, 1277 (D.Or. 2003) ("No statutory provision defines the terms 'restore' or 'restoration of lands' and no provision expressly limits the Secretary's authority to interpret these terms.").

The Secretary concluded in the challenged decision document (and the Tribe agrees) that "the Redding Rancheria Tribe satisfies the 'restored tribe' requirements of the restored lands exception." ER 272. The statutory interpretation question presented in this case therefore focuses specifically on the Secretary's interpretation of the phrase "part of -- the restoration of lands."

B. This Court's controlling precedent requires that this Court grant *Chevron* deference to the Secretary's interpretation of "restoration of lands."

When this Court reviews an agency's construction of ambiguous terms in a statute that the agency administers, as is the case here, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843, *as quoted in Center for Biological Diversity v. Salazar*, __ F.3d __, 2012 WL 3570667, *5 (9th Cir. Aug. 21, 2012). "If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation." *Center for Biological Diversity*, __ F.3d __, 2012 WL 3570667, *5 (quoting *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Service*, 545 U.S. 967, 980 (2005)).

The Tribe rejects this well-established approach to judicial review of an agency's statutory interpretation, arguing instead that this Court should apply an "Indian canon of construction" that ambiguous phrases in statutes enacted for the benefit of Indians must be construed in the Indians' favor. The opening brief discusses the history and development of this canon at great length. However, the brief fails to offer a specific definition of IGRA's terms that would satisfy this particular canon of construction and that the Secretary should have adopted. That is because, unlike the cases in which that canon has been applied, there is no such

interpretation available here. In promulgating the Part 292 regulations, the Secretary included a "temporal limitation" that "effectuates IGRA's balancing of the gaming interests of newly acknowledged and/or restored tribes with the interests of nearby tribes and the surrounding community." 73 Fed. Reg. at 29,367. *See infra* at 42-45. As no single interpretation of 25 U.S.C. § 2719 is clearly "in favor of the Indians," then the canon has no application, and the Tribe's lengthy dissertation on this Court's prior application of the canon has no bearing on the outcome of this appeal.

In any event, the Tribe's argument is directly foreclosed by controlling precedent from this Court. This Court has consistently held for at least 45 years that it must defer to an agency's interpretation of a statute it administers, notwithstanding any contrary Indian canon of statutory construction. *Assiniboine & Sioux Tribes v. Nordwick*, 378 F.2d 426 (1967). With respect to the Indian canon of liberal construction of ambiguous terms in favor of Indian interests, this Court "has recognized this canon of construction, [but] it has also declined to apply it in light of competing deference given to an agency charged with the statute's administration." *Haynes v. United States*, 891 F.2d 235, 239 (9th Cir. 1985) (citing *Shields v. United States*, 698 F.2d 987, 991 (9th Cir. 1983)). This is true even when the ambiguous statute in question was enacted for the benefit of Indians and might otherwise be subject to the Indian canon of construction. *Williams v. Babbitt*, 115 F.3d 657, 663 n.5 (9th Cir. 1997).

This Court regards the Indian canon of construction at issue here to be "a mere 'guideline and not a substantive law.'" *Id.* (quoting *Shields*, 698 F.2d at 990). "We have therefore held that the liberal construction rule must give way to agency interpretations that deserve *Chevron* deference because *Chevron* is a substantive rule of law." *Williams*, 115 F.3d at 663 n.5 (citing *Haynes*, 891 F.2d at 239; *Shields*, 698 F.2d at 991). The district court correctly applied this Court's precedent when it held that, were it necessary to determine whether the Indian canon of liberal construction was applicable, any interpretation compelled by that canon must still give way to a permissible construction of the statute by the Secretary of the Interior. ER 11, 19.

The Tribe's suggestion that this rule was overturned by a subsequent *en banc* decision is incorrect. The Tribe points to *Navajo Nation v. Department of Health and Human Services*, 325 F.3d 1133 (9th Cir. 2003) (*en banc*), which the Tribe claims "the district court failed to address." Br. of Appellant at 30. But the district court *did* address this case, properly noting that the case did not change the existing rule that *Chevron* deference takes priority over the Indian canon of liberal construction. ER 19. As the district court correctly explained, this Court in *Navajo Nation* noted its prior precedent on this point but left the question of that precedent's correctness "for another day." ER 19 (quoting *Navajo Nation*, 325 F.3d at 1136 n.4).

In *Navajo Nation*, the *en banc* panel found that the statute in question there was unambiguous, and the question presented could therefore be answered by "a plain reading of the language." 325 F.3d at 1136. With no ambiguous statutory terms to

interpret, "neither *Chevron* nor the *Blackfeet Tribe* presumption in favor of Indian tribes is implicated. Thus, we leave for another day consideration of the interplay between the *Chevron* and *Blackfeet Tribe* presumptions." *Id.* at 1136 n.4. *See also Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 729 (9th Cir. 2003) ("[A]mbiguity is a prerequisite for any application of the *Blackfeet* presumption."). Thus *Navajo Nation* did not alter this Court's long-standing rule that *Chevron* deference applies to regulations implementing a statute even when the statute is enacted for the benefit of Indians.

Nor does this Court's opinion in *Artichoke Joe's* compel a different result. In that case, this Court applied the Indian canon of construction to resolve an ambiguity in an "unrelated section of IGRA."[3] Br. of Appellant at 35. Indeed, that opinion, which was published after the *en banc* decision in *Navajo Nation*, explicitly acknowledged that "exceptions to the application of the *Blackfeet* presumption" existed. 353 F.3d at 730. "The first exception is that deference to an agency's interpretation can overcome the presumption in favor of Indian tribes." *Id.* (citing *Haynes*, 891 F.2d at 239). This Court then noted that the exception was unnecessary to apply, because the outcome of the case would not be changed whether or not the Indian canon of construction was employed. *Id.* The Tribe attempts to construe this case in its favor, by claiming that the district court's opinion "cannot be squared with the panel's determination in

[3] The provision at issue was 25 U.S.C. § 2710(d)(1)(B), which governs Class III gaming on Indian lands, and provides that "Class III gaming activities shall be lawful on Indian lands only if such activities are . . . (B) located in a State that permits such gaming for any purpose by any person, organization, or entity." *Artichoke Joe's*, 353 F.3d at 720.

Artichoke Joe's to first employ the Indian canons to determine whether a potential conflict exists." Br. of Appellant at 36. That greatly overstates the approach taken by this Court in *Artichoke Joe's*, which simply discussed the Indian canon of construction, noted the canon did not apply in this Circuit where *Chevron* deference was otherwise appropriate, and then further noted that any conflict between this Circuit and others could safely be ignored because it would have no effect on the legal question before it. 353 F.3d at 730.

Any statutory interpretation issues raised in this case are governed by *Chevron* deference, rather than the Indian canon of construction. Therefore, the Secretary's interpretation of the "restored lands" exception must be upheld so long as it is a permissible construction of the statute.

III. The Secretary's interpretation of the phrase "restoration of lands" is a permissible construction of the statute.

While the Tribe continues to offer no alternative interpretation of the "restored lands" exception in its brief, it puts forth two reasons why the Tribe believes the Secretary's interpretation of that exception to be arbitrary and capricious. The first is the Tribe's insistence that the statute may be interpreted solely by reliance on the "plain meaning" of its terms, which would allegedly result in a different interpretation than that contained in the Part 292 regulations. Br. of Appellant at 44. The second argument is that the Secretary's interpretation renders "mutually exclusive" two of

IGRA's exceptions to the general prohibition on gaming on later-acquired lands. Br. of Appellant at 49. Neither of these arguments is persuasive.

The Tribe focuses its arguments on appeal on the two provisions of Interior's regulations that establish a "temporal connection" between the time at which an Indian tribe is restored to federal recognition and the time at which that tribe requests that the United States take land into trust for the tribe for gaming purposes. 25 C.F.R. §§ 292.12(c)(1)-(2). The Tribe maintains that IGRA's "plain language, interpretive case law and administrative decisions did not restrict gaming to the first parcel of land taken into trust for [a] restored tribe." Br. of Appellant at 11. Neither do Interior's regulations. A restored tribe may either game on its first parcel of land taken into trust, or *any other* parcel of land taken into trust within the first 25 years as long as the tribe is not already gaming somewhere else. 25 C.F.R. §§ 292.12(c)(1)-(2). These two provisions codify a long-standing concept in the application of the "restored lands exception" of IGRA – that gaming should occur on property taken into trust "as part of" the restoration process, a process that may take a considerable amount of time but nevertheless has a finite end to it. Moreover, "the temporal limitation effectuates IGRA's balancing of the gaming interests of newly acknowledged and/or restored tribes with the interests of nearby tribes and the surrounding community." 73 Fed. Reg. at 29,367.

Prior to Interior's promulgation of the Part 292 regulations, the relationship between the date of a tribe's restoration and the date of the tribe's request for gaming

lands was a key component of decisions made by both Interior and the NIGC. In 2003, NIGC found that a span of nine years between the Mechoopda Tribe's restoration and its acquisition of lands was "a sufficient 'temporal relationship' to establish lands as 'restored.'" SER 49-50 [Mechoopda Indian Lands Opinion at 12 (Mar. 14, 2003)]. "More importantly, the acquisition of the parcel was the first (with the exception of the unusable almond orchard) for this restored tribe." SER 50. In contrast, a "temporal connection" was not established between the Wyandotte Nation's restoration and its acquisition of lands eighteen years later, in part because the Nation had already acquired three other parcels of land in its first and sixth years after restoration. SER 63-65 [*In re: Wyandotte Nation Amended Gaming Ordinance* at 12-14 (Sept. 10, 2004)]. The NIGC remarked in 2006 that "newly restored tribes have been very conscious of how the IGRA's limitations on after-acquired land will impact their first acquisitions of trust or reservation land." SER 83. One such tribe that recognized the importance of this timing element is the Elk Valley Rancheria, mentioned by both the Tribe and the *amici*. Br. of Appellant at 48; Br. of *Amici Curiae* at 18-19. Interior found in that case that "[t]he fact that the Tribe applied to have all of the acquisitions taken into trust *at the same time* and that *they were the first parcels requested by the Tribe to be acquired into trust* is a clear indication of the Tribe's intent to reestablish a land base." SER 93 (emphasis added).

The Redding Rancheria suggests that Interior's application of 25 C.F.R. § 292.12(c) in its case somehow conflicts with the Elk Valley Determination, since Elk

Valley was permitted to use the "restored lands exception" despite the fact that it was already operating a gaming facility.[4] But the Tribe does not mention that the Elk Valley Rancheria possessed no trust land at the time of its application, and was gaming instead on land held in trust by a tribal member. SER 93. Thus, had the Part 292 regulations been promulgated at that time, it is not clear that the Elk Valley determination would have been any different.

It is also not clear that the Secretary's determination in response to the Redding Rancheria's request would have been any different if the Part 292 regulations were invalidated. *See, e.g.*, SER 64-65 (18 years was too long to wait to request restored lands taken into trust for gaming where the tribe had made earlier land-into-trust requests). If the Tribe is suggesting that there is something unfair about the fact that its prior requests for land taken into trust were for non-gaming purposes, Br. of Appellant at 11, that precise situation is addressed by 25 C.F.R. § 292.12(c)(2) (which the Tribe did not rely on in its request). One commenter suggested, in response to the draft regulations, that 25 C.F.R. § 292.12(c)(1) should be modified "because a tribe should not lose its chance to satisfy the criteria in § 292.12(c)(1) if it acquires land in trust for housing which is not intended for gaming." 73 Fed. Reg. at 29,367. Interior determined that the modification was unnecessary because a tribe in that situation

[4] The Tribe also suggests that the denial of its land-into-trust request is in conflict with decisions made with respect to the Ho-Chunk Nation in Wisconsin. Br. of Appellant at 7-8. Those decisions were made prior to the Congressional decision in 1988 to prohibit all gaming on later-acquired trust lands except under certain limited and specific circumstances. *See also infra* at 46.

would still have an opportunity to take land into trust for gaming within 25 years of its restoration, if it did not already have gaming lands. 25 C.F.R. § 292.12(c)(2).

Although it is not directly challenged here, the Secretary's limitation of 25 C.F.R. § 292.12(c)(2) to tribes that are not already operating a gaming facility is also a reasonable interpretation of the statute. The "temporal connection" between a tribe's restoration and its request to take "restored lands" into trust necessarily has a gaming-specific component, as the very concept of "restored lands" arises out of IGRA. Thus it is consistent with the purposes of IGRA for the Secretary to determine that when a tribe has already successfully requested that land be taken into trust "as part of – the restoration of lands" for that tribe, then the tribe may only make subsequent land-into-trust requests for gaming purposes if it is not already gaming on its previously-acquired lands. The regulations do not, of course, prohibit a tribe from requesting that the United States take additional land into trust for other non-gaming purposes.

The provisions of the Part 292 regulations addressing the "restored lands exception" were the result of significant deliberation on the part of Interior.[5] At least one commenter asked Interior to remove the "temporal connection" requirement entirely, but Interior found that "removing the temporal requirement would so broaden the benefit to restored tribes that it would be detrimental to other recognized

[5] The provisions for establishing modern and historic connections were also the result of balancing competing concerns. While "[o]ne comment suggested that the tests for significant historic connections and modern connections are deficient" because they are too permissive, "[t]he Department received comments suggesting the opposite of this argument as well." 73 Fed. Reg. at 29,361.

tribes, contrary to Congressional intent." 73 Fed. Reg. at 29,364. Similarly, Interior received a number of comments regarding the 25-year limitation on placing newly-acquired lands into trust for gaming, and determined that "[t]he 25 year number is both a practical and reasonable number based on the Department's experience under section 2719." *Id.* at 29,367. Interior was careful to place no time limit on a tribe's first request for newly acquired lands following its restoration to Federal recognition, acknowledging that these processes could sometimes be long and difficult. *Id.* "However, a cap of 25 years, as discussed in (c)(2), addresses the concerns about a tribe's open ended ability to acquire lands for gaming. If a tribe already has newly acquired lands, then a time cap and its limiting effect to acquire a site for gaming does [*sic*] not undermine IGRA's stated policy goals." *Id.* The Secretary's application of the agency's years of expertise in administering the restored lands exception, coupled with the agency's explanation of its reasons and responses to public comments, give this Court every reason to defer to the Secretary's interpretation of the "restored lands exception" and affirm the district court. The Tribe's arguments to the contrary are unpersuasive.

A. The Tribe's "plain meaning" argument does not demonstrate that the regulatory provisions are arbitrary or capricious.

The Tribe suggests that this Court should adopt the "plain meaning" of the terms "restoration" and "restored," Br. of Appellant at 44, but the Tribe never explains what it believes those terms plainly mean. The DC Circuit, when confronted with competing explanations of the "plain meaning" of the terms "restoration of lands" in 25 U.S.C. § 2719(b)(1)(B)(iii), held that "neither side can prevail by quoting the dictionary." *City of Roseville*, 348 F.3d at 1027. The Tribe relies here on the District of Michigan's decisions in the *Grand Traverse* cases, which of course do not bind this Court. Those cases addressed a different set of circumstances, interpreting a different statutory term than the one at issue in this case, and ultimately provide little guidance.

1. The *Grand Traverse* cases did not interpret the phrase "restoration of lands."

The Grand Traverse Band of Michigan sought to game on lands that were not part of, or contiguous to, lands held in trust for the Band prior to October 17, 1988. *Grand Traverse I*, 46 F.Supp.2d at 692. Interior took those lands into trust, but determined that gaming on the lands was prohibited because the trust acquisition occurred after the passage of IGRA. *Id.* The Band argued that Interior's decision to take the land into trust was "part of the restoration of lands" for the Band, and thus qualified for the "restored lands exception" of IGRA. The district court concluded

that the Band had a likelihood of success on the merits of this claim. *Id.* at 694-96. The dispute between the United States and the Band in that case was whether the Band could be considered a "restored tribe," because its recognition was the result of a formal procedure developed in 1980 whereby Interior officially acknowledged that the Tribe's federal recognition was reinstated nearly 100 years after it had been improperly terminated. *Id.* at 696-97.

The United States' original position in that litigation was that the Band was not "restored" to Federal recognition under 25 U.S.C. § 2719(b)(1)(B)(iii), but rather "acknowledged" under a different IGRA exception found in 25 U.S.C. § 2719(b)(1)(B)(ii). 46 F.Supp.2d at 697. The United States further argued that because Congress had established separate exceptions for these two circumstances, the "restored" tribe exception did not apply to tribes that received a formal agency "acknowledgment." *Id.* Since formal recognition by an executive branch agency constituted "acknowledgment," the United States reasoned that "restoration" must be performed by Congress or by a court. *Id.* The district court disagreed.

The court held that Congress did not intend, in IGRA, to limit the term "restored" to those Tribes that were explicitly "restored" by an act of Congress or a court order. Rather, Congress used this "descriptive" term to encompass a number of possible methods of recognition. *Grand Traverse II*, 198 F.Supp.2d 920, 931 (W.D. Mich. 2002). The District of Michigan's extensive discussion of the "plain meaning" of the phrase "restored to Federal recognition" in IGRA, upon which the Redding

Rancheria relies in its opening brief, Br. of Appellant at 44-48, did not address the question presented in this case. The United States readily concedes here that the Redding Rancheria was "restored to Federal recognition" for purposes of that exception. ER 272. But that fact does not establish that the Tribe is eligible to game on the recently-purchased parcels of land at issue.

2. The Secretary considered and addressed the *Grand Traverse* cases when promulgating the Part 292 regulations.

After determining that the Grand Traverse Band was a "restored tribe," the District of Michigan considered whether the Band's later-acquired trust property was part of the "restoration" of its lands. Nothing that court concluded is inconsistent with the district court opinion in this case. In *Grand Traverse I,* the United States explained to the District of Michigan that some limitation on what lands were considered "restoration" lands was required. Otherwise, "restored tribes will be placed in a comparatively advantaged position *vis-a-vis* tribes which were not restored, because all acquisitions of property subsequent to restoration, without limitation, will be excepted from the statute." 46 F.Supp.2d at 700. The district court accepted that some limitations were necessary, but disagreed with the United States about the specific nature of the limitations imposed by IGRA. The Government argued that the "restoration of lands" must be the result of explicit Congressional action, but the

District of Michigan held that this was unnecessary. *Id.* Instead, that court reasoned, a number of "factual circumstances of the acquisition" might serve as the basis for such limitations, such as "the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration." *Id.*

The Tribe states that "the *Grand Traverse* cases . . . foreclose the restrictive interpretation contained within the 2008 regulations." Br. at 48-49. To the contrary, the Secretary explicitly acknowledged those cases and drew from them in the drafting of the challenged regulations. The very idea of explicitly establishing a "temporal relationship of the acquisition [of later-acquired lands] to the tribal restoration" is taken from *Grand Traverse I*, 46 F.Supp.2d at 700, and became 25 C.F.R. § 292.12(c). *See Nebraska ex rel. Bruning v. United States Dept. of the Interior*, 625 F.3d 501, 510 (8th Cir. 2010) ("[C]ourts have articulated a three-factor test to determine whether a parcel was taken into trust as part of the restoration of land to a tribe; under this test, 'land that could be considered part of such restoration might appropriately be limited by . . . the temporal relationship of the acquisition to the tribal restoration.'") (citing *Grand Traverse*, 198 F.Supp.2d at 935).

The Preamble to the Final Rule expressly responds to comments requesting that the Secretary hew closely to the District of Michigan's decisions in the *Grand Traverse* cases. One response explains that the *Grand Traverse* cases validated the inclusion of an "historical connection" test even though such a test was not made explicit in the plain language of the statute. 73 Fed. Reg. at 29,365. Another

commenter "requested that the rules put all restored tribes on an even playing field by incorporating the, so called, *Grand Traverse* standard into the rule." *Id.* at 29,366. The Secretary explained that "[t]his recommendation was adopted in so far as we followed the *Grand Traverse* standard that if the tribe is acknowledged under 25 C.F.R. 83.8, and already has an initial reservation proclaimed after October 17, 1988, the tribe may game on newly acquired lands under the restored lands exception provided it is not gaming on any other land." *Id.*

The Tribe purports to make a "plain meaning" argument but never provides a "plain meaning" of the phrase "restoration of lands" that provides a necessary reading of that phrase, much less a better interpretation of that phrase than the Secretary's interpretation in the Part 292 regulations. The cases on which the Tribe relies in its brief are of no help, and the Secretary's interpretation must be upheld.

B. The regulatory provisions do not render two of IGRA's exceptions "mutually exclusive."

The Tribe also argues that the Secretary's interpretation of the "restored lands exception" is invalid because it renders two exceptions to the general prohibition on gaming on after-acquired lands "mutually exclusive." Br. of Appellant at 49-55. This argument is completely without merit.

The Tribe currently operates the Win-River Casino on lands that the Tribe alleges qualify for the "last recognized reservation" exception found in 25 U.S.C.

§ 2719(a)(1)(B). *See* Br. of Appellant at 50. The Tribe then argues that, because it is ineligible to operate a second casino utilizing a different statutory exception, the regulations have created "mutually exclusive" statutory provisions in violation of the purpose of the statute. *Id.* But these provisions are only "mutually exclusive" given the Tribe's specific factual circumstances, not by virtue of the regulatory text itself. The regulations do not appear to prohibit the Tribe from opening a casino pursuant to the "restored lands exception" *first*, and then subsequently opening a casino under the "last recognized reservation" exception. That the Tribe did not do so, and that it also did not reserve its first land-into-trust request for gaming purposes, resulted in an adverse decision from Interior but has no bearing on whether the Part 292 regulations are consistent with the text of 25 U.S.C. § 2719.

The Tribe's argument, essentially, is that because IGRA Section 2719 contains multiple exceptions, the Tribe is entitled to operate at least one gaming facility pursuant to each of those exceptions.[6] The *amici* are even more explicit about this:

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[6] That the Tribe refers to some of these provisions as "exceptions" and some as "exemptions" is immaterial. Congress specifically labeled the "restored lands" provision of 25 U.S.C. § 2719(b)(1)(B)(iii) an "exception" in the statute, but for purposes of the general prohibition on gaming on later-acquired lands, that exception and the "last recognized reservation" exception function similarly. Both are circumstances in which the general prohibition will not apply. Although the United States occasionally refers to some sections of 25 U.S.C. § 2719 as "exemptions" and others as "exceptions," no legal difference between the two words exists. The Report of the Senate Select Committee on Indian Affairs refers to all of the caveats to the general prohibition on after-acquired lands as "exemptions" to that rule, and the change to "exceptions" in the statutory language was made without comment. S. Rep. No. 99-493, at 10-11 (1986).

"[P]ursuant to the plain wording of the IGRA, Redding is entitled to conduct gaming on both its Reservation trust land and on the Property, because each qualifies under a different provision of Section 2719." Br. of Amici Curiae at 15. But IGRA contains no such guarantee. Congress did recognize that the general prohibition on gaming on later-acquired lands could disadvantage tribes with no reservation lands as of that date, and so it provided a number of potential exceptions to the prohibition. But IGRA certainly does not state that if a tribe is eligible for one, it must be eligible for all. The Tribe has already taken advantage of one of the Congressionally-established exceptions to 25 U.S.C. § 2719(a), and it has identified nothing in either the legislative history or the case law that compels the conclusion that more is required. The Secretary's interpretation of the "restored lands exception" is eminently reasonable in light of the statutory text and must be upheld.

IV. The Indian canon of construction relied on by the Tribe cannot be applied in this case.

As noted above, this Court's precedent requires the application of *Chevron* deference to the Part 292 regulations. *Supra* at 22-26. The Tribe's efforts to portray this Court's precedent as incorrect are beside the point – that precedent controls the outcome of this case, and this panel is bound by it. But even if the Tribe's objections to this precedent were correct, it would not matter. To hold that the Indian canon of construction should be applied prior to (or in lieu of) *Chevron* deference to Interior's

interpretation of IGRA would not change the outcome of this case, as there is no single definition of "restoration of lands" that satisfies the Indian canon of construction. The canon urged by the Tribe in its opening brief simply has no applicability in this particular case.

A. The Tribe never proffers an alternative definition of "restoration of lands."

The Tribe objects strenuously to the Secretary's interpretation of "restoration of lands" as defined in the Part 292 regulations, and to the district court's review and application of those regulations. But nowhere in the opening brief does the Tribe present *any* alternative definition of the statutory terms that it argues that the Secretary should have adopted instead. The closest the brief comes to addressing this issue is to present it as a tautology: "The Strawberry Fields parcel is located just outside of the Tribe's reservation. If those parcels are taken into trust, they would be 'lands [that] are taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition' pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii)." Br. of Appellant at 54. This is not an argument – it is simply a claim that the Tribe believes it is correct on the merits. The Tribe never provides a better interpretation of IGRA than that promulgated by the Secretary - it simply seeks a ruling with a favorable outcome for the Tribe in this particular fee-to-trust circumstance. That is not cause for reversal.

B. This case presents no opportunity for the application of the Indian canon of liberal construction of ambiguous terms in favor of Indians.

The Tribe develops a history of the Indian canon of construction in its brief that largely need not be repeated or responded to here. There is no question that courts have liberally construed treaties and statutes in ways that favor Indians since at least 1836, when this canon of construction was first articulated by the United States Supreme Court in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 551 (1832). The Court later articulated more explicitly the particular canon of construction urged by the Redding Rancheria in this case: "[B]y a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians." *Winters v. United States*, 207 U.S. 564, 576 (1908).

For approximately 80 years, this "rule of interpretation" applied only to agreements and treaties between Indian tribes and the United States. Then, in 1912, as the Tribe describes, Br. at 21, the Supreme Court applied this same guiding principle to the interpretation of two federal tax statutes. *Choate v. Trapp*, 224 U.S. 665, 674-75 (1912). The Supreme Court later clarified that this rule specifically applied to "statutes passed for the benefit of dependent Indian tribes or communities." *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918).

This guidance for the judicial interpretation of statutes enacted for the benefit of Indians was reemphasized in *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759

(1985). That case, like *Choate*, required the interpretation of two federal statutes, in order to determine whether Congress had authorized state taxation of Indian royalty interests in oil and gas leases on Indian lands. 471 U.S. at 761-62. Although a 1924 Act had authorized some state taxation of those interests, a later-enacted statute did not, and the Blackfeet Tribe argued that the later statute precluded any further taxation under the 1924 Act. *Id.* The State of Montana urged the Court to apply a canon of statutory construction that strongly presumes against the repeal of a statute or statutory provision by implication. *Id.* at 766 (citing *United States v. Borden Co.*, 308 U.S. 18, 198 (1939); *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974)). The Supreme Court held, instead, "that the standard principles of statutory construction do not have their usual force in cases involving Indian law." 471 U.S. at 766.

The Court then held that State taxation of the oil and gas royalties was not permitted for any leases executed under the 1938 Act. 471 U.S. at 767-68. The Court found that where the statute contained no explicit consent to state taxation, *id.* at 766-67, and "in the absence of clear congressional consent to taxation," *id.* at 768, the Court's reading of the statute was consistent with *both* "the applicable principles of statutory construction" *and* "the rule requiring that statutes be construed liberally in favor of the Indians." *Id.* at 767. The Supreme Court did not (and had no reason to) address the question of whether the Indian canon of construction trumped, is trumped by, or merely should be considered alongside the more general canons of statutory construction.

The Tribe discusses in its brief many cases in which courts construed ambiguous provisions in favor of Indians. Br. of Appellant at 17-30. A review of each of those cases reveals a common premise. Each of those cases presented an essentially binary question of statutory interpretation, where one proposed interpretation was favorable to Indian interests and the competing interpretation was adverse to those interests. These cases involved direct infringements on tribal sovereignty,[7] Indian claims to land or fishing rights,[8] or attempts by State governments to impose taxes on tribal activities.[9] In each scenario, the Indian litigants opposed a particular interpretation, which was advanced by non-Indian or governmental interests, and clearly favored another interpretation which would be advantageous to Indians. As this Court has explained it, application of the Indian canon of construction to an ambiguous statutory provision is "straightforward" when "[o]ne construction of the provision favors Indian tribes, while the other does not." *Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 730 (9th Cir. 2003).

The case presented to this Court is very different. Here, no single interpretation of "restoration of lands" would be "in favor of the Indians." *Blackfeet Tribe*, 471 U.S. at 767 (quoting *Alaska Pacific Fisheries*, 248 U.S. at 89). Were this Court to agree with the Tribe that the Indian canon of construction should be applied to the "restored

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[7] *E.g.*, *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 551 (1832)
[8] *E.g.*, *Minnesota v. Hitchcock*, 185 U.S. 373, 402 (1902); *United States v. Winans*, 198 U.S. 371 (1905); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918)
[9] *E.g.*, *Choate v. Trapp*, 224 U.S. 665 (1912); *Carpenter v. Shaw*, 280 U.S. 363 (1930); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985).

lands" exception of IGRA, it is not clear *how* this Court would apply that canon of construction. Although the purpose of IGRA, overall, is to facilitate Indian gaming subject to federal regulation, the portion of the statute at issue here actually provides a limitation on that purpose by prohibiting gaming on any later-acquired lands. 25 U.S.C. § 2719(a). The "restored lands exception" represents an attempt by Congress to ensure that this prohibition does not place too much of a burden on restored tribes, in comparison to tribes that were more established at the time of IGRA's passage. The Part 292 regulations reflect this intent to ensure that no tribe is unfairly disadvantaged relative to others, by balancing competing sets of tribal interests, all of which could be considered "favorable" to some Indians but not to others.

As the DC Circuit has recognized, "the exceptions in IGRA § 20(b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones." *City of Roseville*, 348 F.3d at 1030. Thus, if the Secretary were to interpret the "restored lands" exception in a highly restrictive manner, imposing conditions that virtually no tribes could satisfy, this could well be viewed as an interpretation adverse to the interests of tribes that did not have reservation lands on or before October 17, 1988. Those tribes would be at a significant economic disadvantage with respect to tribes that had existing reservation lands when IGRA was passed (and therefore would be able to conduct gaming much more readily). This interpretation would be "favorable" to those latter tribes, but certainly not to the former.

Similarly, if the Secretary were to eliminate the two regulatory conditions that demonstrate a temporal connection (which the Tribe implies, but does not explicitly state, is the result that it seeks here), that interpretation would also favor some tribal interests over others as well. Tribes without an existing reservation on October 17, 1988, would be able to game on any later-acquired lands with very little restriction, providing them with a significant economic advantage over other tribes that would be limited to gaming on lands held in trust for them prior to IGRA's passage.[10]

The district court correctly understood this balancing of interests reflected in the Part 292 regulations. ER 21-22. The "restored lands exception" could, as the district court explained, "favor one set of tribes relative to another, if not for regulations balancing their respective interests . . . [T]he *Blackfeet* presumption has no force because it gives no guidance as to which set of Indians the Restored Lands Exception should benefit." ER 21-22. The Tribe mischaracterizes the district court's holding as a holding that "the restored lands exception pits tribes against each other" and is contravened by out-of-circuit case law regarding inter-tribal competition in gaming. Br. of Appellant at 42.

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[10] In promulgating the Part 292 regulations, the Secretary also had to comply with federal legislation prohibiting regulations that distinguish among tribes in ambiguous circumstances. "Departments of agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 *et seq.*, 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes." 25 U.S.C. § 476(f).

The Tribe argues that because "[n]o tribe objected to Redding's modest proposal," *id.*, the district court erred in its interpretation of the regulations. It may be that no tribe objected to the Redding Rancheria's development plans, but the district court's point was that a favorable ruling for the Redding Rancheria in this case would invalidate regulations that prevent an imbalance between many tribes, nationwide. Similarly, the Tribe objects that the district court concluded "that IGRA requires DOI to insulate existing tribal operations from tribal competition." Br. of Appellant at 43. This is of course not what the court held. Rather, the district court discussed the competing interests of differently situated tribes created by Congress's prohibition on gaming on later-acquired lands. Notably, the Tribe discusses a decision by the Assistant Secretary in response to a request for a Secretarial Determination for gaming on later-acquired lands, Br. of Appellant at 43, a process that the Tribe has not availed itself of. As previously explained, this process requires determinations not applicable to the "restored lands exception," and in that very different context, the Assistant Secretary did not conclude that competition between two specific tribes' gaming facilities was *per se* "detrimental."

That decision, as well as the Seventh Circuit case cited by the Tribe, support the decision challenged in this case. Br. of Appellant at 44 (citing *Sokaogon Chippewa Community v. Babbitt*, 214 F.3d 941 (7th Cir. 2000)). It is true, as the Assistant Secretary explained, that "IGRA does not guarantee that tribes operating existing facilities will continue to conduct gaming free from both tribal and non-tribal competition." *See* Br.

of Appellant at 44. It is precisely for this reason that the exceptions to 25 U.S.C. § 2719 exist.

The Tribe points out (as described in an extra-record declaration that is not part of the administrative record in this case, ER 39-40) that, *prior to 1988*, Interior took land into trust for several tribes that were not previously terminated by the United States and thus permitted those Tribes to operate multiple gaming facilities. Br. of Appellant at 43. But of course this was changed by Congress's mandate in 1988 that no tribe could operate a gaming facility on land taken into trust *after* the date of IGRA's passage, unless one of the exemptions or exceptions in 25 U.S.C. § 2719 applied. If the Tribe's point is that the ability to operate multiple simultaneous gaming facilities (which the Tribe later denies intending to do) is necessary to put it on equal footing with the Ho-Chunk Nation of Wisconsin or other similarly-situated tribes, Br. of Appellant at 43, that reasoning was rejected by Congress in IGRA.[11] The question for this Court, which the Tribe's objections do not answer, is whether the Secretary has appropriately interpreted the authority delegated to him by Congress to address the issue of gaming on later-acquired lands by a "restored tribe." He has.

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[11] Regardless, the self-serving declaration filed by the Tribe's counsel is inadmissible and cannot support the reversal of the district court opinion. Review of an agency's action pursuant to the APA is limited to considering whether the administrative record before the agency supports the agency's decision. *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985); *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. United States Dept. of Agriculture*, 499 F.3d 1108, 1114-15 (9th Cir. 2007). The Tribe never filed a motion to supplement the administrative record in this case, nor has it invoked any of the rarely-used exceptions to the general prohibition on admitting extra-record materials.

C. No inter-circuit conflict requires reversal in this case.

Since no single interpretation of the "restored lands" exception is clearly compelled by an application of the Indian canon of construction, there is no reason to reach the question addressed by the out-of-Circuit cases cited by the Tribe. Nevertheless, the Tribe "urges the court to encourage *en banc* review in the text of its decision," Br. of Appellant at 42 n.12, and the *amici* also suggest that "this Court should refer this case to this Court sitting *en banc*." Br. of *Amicus Curiae* at 13. *En banc* review of this case is not warranted.

As the Tribe correctly notes, both the Tenth Circuit and D.C. Circuits have chosen not to defer to an agency's interpretation of a statute that it administers when that statute was enacted for the benefit of Indians and when the Indian canon of liberal construction would result in a different interpretation than that advanced by the agency. Br. of Appellant at 37 (citing *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455, 1461 (10th Cir. 1997); *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1445 n.8 (D.C. Cir. 1988)). However, both of those cases presented scenarios in which two opposing interpretations of a statutory provision were advanced to the court – one favoring Indian interests, and one opposed. Thus, those courts were obligated to address the interplay of *Chevron* deference and the Indian canon of liberal construction, an issue this Court need not reach in this case.

In *Muscogee Nation*, the Bureau of Indian Affairs denied a request for funding for a tribal court system and law enforcement program, maintaining that a federal statute prohibited tribal courts and no subsequent acts had repealed or modified this provision. 851 F.2d at 1442-44. Thus, one interpretation (permitting tribal courts and law enforcement) was plainly favorable to Indian interests, while the contrary interpretation was not. The D.C. Circuit relied on *Blackfeet* to reject a statutory interpretation argument based on the canon of construction that repeal by implication is disfavored, and thus a "general repealer clause" only applies to prior-enacted statutes that actually conflict with the later statute. 851 F.2d at 1444. The court made no reference to *Chevron* directly, but did note in a footnote that the application of the Indian canon of liberal construction was the "reason that, while we have given careful consideration to Interior's interpretation of the [Oklahoma Indian Welfare Act of 1936], we do not defer to it." *Id.* at 1445 n.8. The court eventually concluded that it would adopt the contrary interpretation put forth by the Muscogee Nation, because "[t]he legislative history is not clear and the language of Section 503 can be easily construed as permitting the establishment of Tribal courts." *Id.* at 1446.

In *Ramah Navajo Chaper*, the Tenth Circuit similarly was asked to review two competing interpretations of the Indian Self-Determination and Education Assistance Act. 112 F.3d at 1459-61. The Bureau of Indian Affairs interpreted the relevant statutory provisions to deny a request for the funding of certain "indirect costs" incurred by a tribe in executing a self-determination contract. *Id.* at 1458, 1460. The

tribal Plaintiffs interpreted the statute to the contrary, arguing to the court that those same costs were reimbursable. The Tenth Circuit found the provisions at issue to be ambiguous, and expressly declined to apply *Chevron* deference, concluding, "for purposes of this case, that the canon of construction favoring Native Americans controls over the more general rule of deference to agency interpretations of ambiguous statutes." 112 F.3d at 1462 (citing *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991); *Muscogee (Creek) Nation*, 851 F.2d at 1444-45)).

Assuming *arguendo* that these cases conflict with this Court's precedent as most recently put forth in *Williams v. Babbitt*, this Court may wait for another day to address that issue. As the Indian canon of construction has no applicability here, there is no reason to determine the correctness of the approach taken by the Tenth and D.C. Circuits, and certainly no reason to convene an *en banc* panel of this Court to alter precedent that need not even be reached here. This Court may instead directly address the merits of the case by considering whether the Secretary's interpretation of the "restored lands" exception is a permissible construction of the ambiguous terms of that statute.

V. The Secretary's application of the Part 292 regulations to the Redding Rancheria was not arbitrary or capricious.

The Tribe's final argument is that, even if the Secretary's interpretation of the restored lands exception is valid, the Secretary violated the Administrative Procedure

Act by applying the exception arbitrarily or capriciously in this case. Br. of Appellant at 55-57. But the Secretary's application of the facts of this case to the regulatory criteria in 25 C.F.R. §§ 202.11-202.12 was straightforward and relied on facts not in dispute. Thus, on appeal, the Tribe's only argument on the merits of the Secretary's application of the regulations is with respect to the *district court's* understanding of the underlying facts of the decision. Even if the Tribe were correct, that would have no bearing on whether the Secretary's decision was correct at the time the Secretary issued the decision letter.

The Tribe states that it "repeatedly made it clear to the Federal Officials that the Tribe did not intend to build a second casino and operate two casinos simultaneously." Br. of Appellant at 55 (citing ER 310-12). The administrative record does somewhat support this factual claim. Six days before Interior issued its final decision, the Tribe wrote to Interior expressing its "intent to close our existing facility and relocate our gaming operation to the Strawberry Fields property." ER 311. The Tribe then claims that, as a legal matter, this promise "effectively complied with the Regulations." Br. of Appellant at 56. But even a cursory reading of the regulatory language demonstrates that this is not so.

A tribe may qualify for the "restored lands exception" if it can show that "[t]he tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and *the tribe is not gaming on other lands.*" 25 C.F.R. § 292.12(c)(2). The regulation is written in the present tense, and makes no exception

for whether the tribe "will be gaming on other lands" in the future. Throughout the entire period of time between the Tribe's initial request to take the Strawberry Fields parcel into trust, through the Secretary's decision of December 22, 2010, and even through the present day, the Tribe has operated the Win-River Casino. Thus, the Secretary's determination that "the Tribe's existing gaming facility precludes a finding," ER 275, that the Tribe "is not gaming on other lands" 25 C.F.R. § 292.12(c)(2), is plainly not arbitrary.

The Tribe objects that the Secretary "acted arbitrarily in refusing to consider the Tribe's plan to relocate its gaming operation." Br. of Appellant at 56. But the regulations are clear, and contain no provision for an expression of future intent with an undefined time frame. Later-acquired lands are not eligible for gaming if a tribe is gaming on other lands, and the Redding Rancheria is gaming on other lands. It is the Secretary's decision that is under review, and only if the Secretary's decision was arbitrary or capricious could this Court remand that decision to Interior for further consideration. Whether or not the district court accurately described the Tribe's stated future intent to close the Win-River Casino if they prevailed on their land-into-trust application, Br. of Appellant at 55-57, is irrelevant.

VI. The United States did not violate any fiduciary duty.

The Tribe in its Complaint, ER 325 at ¶ 58, and the *amici*, Br. of *Amicus Curiae*

at 9-10, argue that the Secretary's interpretation of the "restored lands exception" must be rejected as a violation of a fiduciary duty owed to the Tribe by the United States. This is incorrect. While the United States maintains a general trust relationship between itself and Indian tribes, this general relationship establishes no enforceable fiduciary obligations on its own. *United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313, 1224-25 (2011). Congress must expressly accept such a responsibility by statute. *Id.* at 2325. *See also United States v. Navajo Nation*, 556 U.S. 287, 129 S.Ct. 1547, 1550 (2009) (a tribe must "identify a specific, applicable, trust-creating statute or regulation that the Government violated.").

The IGRA "does not create a fiduciary duty . . . Nothing in the Act indicates any intention by Congress to recognize or create a fiduciary duty." *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. United States*, 259 F.Supp. 2d 783, 790-91 (W.D. Wis. 2003). Nor can a trust obligation exist where the United States "never acquired the subject land in trust for plaintiffs. Without a trust, there is no fiduciary duty." *Id.* at 790. Therefore, whether or not the Tribe is correct on the merits of its appeal, that conclusion is not compelled by any fiduciary duty owed by the United States to the Tribe with respect to the Strawberry Fields and Adjacent 80 Acres parcels.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

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September 2012
DJ # 90-2-4-13393

STATEMENT OF RELATED CASES

The Federal Appellees are not aware of any related cases, as defined by 9th Cir. R. 28-2.6, that are pending in this Court.

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Attorney for Federal Appellees

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REDDING RANCHERIA, *Plaintiff-Appellant*, v. SALLY JEWELL, in her official capacity as Secretary of the United States Department of the interior; KEVIN K. WASHBURN, in his official capacity as the Assistant Secretary for Indian Affairs for the United States Department of the Interior,* *Defendants-Appellees.*	No. 12-15817 D.C. No. 3:11-cv-01493-SC OPINION

Appeal from the United States District Court
for the Northern District of California
Samuel Conti, Senior District Judge, Presiding

Argued and Submitted
April 8, 2014—San Francisco, California

Filed January 20, 2015

Before: Mary M. Schroeder, Kermit Victor Lipez**,
and Consuelo M. Callahan, Circuit Judges.

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* Sally Jewell and Kevin K. Washburn are substituted for their predecessors pursuant to Fed. R. App. P. 43(c)(2).

** The Honorable Kermit Victor Lipez, Senior United States Circuit Judge for the First Circuit, sitting by designation.

Opinion by Judge Schroeder;
Partial Concurrence and Partial Dissent by Judge Callahan

SUMMARY***

Tribal Matters

The panel affirmed the district court's judgment in favor of the federal government insofar as it upheld the Secretary of the Interior's denial of the application of Redding Rancheria (the Tribe) to operate multiple casinos on restored lands, and reversed in part and remanded to the agency for consideration of the Tribe's proposal to close its existing Tribal gaming operation upon construction of a new facility.

The Secretary denied the Tribe's request to take into trust a substantial parcel the Tribe recently acquired for the construction and operation of a new gambling casino. The Indian Gaming Regulatory Act generally banned gaming on lands that tribes acquired after its enactment in 1988, but created an exception for tribes with restored lands. The agency denied the Tribe's application because, at the time it was submitted, the Tribe was operating a modest casino on land it acquired earlier. The district court granted summary judgment to the government because the Tribe was seeking to operate multiple casinos, which the applicable regulations sought to prevent. While the application was pending, the Tribe advised the agency that it was willing to close down its original casino once the new one was in operation.

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel held that the regulation at issue was reasonable, and the Secretary reasonably implemented the restored lands exception. The panel further held that the Indian canon (which provides that where a statute is unclear, it must be liberally interpreted in favor of Indians) did not apply in the circumstances of this case. The panel also held that the Secretary's denial of the Tribe's application was not inconsistent with prior agency practice, and was not arbitrary and capricious.

The panel held that the agency should have considered the Tribe's alternative offer to move all gaming to the new casino, and vacated in part the district court's summary judgment with instructions to remand to the agency to address the issue.

Judge Callahan concurred in parts I, II, and III of the majority's opinion; and agreed that the regulation at issue was reasonable, the Indian canon did not apply, and there was no unexplained change in agency policy. Judge Callahan dissented from part IV of the opinion because the Tribe did not fairly prompt the Secretary to consider its alleged offer to move its casino and did not ask the district court to consider the alleged offer to remove the casino. Judge Callahan would not reverse in part and remand for further consideration.

COUNSEL

Scott D. Crowell (argued) and Scott Wheat, Crowell Law Offices, Spokane, Washington, for Plaintiff-Appellant Redding Rancheria.

Ignacia S. Moreno, Assistant Attorney General, Matthew Marinelli and Lane N. McFadden (argued), Attorneys, United States Department of Justice, Environment & Natural Resources Division, Washington, D.C., for Defendants-Appellees Sally Jewell, Secretary of the Department of the Interior and Kevin K. Washburn, Assistant Secretary for Indian Affairs.

George Forman and Jay B. Shapiro, Forman & Associates, San Rafael, California, for Amicus Curiae Robinson Rancheria of Pomo Indians.

OPINION

SCHROEDER, Senior Circuit Judge:

The Redding Rancheria ("the Tribe") is a very small Indian tribe trying to restore the Reservation that was taken away by the United States during the mid-Twentieth century era of assimilation. *See City of Roseville v. Norton*, 348 F.3d 1020, 1022 (D.C. Cir. 2003); *see also* William C. Canby, American Indian Law in a Nutshell 27–30 (5th ed. 2009) (describing the federal government's general policy of terminating tribal recognition in order to assimilate Indian populations); Felix S. Cohen, Federal Indian Law §1.06 (2005) (noting that, starting in the 1950s, the federal government began an official "policy of rapid assimilation

through termination"). The Tribe also wishes to establish a successful gaming operation on its land. For that purpose, it has asked the Department of the Interior to take into trust a substantial parcel the Tribe recently acquired for the construction and operation of a new gambling casino. The Secretary of the Interior ("Secretary") denied the request.

The Indian Gaming Regulatory Act ("IGRA") generally bans gaming on lands that tribes acquire after its enactment in 1988, but creates an exception for tribes with restored lands. 25 U.S.C. § 2719. This case concerns the regulations the Secretary of the Interior has promulgated to define and place reasonable limits on the restored lands exception. The agency found the Tribe's application did not qualify because, at the time it was submitted, the Tribe was operating a modest casino on land that it acquired earlier. The district court granted summary judgment for the government because the Tribe was seeking to operate multiple casinos, something the applicable regulations unquestionably and reasonably are intended to prevent. While the application was pending before the agency, however, the Tribe advised the agency that it was willing to close down its original casino once the new one was in operation. The agency did not meaningfully address the Tribe's alternative position. We remand to the agency so that it can do so.

FACTS

The Redding Rancheria was first recognized by the United States in 1922, with a reservation of about 30 acres located in rural Northern California. In 1965, however, it was stripped of its federal recognition pursuant to the California Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958). The act was part of a general effort to assimilate Indians into

American society. *See City of Roseville*, 348 F.3d at 1022. The Tribe eventually joined other California tribes in bringing suit against the United States, *see Hardwick v. United States*, No. C-79-1710 (N.D. Cal. Dec. 22, 1983), and as part of a resulting settlement, tribal federal recognition was restored in 1984.

The Tribe then embarked on a series of acquisitions to restore lands to its reservation, and, per its request, each has been taken into trust by the United States, for a total of about 8.5 acres. Roughly 2.3 acres were taken into trust for individual tribe members as part of the settlement agreement in *Hardwick*. The United States accepted the Tribe's trust-to-trust transfer request for these parcels in 1992, and the Tribe began operating a small casino, known as the Win-River Casino, on the 2.3 acre parcel after entering into a gaming compact with the state of California in 1999. The Tribe has since submitted several additional land requests. The first, begun in 1996, was for a Head Start facility, and the application was not completed and accepted until 2009. Another application, submitted in 2000 and also accepted in 2009, was for a burial ground of .5 acres. In 2010, an application for administrative buildings was accepted. According to the Tribe, its land restoration efforts have often been hampered by lack of funds and the unavailability of nearby land.

In 2003, the Tribe submitted a request to the Department of the Interior to take into trust an additional 152 acres ("the Strawberry Fields"), so the Tribe could construct another casino. After the Tribe submitted a completed application on December 22, 2008, it amended the application in July of 2010 to include an additional 80 acres. Shortly before the Secretary denied the application, the Tribe wrote a letter to

the agency, dated December 14, 2010, stating the Tribe was willing to close its current gaming facilities once its new facility was built. The Secretary denied the Tribe's application on December 22, 2010, finding that, under the applicable regulations, the Tribe could not conduct gaming on newly acquired lands because it was already gaming on other lands.

The key statute governing the Tribe's gaming activities is the portion of IGRA that covers "restored" tribes. Congress passed IGRA in 1988 "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. IGRA permits Indian tribes to conduct gaming on tribal lands subject to certain limitations. Section 2719(a) prohibits tribes from gaming on lands taken into trust after IGRA's 1988 passage date, but that section includes Exemptions and Exceptions. Of relevance is section 2719(b)(1)(B), which allows restored tribes to game on any land taken into trust as part of a "restoration of lands" (the "restored lands exception"). There is no dispute that the Tribe is a "restored tribe" within the meaning of the statute. The issue is whether the land in question is "restored land."

To define and place reasonable limits on the exceptions, the Secretary of the Interior, in 2008, promulgated a series of rules implementing section 2719 of IGRA. 25 C.F.R. § 292.1. The purpose of these rules was to "explain to the public how the Department interprets" IGRA's various exceptions and exemptions, including the restored lands exception. 73 Fed. Reg. 29,354. Under the Secretary's interpretation, lands qualify as "restored" and can thus be used for gaming purposes only if the tribe establishes a sufficient relationship to the land in what the regulations term

"modern," "historical," and "temporal" connections to the Tribe's original land. 25 C.F.R. § 292.12. At issue here is only the temporal connection. A tribe can demonstrate a "temporal" connection in one of two ways:

> (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
>
> (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition *and the tribe is not gaming on other lands.*

25 C.F.R. § 292.12(c) (emphasis added). The Strawberry Fields were not included in the Tribe's first request for newly acquired lands, so subsection (1) does not apply. The application was filed within 25 years of recognition, but because of the last proviso of subsection (2), the Win-River Casino became the stumbling block. The Tribe was operating a casino on other lands.

The application remained pending for more than seven years. Then the Tribe, on December 14, 2010, wrote to the Secretary to advise that it would close the Win-River Casino when the new casino was completed. Eight days later, the Secretary denied the application, stating that "[b]ecause the Tribe cannot meet the standards articulated in Section 292, the Parcels are not eligible for the restored lands exception." The denial did not address the Tribe's December 14 letter proposing to close the Win-River Casino.

The Tribe then brought suit in the Northern District of California, challenging the Secretary's determination that the Strawberry Fields are not covered by the restored lands exception. The Tribe argued that the regulation's limitation on operating a second casino was unreasonable. The court granted summary judgment in favor of the Secretary, concluding that the Secretary had the power to promulgate regulations under IGRA, that the Secretary's interpretation of the restored lands exception was reasonable, and that the Secretary did not act arbitrarily and capriciously in denying the Tribe's request to operate two casinos, but did not address the Tribe's alternative proposal to close the first casino once the new one was operational.

The Tribe now appeals. It contends that the regulations are arbitrary and capricious in limiting tribes to one casino on restored lands. It further contends that, even if the limitation is reasonable, the Secretary was arbitrary and capricious in denying its application even though it had offered to close the first casino so that the application would not result in more than one casino. We uphold the reasonableness of the regulation itself, but direct the agency to consider whether the regulation bars the Tribe's moving its casino operation from the old casino to a new one.

DISCUSSION

I. The Regulation is Reasonable

In promulgating the regulation at issue here, the Secretary was implementing the restored lands exception to the general statutory ban on tribes using land acquired after IGRA for gaming. The restored lands exception therefore must be read in the context of IGRA's general prohibition against gaming

on lands acquired after 1988. The exception was not intended to give restored tribes an open-ended license to game on newly acquired lands. Rather, its purpose was to promote parity between established tribes, which had substantial land holdings at the time of IGRA's passage, and restored tribes, which did not. *See City of Roseville*, 348 F.3d at 1030. In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations.

To that end, the Secretary promulgated a series of requirements a tribe must satisfy in order to demonstrate that newly acquired lands are part of the effort to restore a reservation and are therefore eligible for gaming. To benefit from the restored lands exception, a tribe must establish a "modern," "historical," and "temporal" connection to tribal land. 25 C.F.R. § 292.12. Because these factors are general, the regulation further defines each.

The "modern" connection means that the land is within the state or states in which the tribe is currently located and is, by at least one of several measures prescribed by the regulation, in close proximity to the tribe's other lands. 25 C.F.R. § 292.12(a). The Secretary concluded that the Tribe satisfied this requirement. The Secretary also concluded that the Tribe satisfied the "historical" connection under 25 C.F.R. § 292.12(b) because the land in question is next to historic lands.

In order to establish a "temporal connection," the tribe must demonstrate either (1) that the land was part of the tribe's first request for newly acquired lands after being restored to federal recognition, or (2) that it submitted an

application to take the land into trust within 25 years after being restored, and that it is not currently gaming on other lands. *Id.* § 292.12(c). As the Secretary stated in the preamble to 25 C.F.R. § 212(c), "the temporal limitation effectuates IGRA's balancing of the gaming interests of newly acknowledged and/or restored tribes with the interests of nearby tribes and the surrounding community." 73 Fed. Reg. 29,367.

In this way, the regulation strikes a balance between allowing restored tribes to game on newly acquired lands, while at the same time protecting the interests of established tribes. Section 292.12(c) allows a tribe to game on any lands that were acquired as part of its first request for lands after regaining federal recognition, but it limits gaming on lands acquired as part of subsequent requests. After a tribe's first request for land is granted, it can only game on newly acquired lands if it requests that these lands be taken into trust within 25 years of restoration, and it is not already gaming elsewhere. 25 C.F.R. § 292.12(c)(2). As a result, once a restored tribe builds a casino, it cannot build additional casinos on newly acquired lands. Without this limitation, restored tribes would be able to expand their gaming operations indefinitely. This would give them an unfair advantage over established tribes who generally cannot game on any lands acquired after IGRA was passed. 25 U.S.C. § 2719(a).

The Tribe contends that the limitation is nonetheless unreasonable because it is not contained in the statute. The statute, of course, merely creates an exception for restored lands, without attempting to define the term or dictate how it should be administered. Congress authorized the Secretary to promulgate regulations to achieve those purposes, as is

standard practice in today's understanding of administrative law. Thus an agency charged with administering a statute has the power to make rules "to fill any gap left, implicitly or explicitly, by Congress." *Morton v. Ruiz*, 415 U.S. 199, 231 (1974).

The Administrative Procedure Act accordingly sets forth procedures by which agencies promulgate rules "to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). When an agency uses this rule making authority to define a general or ambiguous provision of a statute, its interpretation is owed deference so long as it is reasonable. *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001) (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 845 (1984)).

We conclude that the Secretary reasonably implemented the restored lands exception, to limit the extent to which a restored tribe may operate gaming facilities on restored land, in order to ensure parity between restored and established tribes. There is nothing unreasonable about the regulation's intent to prevent restored tribes from acquiring additional land to operate multiple gaming operations.

II. The Indian Canon Does Not Apply

In Indian law there is a canon that, where a statute is not clear, it must be interpreted liberally in favor of Indians. This canon was most recently articulated by the Supreme Court in *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). The Tribe therefore asserts that even if the regulation could be viewed as reasonable, the *Blackfeet* presumption precludes the Secretary from prohibiting additional gaming on restored lands.

The Tribe points out that no such "numerical limitation" is clearly expressed within the language of the statute. *See* 25 U.S.C. § 2719(b)(1)(B)(iii). The Tribe's position is that, because the limitation is contrary to the interests of the Tribe, we must apply the canon to hold that the numerical limitation violates Congressional purpose. The government, on the other hand, points to a competing presumption of deference to agency interpretation of a statute. *See Chevron*, 467 U.S. at 845.

The Tribe's argument seems foreclosed by precedent in this Circuit. This court has repeatedly "declined to apply [the Indian law canon of construction] in light of competing deference given to an agency charged with the statute's administration." *Haynes v. United States*, 891 F.2d 235, 239 (9th Cir. 1989); *see also Seldovia Native Ass'n, Inc. v. Lujan*, 904 F.2d 1335, 1342 (9th Cir. 1990). We have said this is because the *Blackfeet* presumption is merely a "guideline," whereas "*Chevron* is a substantive rule of law." *Williams v. Babbitt*, 115 F.3d 657, 663 n.5 (9th Cir. 1997). In this circuit, an agency's legal authority to interpret a statute appears to trump any practice of construing ambiguous statutory provisions in favor of Indians.

Even if the *Blackfeet* presumption might be applied in some circumstances in our circuit, however, it would not apply in this case. This is because all tribal interests are not aligned. An interpretation of the restored lands exception that would benefit this particular tribe, by allowing unlimited use of restored land for gaming purposes, would not necessarily benefit other tribes also engaged in gaming. It might well work to their disadvantage.

The canon should not apply in such circumstances. The canon has been applied only when there is a choice between interpretations that would favor Indians on the one hand and state or private actors on the other. For example, in *Blackfeet* itself, the Supreme Court applied the canon in a dispute between state and tribal interests, interpreting the 1938 Mineral Leasing Act. The Court concluded that the statute should not be read to permit the state of Montana to tax Indian royalty income from mineral leases, because the Act did not expressly authorize state taxation of Indian royalty interests. 471 U.S. at 767. In the absence of such an express authorization, the statute had to be interpreted in favor of the Indians. This court has explained that the *Blackfeet* presumption does not apply when tribal interests are adverse because "[t]he government owes the same trust duty to all tribes." *Confederated Tribes of Chehalis Indian Reservation v. Washington.*, 96 F.3d 334, 340 (9th Cir. 1996). It cannot favor one tribe over another. The district court therefore correctly refused to apply the Indian canon in the circumstances of this case.

III. There Has Been No Unexplained Change in Agency Policy

The Tribe argues that the Secretary's denial of its application was inconsistent with prior agency practice and therefore arbitrary and capricious. The Tribe points to a single past agency decision that permitted the Elk Valley Rancheria to game on restored lands even though it was already gaming on other lands. The Elk Valley decision was before the promulgation of 25 C.F.R. § 292.12 in 2008 and before the Tribe's application was completed in 2010.

It is not entirely clear that the Elk Valley decision would have been any different under the current regulation. Under the current regulation, a tribe may game on lands provided that they are "included in the tribe's first request for newly acquired lands since the tribe was restored to federal recognition" regardless of whether the tribe is already gaming elsewhere. 25 C.F.R. § 292.12. The administrative decision is a part of our record and states that the lands on which the Elk Valley Rancheria sought to conduct gaming were part of "the first parcels requested by the Tribe to be acquired into trust."

What is more, an agency is permitted to change its policy so long as it provides some minimal explanation for the change. *See Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 493 (9th Cir. 2007). Even assuming the Elk Valley decision was inconsistent with the current regulation and the agency's treatment of the Tribe's application in this case, the agency provided a sufficient explanation for its change of policy. In promulgating 25 C.F.R. §292.12, the agency stated that it wanted to "explain to the public how the Department interprets th[is] exception[ ]." 73 Fed. Reg. 29,354. It further explained, that the temporal requirement was designed to "effectuate[ ] the IGRA's balancing of the gaming interests of . . . restored tribes with the interests of surrounding tribes and the nearby community." *Id.* at 29,367. More extensive explanation was not required. *See Robles-Urrea v. Holder*, 678 F.3d 702, 710 n.6 (9th Cir. 2012) (noting that even a "sparse" explanation suffices).

IV. The Agency Should Have Considered the Tribe's Alternative Offer to Move All Gaming to the New Casino

Once a restored tribe has acquired restored lands, and built a casino, the regulation bars use of subsequent acquisitions to operate additional casinos. It is undisputed that the Tribe was operating the Win-River Casino when it submitted its application for the new Strawberry Fields casino. The Tribe's 2008 application thus contemplated the construction of a second casino. There were apparently discussions between the parties, because in December 2010 the Tribe wrote to the Secretary offering to "memorialize" its intent to move its gaming operations from its current location to the Strawberry Fields. The Tribe argues that the Secretary, in denying the Tribe's application, arbitrarily failed to consider the Tribe's 2010 representation that it would not operate multiple gaming facilities. The Secretary denied the Tribe's application without any mention of the Tribe's offer, although the denial emphasized the specific wording of the regulation that conditions the requisite temporal connection on a finding that the tribe "is not gaming on other land." 25 C.F.R. § 292.12(c)(2). The district court did not consider the Tribe's alternative offer and construed its application as if it necessarily contemplated the operation of multiple casinos.

An agency's decision is arbitrary and capricious if it ignores important considerations or relevant evidence on the record. *See Port of Seattle, Wash. v. F.E.R.C.*, 499 F.3d 1016, 1035 (9th Cir. 2007) (citing *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). The Secretary did not address the Tribe's willingness to close its current casino in order to move its

gaming operations to one on newly restored lands. The agency now argues, however, that the Secretary's determination was required by the plain meaning of the regulation.

Under 25 C.F.R. § 292.12(c)(2), land is eligible for gaming if the application is submitted within 25 years after the tribe was restored to federal recognition and "the tribe is not gaming on other lands." The regulation thus has both a 25 year deadline and a prohibition against gaming on other lands. The agency must look to the date on which a tribe submits its application to determine whether it has satisfied the 25 year deadline. The regulation is not clear, however, that the agency must also look to the date of the application to determine whether the tribe has satisfied the prohibition against gaming on other lands. While the regulation could be so interpreted, the agency has so far provided no reason why it should. Allowing a restored tribe to move a casino does not appear to conflict with the statutory purpose of ensuring parity among restored and established tribes. Restored tribes, if allowed to operate an indefinite number of casinos on newly restored lands, would of course have an advantage over established tribes, but it is not clear that allowing restored tribes to move a casino to a different location would necessarily have the same effect.

The agency can point out that we generally defer to an agency's interpretation of its own regulation. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997). The administrative proceedings in this case, however, did not address this issue of interpretation, much less provide any reasons for the agency's current position. The agency presented its position for the first time in its brief, and it offered sparse explanation for it. We need not defer to an agency position when taken

for purposes of litigation. *See Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2166–67 (2012) (noting that "an interpretation is not owed deference when it is nothing more than a convenient litigating position or a *post hoc* rationalizatio[n] advanced by an agency seeking to defend past agency action against attack.") (internal citations and quotation marks omitted) (alterations in original). The agency's interpretation on the administrative record before us lacks explanation or justification.

In remanding to the agency we expedite the agency's consideration of the Tribe's alternative proposal. We do not tell the agency what to say. While the dissent may speculate on how and why the agency interprets the regulation, the agency has never addressed these issues. We cannot defer to what the agency has not done.

We accordingly vacate in part the district court's grant of summary judgment with instructions to remand to the agency to address whether the Tribe should be permitted to construct a new casino to replace the existing one.

CONCLUSION

The judgment of the district court in favor of the government is affirmed insofar as it upholds the Secretary's denial of the Tribe's application to operate multiple casinos on restored lands. The judgment is reversed in part, and the case remanded to the district court with instructions to remand to the agency for consideration of the Tribe's

proposal to close its existing gaming operation upon construction of a new facility.

AFFIRMED in part, **REVERSED** and **REMANDED** in part. Each side to bear its own costs.

CALLAHAN, Circuit Judge, concurring and dissenting:

I concur in parts I, II and III of the majority's opinion. I agree that the regulation here at issue is reasonable, the Indian canon does not apply, and there has been no unexplained change in agency policy. In other words, I agree that the Secretary reasonably rejected the Tribe's challenges to the underlying regulation. However, I dissent from part IV of the opinion because the Tribe did not fairly prompt the Secretary of the United States Department of Interior ("the Secretary" or "the Department") to consider its alleged offer to move its casino and did not ask the district court to consider the alleged offer to move the casino. Moreover, on this record, there is no basis for suggesting that the such an offer would merit relief under the regulation. Our sympathy for a small, struggling tribe does not justify formalizing a claim that was never clearly presented to the Secretary, was not fairly presented to the district court, and is of questionable merit. Our opinion should conclude this litigation.

I

As the opinion notes, the Tribe made its application in 2003. The application was supplemented on several occasions, including on December 22, 2008, and on October 29, 2010. There is nothing in either of these detailed

supplements that suggests that the Tribe contemplated closing its Win-River Casino if its application for Strawberry Fields was approved.

Negotiations continued through a meeting in November 15, 2010. It appears that the possibility that the Tribe might close its Win-River Casino if it were allowed to build a casino on Strawberry Fields was first raised in a letter dated December 14, 2010, from Barbara Murphy, Vice Chairperson, Redding Rancheria, to Del Laverdue, Deputy Assistant Secretary - Indian Affairs, Department of Interior. The letter stated:

> Since our meeting in Albuquerque, the Tribal Council has met and discussed our options with regard to this application, and we are determined to do whatever is necessary to alleviate any concerns you may have about our current landholdings and gaming operation.
>
> Accordingly, while we contend that our existing gaming facility does not preclude us from obtaining a restored lands opinion for Strawberry Fields, I want to personally assure you of our intent to close our existing facility and relocate our gaming operation to the Strawberry Fields property. Additionally, we are willing to memorialize this intent in an agreement with the Department and look forward to talking to you about [t]his further.

Several features of this letter are relevant. First, the Tribe continues to press its contention that its "existing gaming

facility does not preclude [it] from obtaining a restored lands opinion for Strawberry Field." Second, the letter offers only the Vice Chairperson's personal assurance of the Tribe's intent to relocate its casino to Strawberry Fields. Third, the letter asserts that the Tribe is "willing to memorialize this intent." Fourth, the Vice Chairperson indicates that she looks forward to talking to the Deputy Assistant Secretary about this matter.

Thus, it is doubtful that the December 14 letter can, or should, be read as conveying a formal offer by the Tribe to close the Win-River Casino once the Strawberry Fields Casino opened. Rather, the Vice-Chairperson offered her personal assurance as to the Tribe's intent and that the Tribe was "willing to memorialize this intent in an agreement." Moreover, the letter does not contain any argument or explanation as to why the Tribe's offer to move its casino might be relevant to the Secretary's consideration of the Tribe's application. Particularly in light of the questionable relevance of this offer to the Secretary's analysis (*see* part III, *infra*), the letter is best understood as an attempt to continue negotiations: an effort to negotiate a last minute deal.

Eight days later, on December 22, 2010, the Secretary of the Interior issued an eight-page, single-spaced decision denying the Tribe's application. A review of the December 22 decision shows that it was carefully crafted and that the preliminary determinations must have been made well before December 14, 2010. In its penultimate section the letter states:

> Whether we consider the Tribe's first request for newly acquired lands to be the trust-to-trust transfers or the subsequent fee-to-trust

> requests, it is evident that the subject Parcels were not included in either of these requests. Therefore, the Parcels were not "included in the [T]ribe's first request for newly acquired lands since the [T]ribe was restored to Federal recognition" and they cannot meet the standard in 25 C. F. R. § 292.12(c)(I).
>
> To meet the alternate standard under 25 C. F. R. § 292.12(c)(2), a tribe must demonstrate that it submitted the land into trust application within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.
>
> In this case, the Tribe's existing gaming facility precludes a finding under this section.

Even if the Tribe's letter could be viewed as a plea for the creation of an exception to the requirement that "*the tribe is not gaming on other land*," which is contrary to its natural meaning, *see infra*, the December 14 letter contained no explanation or justification for such a request. Accordingly, as the Tribe's alleged offer to move its casino did not appear to be relevant to the Secretary's decision, the Secretary did not, and should not be required or expected to, address the offer in any detail. Rather, the Secretary succinctly explained that he denied the Tribe's application because of its "existing gaming facility." The offer to move the casino did not change the fact that the Tribe had an existing casino when it submitted its application.

The conclusion that the December 14 letter did not clearly present to the Secretary an alternate proposal of moving the

existing casino is supported by the lack of anything in the record suggesting that the Tribe thought otherwise. There is no indication that the Tribe asked the Secretary to reconsider his decision in light of the December 14 letter. Indeed, the Tribe's complaint filed in the district court does not even mention the December 14, 2010 letter. Paragraph 23 states that the Tribe amended its request on October 29, 2010. Paragraph 24 then states that Department denied the Tribe's request in the December 22, 2010 letter. There is no mention of the November 15, 2010 meeting or Ms. Murphy's December 14, 2010 letter.

The existing record does not support the majority's statement that the Tribe presented the Secretary with an "alternative proposal to close the first casino once the new one was operational." Maj. at 9. Rather, the possibility of moving the casino appears to have been tentatively raised in a last minute letter with no explanation of why the proposal would be permissible under the applicable regulation. The "alternate proposal" was not addressed in the Secretary's decision, and the Tribe never asked the Secretary to reconsider his decision in light of its alleged "alternate proposal." We hold that the Secretary's denial of the application was otherwise reasonable. This decision should not be undermined by subsequent attempts to re-characterize what happened. Because no "alternate proposal" was fairly presented to the Secretary, his failure to address it cannot be described as arbitrary or capricious. Furthermore, if the "alternate proposal" has any merit, the Tribe presumably can raise it anew with the Department. Such a course is surely preferable to remanding this case to the district court, to remand it to the Secretary, to consider a claim that was not fairly raised before the Department.

II.

Contrary to the majority's opinion and the Tribe's representations in its appellate brief, the district court's 32-page opinion is not based on a misperception that the Tribe sought to operate multiple casinos. As noted, the December 14 letter was not even mentioned in the Tribe's complaint.

Furthermore, a review of the briefs filed in the district court reveals that the alleged "alternate proposal" was never argued in writing to the district court. The December 14 letter is first mentioned in the Tribe's September 30, 2011 Motion for Summary Judgment as "summarizing many of the Tribe's arguments supporting its position that the Property fell within the Restored Lands Exception."[1] However, the thrust of the motion was that "the validity of the Decision . . . depends on the validity of the Regulations."[2]

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[1] Paragraph 19 in the Motion for Summary Judgement reads:

> On December 14, 2010, the Tribe sent a letter to Mr. Laverdure reiterating the discussions that occurred during the November 15, 2010 meeting, and summarizing many of the Tribe's arguments support its position that the Property fell with the Restored Lands Exception.

[2] The motion stated:

> The Assistant Secretary's Decision that the Tribe's request must be denied was based on the conclusion that the Property did not meet the requirements of the Regulations, in particular 25 C. F. R. §§ 292.2 and 292.7–292.12. The validity of the Decision, therefore depends on the validity of the Regulations.

The motion does contain a section alleging that "the Assistant Secretary's Decision violates the APA because he refused to consider important information and arguments submitted by the tribe." This section does mention the December 14, 2010 letter, but only as supporting the Tribe's argument that "because the lands upon which the Tribe was conducting gaming were within the original boundaries of the Tribe's Reservation, that gaming had no effect on the Tribe's request that the Property be taken into trust pursuant to the Restored Lands Exception." The December 14, 2010 letter does not make an appearance in the Tribe's reply brief.

The only language in the district court's opinion that arguably implies that the district court thought that the Tribe sought to operate multiple casinos is the third sentence in the opinion that reads: "The Tribe seeks to expand its gaming operations by building a second casino on 230 acres of undeveloped riverfront lands." However, this is an accurate statement, even if the Tribe intended to close the Win-River Casino. The Tribe did seek to build a "second" casino. Moreover, the Tribe did intend to expand its operations as the proposed Strawberry Fields Casino would be much larger than the Win-River Casino.

The district court did address the Tribe's claim that the Secretary "refused to consider important information, and found that the Decision was not arbitrary or capricious." The district court concluded that the Secretary had "explained that the Tribe could not satisfy the alternate criterion for establishing a temporal connection to newly acquired lands, which depends on a tribe conducting gaming on no other lands, *see* § 292.12(c)(2), because the tribe already operated the Win-River Casino," and that there was "nothing arbitrary or capricious about this application of the Regulations." The

district court further opined that "[t]he Tribe's real objection to the Decision appears to be not how Interior applied the Regulations but rather that Interior applied them at all."

Thus, the district court held that the Secretary reasonably denied the Tribe's request because the Tribe was already gaming on other land. The district court did not consider (and apparently was not asked to consider) whether the regulation could, or should be, revised or interpreted to allow the transfer of gaming from one location to another. Just as the Secretary's decision should not be set aside for not addressing an argument that was not clearly raised in the administrative proceedings, the district court should not be reversed for not addressing an argument that the Tribe failed to advance before it. It appears that the Tribe waived its alternate proposal argument by failing to present it to the district court.

III

Finally, I cannot agree with the majority's gratuitous comments on the merits of the Tribe's "alternate proposal" to close its Win-River Casino and open a casino on Strawberry Fields. The panel is in accord that (1) the regulation is reasonable, (2) the Indian canon does not apply, and (3) there has been no unexplained change in agency policy. These cover the primary issues raised by the Tribe. Indeed, in its reply brief, the Tribe reiterates that it "has consistently challenged a very specific component of the Secretary's interpretation; the requirement set forth in 25 C. F. R. § 292.12(c)(2) that the tribe must not 'already be gaming on other lands.'" Our agreement with the district court on these three issues should end this litigation, there is no need for further comment.

However, section IV of the majority opinion, after incorrectly accepting as fact both that the Tribe made an alternate proposal to the Department and that the district court's order contemplated that the Tribe sought to operate multiple casinos,[3] proceeds to offer questionable dicta. The majority recognizes that the regulation contains a prohibition against gaming on other lands, but then comments:

> The regulation is not clear, however, that the agency must also look to the date of the application to determine whether the tribe has satisfied the prohibition against gaming on other lands. While the regulation could be so interpreted, the agency has so far provided no reason why it should. Allowing a restored tribe to move a casino does not appear to conflict with the statutory purpose of ensuring parity among restored and established tribes.

Maj. at 17.

This approach is wrong on a number of fronts. First, it takes liberty with the regulation's language. The critical subsection reads: "the tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe *is not gaming on other lands*." Why isn't the most natural reading of the subsection that the Secretary must look to the date of the application in determining whether the application was submitted within the 25 year period and whether the tribe "*is not gaming on other*

[3] The majority states that: "The district court did not consider the Tribe's alternative offer and construed its application as if it necessarily contemplated the operation of multiple casinos."

lands?" The subsection directs the Secretary to look at what is happening, not what might happen in the future.

Second, this is the Secretary's position as set forth in the December 22, 2010 decision. The Secretary's brief reasserts that "the regulations are clear, and contain no provision for an expression of future intent with an undefined time frame." There is no doubt that throughout the proceedings the Tribe has operated the Win-River Casino. Thus, according to the Secretary, whether the Tribe intended to close the Win-River Casino if it prevailed on its application was "irrelevant." The Department's interpretation of its own regulation is controlling because it is not plainly erroneous or inconsistent with the statute. *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (holding that a Secretary's interpretation of a Department's regulation is controlling unless plainly erroneous or inconsistent with the regulation). Indeed, the Tribe has not argued, and the majority has not held, otherwise. Moreover, this is not a situation where the Secretary has changed his position during litigation or offered a *post hoc* rationalization. *See Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2166–67 (2012). Rather, the Secretary has consistently given *"is not gaming on other lands"* its ordinary meaning. It is the Tribe that on appeal advances a new proposed definition of the term.

Third, the majority's approach places the cart before the horse. I agree with the majority that "the Secretary reasonably implemented the restored lands exception," and that under the Administrative Procedure Act, the Secretary's "interpretation is owed deference so long as it is reasonable." Maj. at 12 (citing *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001); and *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 845 (1984)). We have further

held that "[u]nder the APA, we may only set aside an agency action if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *MacClarence v. United States Environmental Protection Agency*, 596 F.3d 1123, 1130 (9th Cir. 2010) (internal quotation marks and citation omitted). The Tribe has the burden of showing that the Secretary's interpretation of the regulation is plainly erroneous, and the Secretary had no obligation to anticipate what the Tribe might argue on appeal. Here, the Secretary's interpretation is reasonable, as the majority essentially admits. Maj. at 17. The Tribe has failed to demonstrate that the Secretary's reading of "*is not gaming on other lands*" was arbitrary, capricious or an abuse of discretion.

Moreover, even if the Secretary's interpretation of "not gaming" was not the most reasonable reading of the subsection, it is at least sufficiently reasonable to place the burden of proving a different interpretation on the Tribe. However, the record shows that although the Tribe informed the Secretary of its willingness to move its casino, it never offered any arguments to the Secretary or the district court as to why its offer was, or should be, relevant to the interpretation of the regulation. Even the Tribe's passing argument on this issue in its brief to this court is devoid of any citation to case law or regulation.

Finally, the assertion that moving a casino "does not appear to conflict with the statutory purpose of ensuring parity among restored and established tribes" is dicta, unsupported by anything in the record, and possibly contrary to panel's reasoning for otherwise affirming the Secretary's decision. The Tribe wants to build the Strawberry Fields Casino because it would be bigger and presumably more profitable than the Win-River Casino. But wouldn't allowing

restored tribes, but not established tribes, to move their casinos to newly acquired land alter the balance between restored and established tribes? Perhaps, if the Tribe's lands had never been confiscated, it might have built its casino at a better location in the first instance, but it is not clear why the Tribe's particular challenges are, or should be, relevant to the Secretary's interpretation of the regulation. I am at a loss to explain how the majority can otherwise affirm the Secretary's decision but then suggest that the Tribe's intent to move its casino rather than operate a second casino might somehow change the Secretary's interpretation of the regulation.

IV

If the Tribe wants to ask the Secretary to reconsider the December 22, 2010 decision on the basis that "*is not gaming on other land*" may, or should be, interpreted to allow a Tribe to move its casino from existing land to newly acquired land, it presumably may do so. I express no opinion as to whether the Secretary should entertain, or grant, such a request. However, having unanimously determined that the Secretary's interpretation of "*is not gaming on other land*" is reasonable, we should not comment on the Tribe's belated offer to move its casino. This is so because the Tribe did not fairly present its argument to the Secretary or to the district court. Furthermore, the majority's dicta is contrary to the Secretary's reasonable interpretation of the regulation, which is entitled to deference, and the dicta is unsupported by facts or legal argument. Accordingly, the majority's misguided championing of the Tribe's offer to move the casino misconceives the judiciary's review function under the Administrative Procedure Act, and is unlikely to produce any actual benefit for the Tribe. Because we should limit our

opinion to our determination that the Secretary otherwise reasonably interpreted the regulation and denied the Tribe's application, I dissent from part IV of the opinion.

COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

3RD-0113

NOV 07 2012

RECEIPT NO: 7011 0470 0003 0036 2884
SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 2, 2012

Stan Speaks, Regional Director
Bureau of Indian Affairs
911 NE 11th Ave
Portland, OR 97232

Dear Director Speaks,

By this letter, the Coquille Indian Tribe ("Tribe"), a federally-recognized Tribe as provided in the Coquille Restoration Act of 1989, 25 U.S.C. §715 et seq. (the "Restoration Act") requests the United States to accept title to approximately 2.4 acres of land and improvements (the "Subject Property") to be held in trust for the Tribe. The Tribe expects to use this land for on-reservation gaming, to provide governmental services to Tribal members and to advance and promote Tribal self-determination, self-sufficiency and community development. The Tribe makes this request under the provisions of the Indian Reorganization Act (25 U.S.C. §465 et seq.) ("IRA") and the Restoration Act. A copy of the Coquille Tribal Council resolution authorizing this request is attached to this letter as Exhibit A.

The Restoration Act's unique language clearly authorizes the Bureau of Indian Affairs to accept land into trust for the Tribe within a designated five county area, and provides that such land, once accepted in trust by the United States, shall be part of the Coquille Reservation.[1] In that Act, Congress *specifically* extended application of the entire IRA to the Tribe and to its fee-to-trust applications. The Restoration Act states, "[t]he Act of June 18, 1934 (48 Stat. 984), as amended . . . shall be applicable to the Tribe and its Members."[2] Another subsection specifically authorizes the Secretary to accept land into trust within the Tribe's five county service area

[1] 25 U.S.C. §715c.
[2] 25 U.S.C. §715a(e) (entitled "Indian Reorganization Act Applicability)

Exhibit A

COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

RESOLUTION
CY1296

AUTHORIZATION FOR FEE TO TRUST AND FOR OTHER APPROVALS

WHEREAS, the Coquille Indian Tribe ("Tribe") is a federally recognized Indian tribe pursuant to the Coquille Indian Restoration Act of June 28, 1989, 25 U.S.C. § 715, et seq. ("the Act"); AND

WHEREAS, the Tribe is governed by the Coquille Tribal Council pursuant to the Tribal Constitution adopted by eligible voters of the Tribe on August 27, 1991, and approved by the Secretary of the Interior on September 9, 1991; and the Tribal Council is empowered to establish Tribal policies, enact Tribal laws and act for the Tribe; AND

WHEREAS, among the first words of the Preamble to the Tribe's Constitution are the following:

> The Coquille Indian Tribe is and has always been a sovereign self-governing power dedicated to: 1. Preservation of Coquille Indian Culture and Tribal Identity; 2. Promotion of social and economic welfare of Coquille Indians; 3. Enhancement of our common resources; 4. Maintenance of peace and order; and 5. Safeguard individual rights of tribal members; AND

WHEREAS, consistent with the above-quoted words from the Preamble to the Tribe's Constitution, the Tribe wishes to authorize Tribal officials to apply for certain Jackson County, Oregon lands, currently used as a bowling alley, bar, restaurant, Oregon lottery licensee and associated services, to be placed into trust for gaming and non-gaming purposes, and to request any additional necessary federal government approvals; AND

WHEREAS, this fee-to-trust request is necessary for the Tribe to generate the revenue necessary to meet the current and future service needs of its members; AND

WHEREAS, this fee-to-trust request is necessary to help the Tribe to provide governmental services and outreach to its members who live in and near Jackson County; AND

WHEREAS, the Coquille Restoration Act (25 U.S.C. §715 et seq.) and the Indian Reorganization Act (25 U.S.C. §465 et seq.), each provides independent Federal statutory authority for this resolution and the fee-to-trust request; NOW

THEREFORE BE IT RESOLVED, that the Tribal Council approves of submitting an administrative fee-to-trust request to the Bureau of Indian Affairs that the lands described in the attached Exhibit A be taken into trust for governmental, gaming and non-gaming-related purposes; AND,

THEREFORE BE IT FURTHER RESOLVED, that the Tribal Council approves any additional submission required to obtain Federal government approvals necessary for the lands described in the attached Exhibit A to be eligible for gaming; AND

THEREFORE BE IT FURTHER RESOLVED, that this resolution replaces Coquille Tribal Council Resolution CY 1281; AND

THEREFORE, BE IT FINALLY RESOLVED, that the Tribal Chairperson or in his or her absence or unavailability, the Tribal Vice-Chairperson, shall have the authority to sign all documents needed to give this resolution full force and effect.

CERTIFICATION

The foregoing Resolution was duly adopted at the Tribal Council Meeting held on the Coquille Indian Tribe Reservation in North Bend, Oregon, on October 11, 2012, with the required quorum present by a vote of

6 For; 0 Against; 0 Absent; 0 Abstaining.

Edward L. Metcalf,
Chairperson

Joan Metcalf,
Secretary-Treasurer

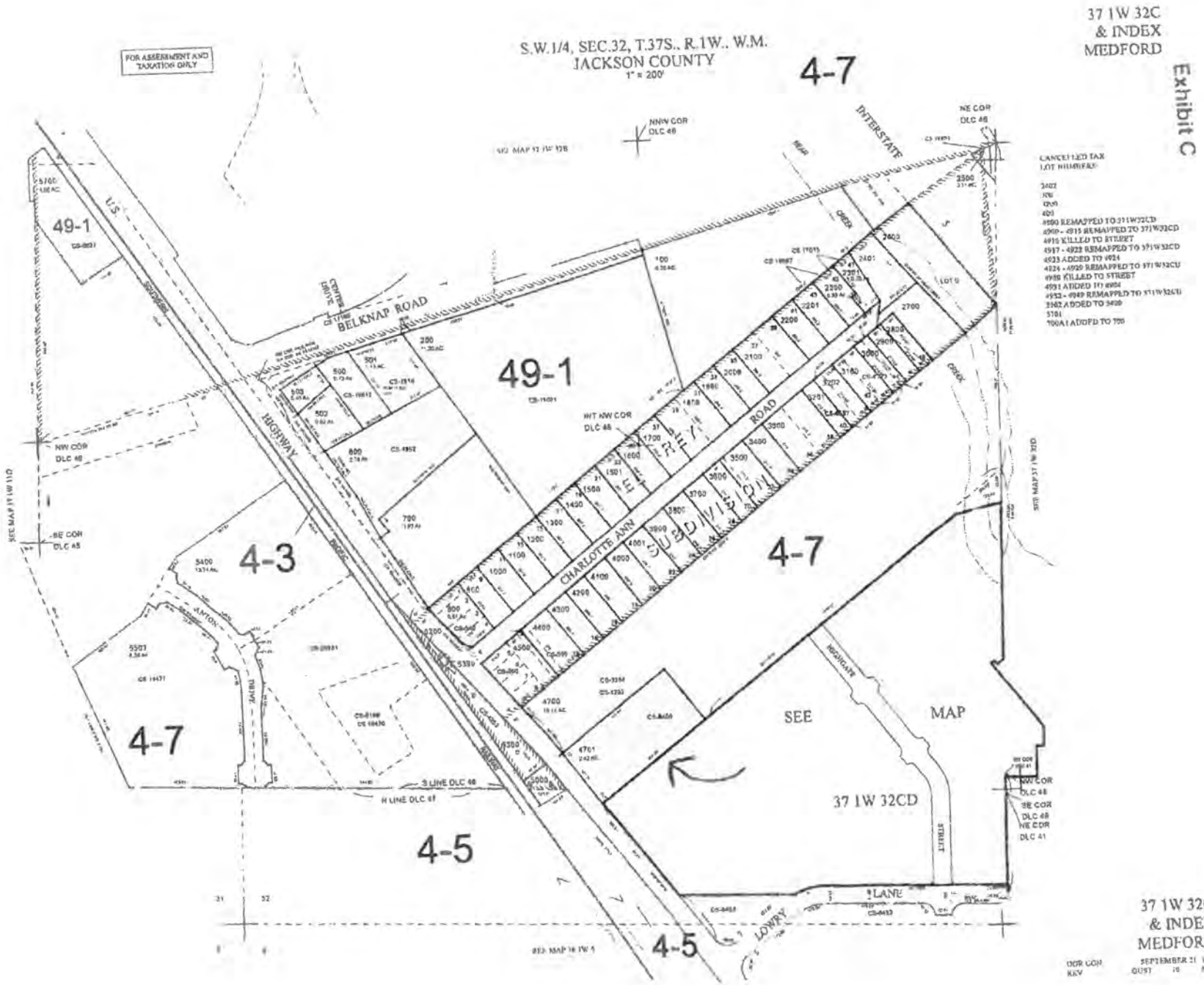
EXHIBIT A

Legal Description

Real property in the County of Jackson, State of Oregon, described as follows:

BEGINNING AT THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 46, TOWNSHIP 37 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON; THENCE SOUTH 00° 02' 40" EAST ALONG THE EAST LINE OF SAID DONATION LAND CLAIM LINE 1163.22 FEET (RECORD SOUTH 1163.80 FEET); THENCE SOUTH 51° 15' 00" WEST, 1338.47 FEET TO A 5/8 INCH IRON PIN AT THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 51° 15' 00" WEST 468.33 FEET TO INTERSECT THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 99 AT A 5/8 INCH IRON PIN; THENCE ALONG SAID HIGHWAY RIGHT OF WAY LINE ON A SPIRAL CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 39° 58' 20" WEST, 33.73 FEET) TO A 5/8 INCH IRON PIN, SAID PIN BEING A POINT OF SPIRAL CURVE (P.S.C.), STATION 490+28.72 OF SAID HIGHWAY; THENCE 177.14 FEET ALONG SAID HIGHWAY LINE ON AN ARC OF A 5761.16 FOOT RADIUS CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 41° 03' 50" WEST 177.14 FEET) TO A 5/8 INCH IRON PIN, SAID POINT BEING A P.S.C., STATION 492+4.90 OF SAID HIGHWAY; THENCE ALONG SAID HIGHWAY RIGHT OF WAY LINE ON A SPIRAL CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 42° 00' WEST 12.00 FEET) TO A 5/8 INCH IRON PIN; THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 51° 15' 00" EAST, 477.40 FEET TO A 5/8 INCH IRON PIN; THENCE SOUTH 38° 36' 27" EAST, 222.70 FEET TO THE POINT OF BEGINNING.


Exhibit B
So. Medford
Interstate 5
Charles Point
Charlotte Ann Rd.
2.42 acres
Hwy 99 So


37 1W 32C
& INDEX
MEDFORD
Exhibit C
S.W.1/4, SEC.32, T.37S., R.1W., W.M.
JACKSON COUNTY
1" = 200'
FOR ASSESSMENT AND TAXATION ONLY
4-7
49-1
4-3
4-5
BELKNAP ROAD
CHARLOTTE ANN SUBDIVISION
HIGHWAY
INTERSTATE
NW COR DLC 48
NE COR DLC 48
SE COR DLC 48
WT NW COR DLC 48
S LINE DLC 48
H LINE DLC 61
SEE MAP 37 1W 32D
SEE MAP 37 1W 31D
SEE MAP 37 1W 5
SEE MAP
37 1W 32CD
LANE
LOWRY
CANCELLED TAX LOT NUMBERS:
4990 REMAPPED TO 371W32CD
4909 - 4915 REMAPPED TO 371W32CD
4916 KILLED TO STREET
4917 - 4922 REMAPPED TO 371W32CD
4923 ADDED TO 4924
4924 - 4929 REMAPPED TO 371W32CU
4930 KILLED TO STREET
4931 ADDED TO 4904
4932 - 4949 REMAPPED TO 371W32CU
3502 ADDED TO 3400
3701
700A1 ADDED TO 700
37 1W 32C
& INDEX
MEDFORD
SEPTEMBER 21

COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

RECEIPT NO: 7012 1010 0001 2469 8822
SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 28, 2013

Sherry Johns, Realty Specialist
Bureau of Indian Affairs
North West Regional Office
911 N.E. 11th Avenue
Portland, OR 97232-4169

Dear Ms. Johns:

Thank you for your January 9, 2013, letter. Enclosed, please find the following items:

1. Copy of most recent tax information for the subject parcel.
2. Copy of the deed showing that a wholly owned subsidiary of the Tribe acquired the land.
3. A location map showing the subject property in relation to the reservation.
4. A copy of the Constitution of the Coquille Indian Tribe.
5. A survey of the subject property.

In the near future we expect to provide the remaining items as we actively work to pursue this application.

If you have any questions regarding this matter, please contact me at (541) 756-0904 or brettkenney@coquilletribe.org.

Thank you.

Sincerely,

Brett Kenney, Tribal Attorney
Coquille Indian Tribe

Encl.

REAL PROPERTY TAX STATEMENT
JULY 1, 2012 TO JUNE 30, 2013
JACKSON COUNTY, OREGON
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

ACCOUNT NO: 10568511

PROPERTY DESCRIPTION
CODE: 0407
MAP: 371W32C004701
ACRES: 2.42
SITUS: 2375 SOUTH PACIFIC HWY PHOENIX-TA

SOUTHERN OREGON PROPERTY HOLDINGS LLC
1159 MIRA MAR AVE
MEDFORD, OR 97504

VALUES:	LAST YEAR	THIS YEAR
REAL MARKET (RMV)		
LAND	522,510	491,170
STRUCTURES	1,357,540	1,276,120
TOTAL RMV	1,880,050	1,767,290
TOTAL ASSESSED VALUE	1,244,440	1,281,770
EXEMPTIONS		
NET TAXABLE:	1,244,440	1,281,770
TOTAL PROPERTY TAX:	17,771.85	18,303.80

EDUCATION SERVICE DISTRICT	437.34
ROGUE COMMUNITY COLLEGE	657.29
PHOENIX / TALENT SCHOOL DIST 4	5,437.52
EDUCATION TOTAL:	6,532.15
JACKSON COUNTY	2,494.07
VECTOR CONTROL	53.32
ROGUE VALLEY TRANSIT DISTRICT	219.95
JACKSON COUNTY SOIL & WATER CONS	62.17
CITY OF MEDFORD	6,787.36
MEDFORD URBAN RENEWAL	636.91
GENERAL GOVT TOTAL:	10,253.78
JACKSON COUNTY BONDS	241.10
ROGUE COMMUNITY COLLEGE BONDS	141.38
CITY OF MEDFORD	103.44
PHOENIX / TALENT SCHOOL DIST 4 B	1,031.95
BONDS & OTHER TOTAL:	1,517.87

VALUE QUESTIONS (541) 774-6059
PAYMENT QUESTIONS (541) 774-6541

ALL TAX PAYMENTS ARE NOW PROCESSED LOCALLY - PLEASE DO NOT SEND TO PREVIOUS PORTLAND ADDRESS.

2012-13 TAX (Before Discount) 18,303.80

PAYMENT OPTIONS			
Date Due	3% Option	2% Option	Trimester Option
11/15/12	17,754.69	11,958.48	6,101.27
02/15/13			6,101.27
05/15/13		6,101.27	6,101.26
Total	17,754.69	18,059.75	18,303.80

TOTAL DUE (After Discount and Pre-payments) 17,754.69

↓ Tear Here — PLEASE RETURN THIS PORTION WITH YOUR PAYMENT — Tear Here ↓

2012-2013 PROPERTY TAXES — **JACKSON COUNTY REAL** — **ACCOUNT NO. 10568511**

PAYMENT OPTIONS	Discount	Date Due	Amount		Date Due	Amount		Date Due	Amount
Full Payment Enclosed	3%							11/15/12	17,754.69
or 2/3 Payment Enclosed	2%			&	05/15/13	6,101.27		11/15/12	11,958.48
or 1/3 Payment Enclosed	0%	05/15/13	6,101.26	&	02/15/13	6,101.27	&	11/15/12	6,101.27

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE ☐ Mailing address change on back

Enter Payment Amount
$

MAKE PAYMENT TO:

SOUTHERN OREGON PROPERTY HOLDIN 16824 51 1/1
1159 MIRA MAR AVE
MEDFORD OR 97504-8576

LLC JACKSON COUNTY TAXATION OFFICE
10 SOUTH OAKDALE ROOM #111
MEDFORD, OR 97501

1583 - 013067 - 1830380

1510010568511000061012700011958480001775469 6

FT1809222-SQ

AFTER RECORDING, RETURN TO:

Lorie Harris Hancock
PO Box 1208
Sisters, OR 97759

Recorded Electronically
ID 2012-25967
County Jackson
Date 8-3-12 Time 12:35
Simplifile.com 800.460.5657

UNTIL A CHANGE IS REQUESTED,
SEND ALL TAX STATEMENTS TO:

Southern Oregon Property Holdings, LLC
1159 Mira Mar Avenue
Medford, OR 97504

WARRANTY DEED

25

OREGON RIMROCK INVESTMENTS, LLC, an Oregon limited liability company, Grantor, conveys and warrants to SOUTHERN OREGON PROPERTY HOLDINGS, LLC, an Oregon limited liability company, Grantee, that certain real property located in Jackson County, Oregon, and more particularly described on Exhibit A attached hereto, free of all liens and encumbrances except those set forth on Exhibit B attached hereto.

The true consideration for this conveyance is $1,600,000.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

FN1809222-SQ

AFTER RECORDING, RETURN TO:

Lorie Harris Hancock
PO Box 1208
Sisters, OR 97759

UNTIL A CHANGE IS REQUESTED,
SEND ALL TAX STATEMENTS TO:

Southern Oregon Property Holdings, LLC
1159 Mira Mar Avenue
Medford, OR 97504

Jackson County Official Records 2012-025969
R-WD
Stn=6 SMITHBJ 08/03/2012 12:35:54 PM
$25.00 $10.00 $5.00 $11.00 $15.00 $3.00 $69.00

I, Christine Walker, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Christine Walker - County Clerk

25

WARRANTY DEED

OREGON RIMROCK INVESTMENTS, LLC, an Oregon limited liability company, Grantor, conveys and warrants to SOUTHERN OREGON PROPERTY HOLDINGS, LLC, an Oregon limited liability company, Grantee, that certain real property located in Jackson County, Oregon, and more particularly described on Exhibit A attached hereto, free of all liens and encumbrances except those set forth on Exhibit B attached hereto.

The true consideration for this conveyance is $1,600,000.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 2nd day of August, 2012.

GRANTOR:

OREGON RIMROCK INVESTMENTS, LLC,
an Oregon limited liability company

By: _____
John C. Larkin, Member

By: _____
Lela Larkin, Member

STATE OF OREGON)
) ss.
County of Jackson)

The foregoing instrument was acknowledged before me on the 2nd day of August, 2012, by John C. Larkin and Lela Larkin as Members of Oregon Rimrock Investments, LLC, an Oregon limited liability company.

OFFICIAL SEAL
SUSAN G SMITH
NOTARY PUBLIC - OREGON
COMMISSION NO. 454388
MY COMMISSION EXPIRES JANUARY 30, 2015

_____
Notary Public for Oregon
My commission expires: 1/30/15

EXHIBIT A

Legal Description

Real property in the County of Jackson, State of Oregon, described as follows:

BEGINNING AT THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 46, TOWNSHIP 37 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON; THENCE SOUTH 00° 02' 40" EAST ALONG THE EAST LINE OF SAID DONATION LAND CLAIM LINE 1163.22 FEET (RECORD SOUTH 1163.80 FEET); THENCE SOUTH 51° 15' 00" WEST, 1338.47 FEET TO A 5/8 INCH IRON PIN AT THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 51° 15' 00" WEST 468.33 FEET TO INTERSECT THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 99 AT A 5/8 INCH IRON PIN; THENCE ALONG SAID HIGHWAY RIGHT OF WAY LINE ON A SPIRAL CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 39° 58' 20" WEST, 33.73 FEET) TO A 5/8 INCH IRON PIN, SAID PIN BEING A POINT OF SPIRAL CURVE (P.S.C.), STATION 490+28.72 OF SAID HIGHWAY; THENCE 177.14 FEET ALONG SAID HIGHWAY LINE ON AN ARC OF A 5761.16 FOOT RADIUS CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 41° 03' 50" WEST 177.14 FEET) TO A 5/8 INCH IRON PIN, SAID POINT BEING A P.S.C., STATION 492+4.90 OF SAID HIGHWAY; THENCE ALONG SAID HIGHWAY RIGHT OF WAY LINE ON A SPIRAL CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 42° 00' WEST 12.00 FEET) TO A 5/8 INCH IRON PIN; THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 51° 15' 00" EAST, 477.40 FEET TO A 5/8 INCH IRON PIN; THENCE SOUTH 38° 36' 27" EAST, 222.70 FEET TO THE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 1, 2008.

Tax Parcel Number: 1-056851-1

EXHIBIT B

Permitted Exceptions

1. City liens, if any, of the City of Medford (no outstanding liens as of the date hereof).

2. The premises herein described are within and subject to the statutory powers of the Rogue Valley Sewer Services (no outstanding liens as of the date hereof).

3. These premises are situated in the Medford Irrigation District, and subject to the levies and assessments thereof, water and irrigation rights, easements for ditches and canals and regulations concerning the same (no outstanding liens as of the date hereof).

   Note: The herein described land is exempt from future assessments pursuant to Medford Irrigation District Resolution recorded as Document No. 92-39676, Official Records of Jackson County, Oregon.

4. The effect of being within the Charlotte Ann Water District, a Municipal Corporation, organized under and pursuant to Chapter 346, General Laws of Oregon for 1917.

5. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.

6. Easement, including terms and provisions contained therein:

Recording Information:	Volume 283, Page 423 and Volume 376, Page 337, Jackson County, Oregon, Deed Records.
In Favor of:	The California Oregon Power Company
For:	transmission and distribution of electricity (Specific location not given)

7. Perpetual right, license and easement for a drainage ditch, granted the State of Oregon, by and through its State Highway Commission, by deed recorded in Volume 371, Page 250, Jackson County, Oregon, Deed Records. (Specific location not given)

8. Perpetual easement and right of way for sanitary sewer lines, and rights in connection therewith, granted the South Bear Creek Sanitary District, a Municipal Corporation of the State of Oregon, by instrument recorded in Volume 428, Page 248, Jackson County, Oregon, Deed Records.

9. Easement, including terms and provisions contained therein:

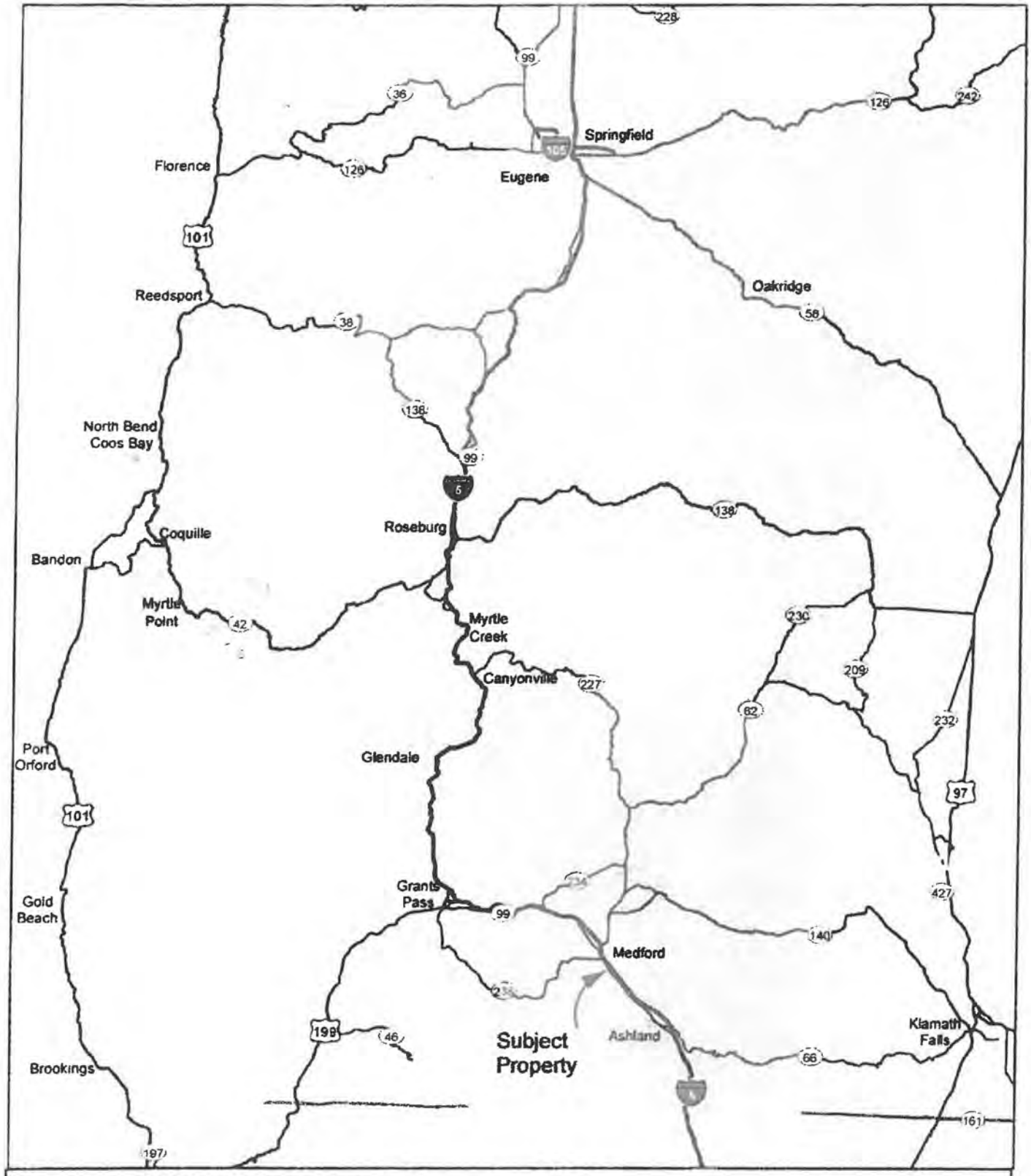
Recording Information:	Volume 513, Page 413; Volume 572, Page 153; and Volume 576, Page 35, Jackson County, Oregon, Deed Records, an in instrument recorded as Document No. 72-16824, Official Records of Jackson County, Oregon.
In Favor of:	The Pacific Power and Light
For:	transmission and distribution of electricity (Specific location not given)

10. Right to enter and construct an interceptor sewer line, and rights in connection therewith, granted the Bear Creek Valley Sanitary Authority, by instrument recorded as Document No. 70-09960, Official Records of Jackson County, Oregon.

11. Permanent right of way and easement for sewer lines, and rights in connection therewith, granted the Bear Creek Valley Sanitary Authority, by instrument recorded as Document No. 71-01901, Official Records of Jackson County, Oregon.

12. A non-exclusive right of way and easement for ingress and egress and rights in connection therewith, as more fully set forth in instrument recorded as Document No. 76-21632, Official Records of Jackson County, Oregon.

13. An easement, including the terms and provisions thereof, for a permanent easement to construct and maintain highway slopes, and to construct, relocate, operate, and maintain T.V., telephone, and electric powerline facilities, and appurtenances therefor, necessitated by the widening and improvement of the S.C.L. Medford-Phoenix Section of the Rogue Valley Highway, granted to the State of Oregon by and through its Department of Transportation Highway Division, in Document No. 86-12392, Official Records of Jackson County, Oregon.


Springfield
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Florence
Reedsport
Oakridge
North Bend
Coos Bay
Roseburg
Coquille
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Myrtle
Point
Myrtle
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Canyonville
Port
Orford
Glendale
Gold
Beach
Grants
Pass
Medford
Ashland
Klamath
Falls
Brookings
Subject
Property
228
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36
126
242
105
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Map produced January 2013 by the Coquille Indian Tribe's GIS Program
Map Projection Oregon State Plane South HARN
Map Scale 1 1 200,000 Map Size letter
Data Sources Coquille Indian Tribe, Jackson Co State of Oregon
This product is for informational purposes and may not have been prepared for, or be suitable for engineering or surveying purposes Users of this information should review or consult the primary data and information sources to ascertain the usability of the information
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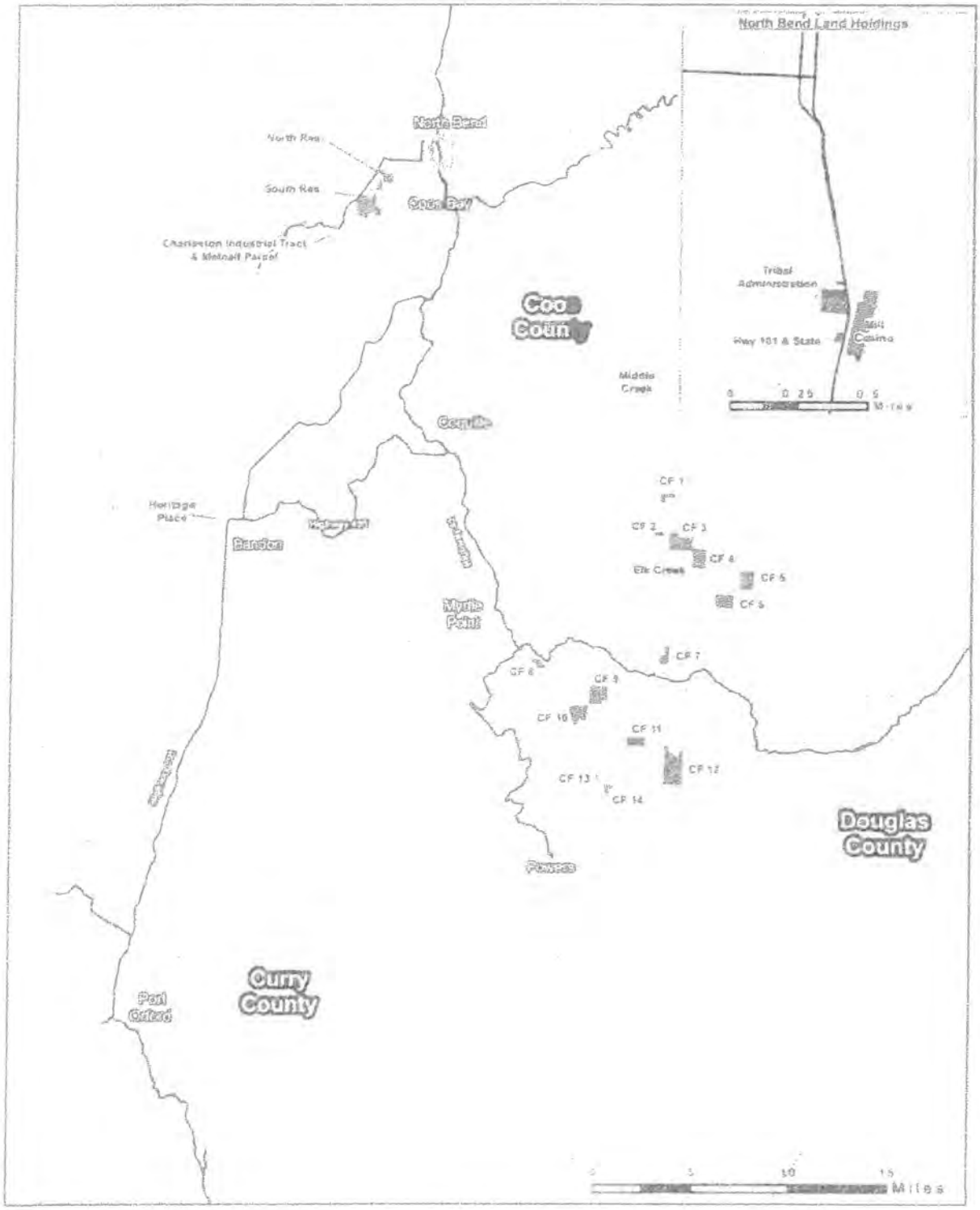
Highway
Major Road
Coquille Tribe Trust Property
Coquille Tribe Parcel
Medford City Limits
Five County Service Area
County Boundary

Coquille Indian Tribal Reservation Trust Lands



Legend

Highway
City Limit
County
CIT Trust Land

Tribal Trust Parcels & Acreage

[illegible]	[illegible]	Coquille Forest Parcel 12	[illegible]
[illegible]	[illegible]	Coquille Forest Parcel 13	40.28 ac
Coquille Forest Parcel [illegible]	18.38 ac	Coquille Forest Parcel 14	125.67 ac
Coquille Forest Parcel 3	568.56 ac	Heritage Place	5.34 ac
Coquille Forest Parcel 4	410.75 ac	Hwy 101 and State	3.85 ac
Coquille Forest Parcel 5	685.82 ac	Metcalf	3.67 ac
Coquille Forest Parcel 6	469.52 ac	Mill Casino	10.66 ac
Coquille Forest Parcel 7	261.47 ac	North Reservation	208.74 ac
Coquille Forest Parcel 8	161.61 ac	South Reservation	736.48 ac
Coquille Forest Parcel 9	470.35 ac	Tribal Administration Office	4.43 ac
Coquille Forest Parcel 10	477.98 ac		
Coquille Forest Parcel 11	179.05 ac		

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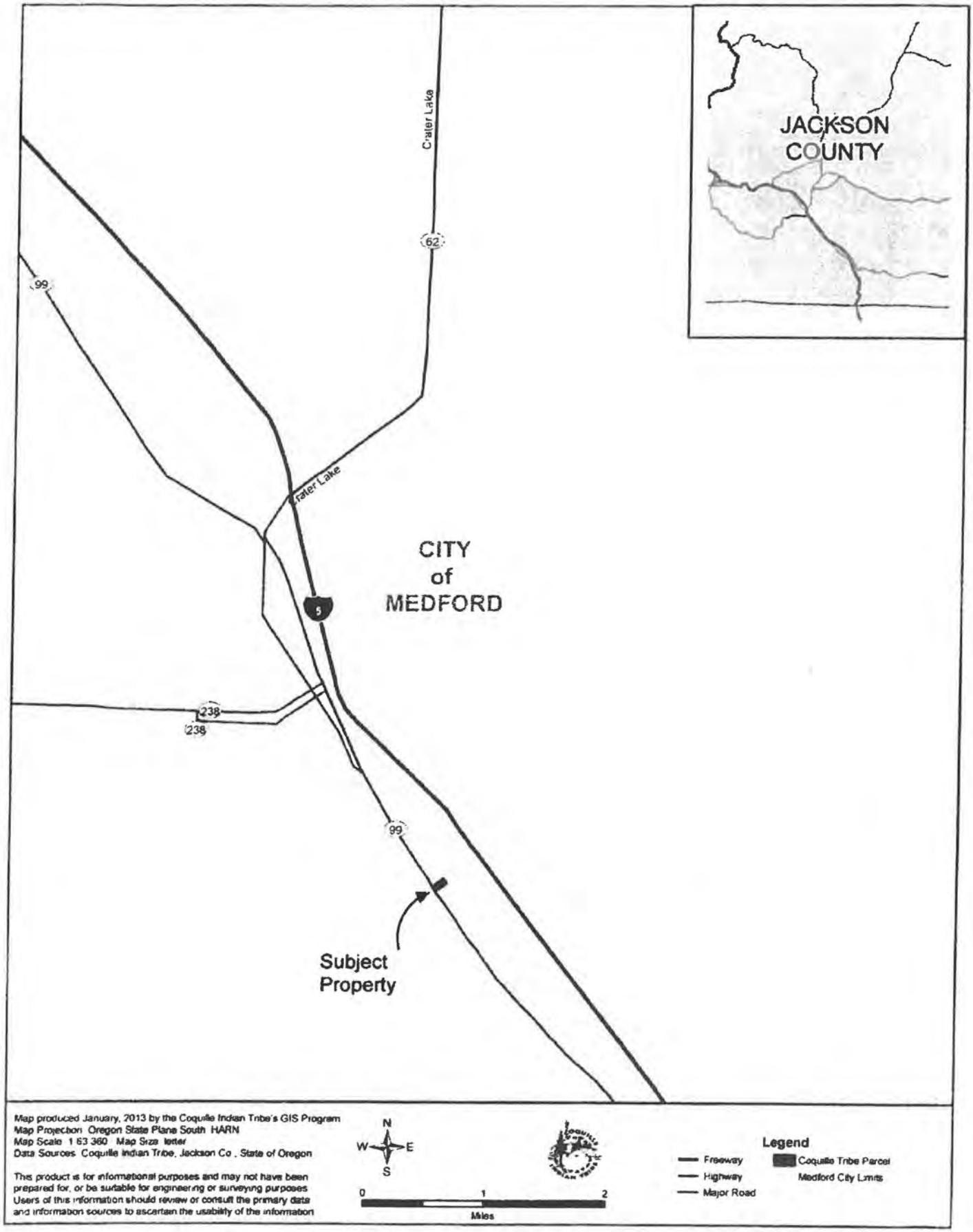
JACKSON
COUNTY
Crater Lake
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Crater Lake
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CITY
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MEDFORD
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Subject
Property
Map produced January, 2013 by the Coquille Indian Tribe's GIS Program
Map Projection Oregon State Plane South HARN
Map Scale 1 63 360 Map Size letter
Data Sources Coquille Indian Tribe, Jackson Co , State of Oregon
This product is for informational purposes and may not have been prepared for, or be suitable for engineering or surveying purposes Users of this information should review or consult the primary data and information sources to ascertain the usability of the information
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Legend
Freeway
Highway
Major Road
Coquille Tribe Parcel
Medford City Limits

CONSTITUTION

OF THE

COQUILLE INDIAN TRIBE

PREAMBLE

Our ancestors since the beginning of time have lived and died on the Coquille aboriginal lands and waters.

The Coquille Indian Tribe is and has always been a sovereign self-governing power dedicated to:

1. Preservation of Coquille Indian Culture and Tribal Identity.
2. Promotion of social and economic welfare of Coquille Indians.
3. Enhancement of our common resources.
4. Maintenance of peace and order.
5. Safeguard individual rights of tribal members.

Our ancestors have passed on to us a sacred trust and obligation to maintain and safeguard these goals.

In recognition of this sacred responsibility, we, the members of the Coquille Indian Tribe, being a federally recognized Indian tribe pursuant to the Coquille Indian Restoration Act of June 28, 1989, 103 Stat. 91, hereby adopt this constitution in order to re-affirm our tribal government and to secure the rights and powers inherent in our sovereign status as guaranteed to us by federal and tribal laws.

ARTICLE I

AUTHORITY OF GOVERNMENT

SECTION 1. JURISDICTION AND TERRITORY

The authority of the government established by this Constitution shall extend over all persons, property, and activities within the jurisdiction of the Coquille Indian Tribe, except as limited by this constitution and federal law.

The jurisdiction of the Coquille Indian Tribe shall extend, to the fullest extent possible under federal laws, over all lands, waters, property, airspace, minerals and other natural resources, and any interest therein, either now or in the future, owned by the Tribe or held in trust by the United States for the Tribe.

SECTION 2. HUNTING, FISHING AND GATHERING RIGHTS

Coquille tribal members may exercise tribal hunting, fishing and gathering rights to the fullest extent possible under federal and tribal laws.

ARTICLE II

MEMBERSHIP

SECTION 1. REQUIREMENTS.

The membership of the Coquille Indian Tribe shall consist of all persons:

a. whose names validly appear on the official tribal membership roll prepared pursuant to the requirements of Section 7 (b) of the Coquille Indian Restoration Act, 103 Stat. 91; provided, that such roll may be corrected by the Tribal Council with the approval of the Secretary of the Interior; or,

b. who are descended from a member of the Coquille Indian Tribe and have filed an application for enrollment according to procedures established pursuant to Section 3 of this Article, and

have been accepted as members in accordance with the tribal enrollment ordinance.

For purposes of this section, descent from a member of the Coquille Indian Tribe shall include lineal descent from any person who was named on any roll or records of Coquille Indian Tribe prepared by the Department of the Interior prior to the effective date of this Constitution.

SECTION 2. DUAL MEMBERSHIP PROHIBITED

No person who is an enrolled member of any other tribe, band, or Indian community officially recognized by the Secretary of the Interior shall be qualified for membership in the Coquille Indian Tribe, unless s/he has relinquished in writing his/her membership in such tribe, band or community.

SECTION 3. ORDINANCE

The Tribal Council shall enact an enrollment ordinance establishing procedures for processing membership matters, including application procedures, procedures for correction of the tribal roll, the right to appeal a denied application for membership, procedures for voluntary relinquishment of membership, and procedures governing reinstatement of former members who have relinquished membership.

SECTION 4. LOSS OF MEMBERSHIP

The Tribal Council shall by ordinance prescribe rules and regulations governing involuntary loss of membership. The reasons for such loss shall be limited exclusively to failure to meet the requirements set forth for membership in this Constitution; provided

that nothing in this section shall prohibit a member from voluntarily relinquishing membership in the Coquille Indian Tribe.

SECTION 5. ENROLLMENT PROHIBITION

No person who is not of Coquille Indian descent shall be entitled to membership in the Coquille Indian Tribe pursuant to Section 1 of this Article or by adoption.

ARTICLE III

GENERAL COUNCIL

SECTION 1. POWERS

There shall be a General Council, comprised of all duly enrolled members of the Coquille Indian Tribe who are eighteen years of age or older, which shall have the power to:

a. Elect Tribal Council members.

b. Amend this Constitution as provided by Article VII of this Constitution.

c. Make advisory recommendations to the Tribal Council upon a majority vote of those actually voting at a General Council meeting.

SECTION 2. PROCEDURES

The General Council shall hold meetings in accordance with the following procedures:

a. The General Council shall meet at least twice a year at a time and place to be set by the Tribal Council.

b. Special meetings of the General Council may be called by the Tribal Council upon two (2) weeks

notice to the membership of the General Council. Such notice shall include an agenda which specifies the items to be discussed at the meeting. The Tribal Council may call such meetings upon its own motion. The Tribal Council must call a General Council meeting upon presentation of a properly verified petition signed by one-third (1/3) or more of the General Council of the Coquille Indian Tribe.

c. The agenda for the General Council meetings shall be set by the Tribal Council; provided that any member of the General Council may submit in writing items to the Tribal Council for consideration for the agenda. Additionally, the Tribal Council in each agenda must include time for more discussion of items from the floor regardless of whether said items appear on the agenda.

d. The Tribal Council Chairperson shall chair General Council meetings. In his/her absence, the Tribal Vice Chairperson shall chair the meeting. If both the Tribal Chairperson and Vice Chairperson are absent, the Chief shall chair the meeting.

ARTICLE IV

REFERENDUM, INITIATIVE AND RECALL

SECTION 1. INITIATIVE

The General Council shall exercise the power of initiative by submitting to the Election Board a petition signed by at least one-third (1/3) of the members of the General Council, setting forth a

proposed ordinance or resolution. Upon verification of the petition by the Election Board, the proposed ordinance or resolution shall be submitted by the Election Board to a vote of the General Council at a regular or special election which must be held within sixty (60) days of the verification by the Election Board. The vote of a majority of those actually voting in the election shall be conclusive and binding on the Tribal Council provided that at least thirty percent (30%) of the qualified tribal members have voted in the election.

SECTION 2. REFERENDUM

The General Council shall exercise the power of referendum by submitting to the Election Board a petition, signed by at least one-third (1/3) of the members of the General Council, setting forth any proposed or previously enacted ordinance or resolution of the Tribal Council for reconsideration by the General Council. Upon verification by the Election Board, the proposed or previously enacted ordinance or resolution shall be submitted by the Election Board to a vote of the General Council at a regular or special election which must be held within sixty (60) days of said verification. The vote of a majority of those actually voting shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the qualified tribal members have voted in the election.

SECTION 3. RECALL

The General Council shall exercise the power of recall of elected tribal officials who are guilty of improper conduct or gross neglect of duties as provided by the election ordinance. The procedure for recall of elected tribal officials shall be set forth in the election

ordinance. In such an election, the vote of a two-thirds (2/3) majority of those actually voting in that election shall be conclusive and binding on the Tribal Council provided that at least thirty percent (30%) of qualified tribal members have voted in the election.

ARTICLE V

ELECTIONS & NOMINATIONS

SECTION 1. ELIGIBLE VOTERS

All enrolled members of the Coquille Indian Tribe who are eighteen years of age or over on the date of the election shall have the right to vote by secret ballot in that election.

SECTION 2. TIME OF ELECTION

Elections for the Tribal Council shall be held the third week of October each year.

SECTION 3. QUALIFICATIONS OF CANDIDATES

Any enrolled member of the Coquille Indian Tribe who will be 18 years of age or older on the date of the election.

SECTION 4. NOMINATIONS

The General Council shall hold a meeting at least five weeks before election day for the purposes of nominations of candidates for the Tribal Council. The only agenda item to be considered at this meeting is the nomination of candidates. Nominations shall be made from the floor at the General Council meeting.

Write-in candidates shall be allowed for all tribal offices and the Election Board will provide space for write-in candidates on each ballot.

SECTION 5. ELECTION BOARD

The Tribal Council shall appoint an Election Board which shall be composed of three (3) members and two (2) alternates. All Election Board members must be enrolled members of the Coquille Indian Tribe. The duties of the Election Board shall be to supervise the elections, determine the validity of tribal petitions, and perform other such duties as are provided for in the election ordinance.

SECTION 6. ELECTION ORDINANCE

The first Tribal Council elected pursuant to this Constitution shall enact an election ordinance within six (6) months of their initial election. The ordinance shall include but not limited to provisions for secret balloting, absentee voting, validation of tribal petitions and the settlement of any and all election disputes including the right to appeal to the Tribal Court.

ARTICLE VI

TRIBAL COUNCIL

SECTION 1. POWER

There shall be a Tribal Council which shall have the power to exercise all legislative authority except that vested in the General Council, and all executive authority of the Tribe, including the right to delegate authorities as the Tribal Council deems appropriate. The Tribal Council's authority shall include but shall not be limited to the authority to employ legal counsel, the choice of said counsel and fixing of fees to be subject to the approval of the Secretary of Interior as long as required by federal law, the power to prevent the

sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the Tribe and the power to negotiate with the federal, state and local governments. The Tribal Council shall have the power to submit proposed amendments to this Constitution to the Secretary of Interior as provided in Article VIII of this Constitution.

SECTION 2. FUTURE POWERS

The Tribal Council of the Coquille Indian Tribe may exercise such powers as may be returned to it in the future by the Secretary of the Interior, or by any other duly-authorized official or agency of government.

SECTION 3. TRIBAL COUNCIL PROCEDURES

a. Members of the Tribal Council shall conduct themselves in a professional manner and shall avoid engaging in any behavior which would compromise the integrity of the Coquille Indian Tribe.

b. The Tribal Council shall hold meetings and take actions in accordance with the following procedures which it may augment or diminish by its own rules so long as such rules do not conflict with any provisions of this Constitution:

1) Regular meetings of the Tribal Council shall be held pursuant to the Tribal Council ordinance; provided that notice of regular meetings shall be published in the tribal newsletter and posted in a conspicuous place at the tribal administrative office.

2) Special meetings of the Tribal Council may be called by the Tribal Chairperson at his/her discretion, but the Chairperson

must call a special meeting upon receipt of written request of two (2) or more Tribal Council members. If after such written request the Chairperson fails to call a special meeting within one (1) week of said request, the Tribal Court shall have jurisdiction to direct that a meeting be called and conducted. No special meeting shall be called without at least forty eight (48) hours notice to each member of the Tribal Council, unless each member agrees to waive the notice requirement.

3) The Tribal Council shall consist of seven (7) duly elected members. Four (4) members of the Tribal Council shall constitute a quorum. There must be a quorum present for the Tribal Council to conduct business. Matters of business shall be decided by majority vote, except where otherwise required by this Constitution or by the Tribal Council's own rules as set forth by ordinance. The Chairperson shall vote only in case of a tie.

4) The Officers of the Tribal Council shall consist of a Chairperson, a Vice Chairperson, a Chief and a Secretary/Treasurer. All members of the Tribal Council, including Tribal Officers, shall be elected by vote of the General Council.

5) The members first elected to the Tribal Council under this Constitution pursuant to Section 9 (b) of the Coquille Restoration Act, 103 Stat. 91, shall hold office until their successors are duly elected and installed following the Tribal Council election in October 199-.

At the Tribal Council election in October 199-, the Chairperson, the Secretary/Treasurer and one Representative shall be elected to three year (3) terms; the Vice Chairperson and one Representative shall be elected to two year (2) terms; and the Chief and one Representative shall be elected to one year (1) terms. Thereafter, in order to maintain the concept of staggered terms of office, Tribal Council members shall be elected to three (3) year terms. The annual election shall be held the third week of October of each year.

6) The duties of the Chairperson shall include presiding over all Tribal Council and General Council meetings. The Chairperson shall also perform all duties of the chair and exercise any authority delegated to him/her by the Tribal Council. The Vice Chairperson shall assist the Chairperson when called upon to do so by the Chairperson. In the absence of the Chairperson, s/he will preside at Tribal Council and General Council meetings and when so presiding, s/he will have all the rights, duties, privileges and responsibilities of the Chairperson including the duty to vote only in the event of a tie. The Chief shall be the primary cultural and spiritual representative of the Tribe. Additionally in the absence of both the Chairperson and Vice Chairperson, the Chief shall preside at all meetings of the Tribal Council and General Council.

7) All meetings of the Tribal Council shall be open to all tribal members; however, the Tribal Council may recess at its discretion to discuss any matter in an executive session.

The executive session shall consist of tribal council members and other invited persons necessary to the discussion. The Tribal Council must express in a motion calling for an executive session the general subject matter to be discussed in the executive session. The Tribal Council shall not take any final or official action on the matter in the executive session.

8) All final decisions of the Tribal Council on matters of general and permanent interest to the members of the Coquille Indian Tribe shall be embodied in ordinances. The ordinances shall be collected and made available to tribal members and others affected upon reasonable request.

9) All final decisions of the Tribal Council on matters of temporary interest or relating to specific individuals shall be embodied in resolutions. The resolutions shall be collected and made available to tribal members and others affected upon reasonable request.

10) A written record shall be kept of Tribal Council proceedings. The record shall be open for inspection by all members of the Coquille Indian Tribe during regular business hours in accordance with established tribal council procedures.

11) The Tribal Council and other officials of the Tribe shall not deny to any person within its jurisdiction freedom of speech, press or religion or the right of peaceful assembly. The Tribal Council and other officials of the Tribe shall not deny to any person the equal protection of tribal laws or deprive any person of liberty or property without due process of law. The Tribe shall provide to all persons within its

jurisdiction the rights guaranteed by the Indian Civil Rights Act of 1968.

SECTION 4. CONFLICT OF INTEREST

a. No member of the Tribal Council may be employed by the tribal administrative office while serving as a member of the Tribal Council.

b. No Tribal Council member will vote on any matter in which s/he or a member of her or his immediate family has a direct personal interest, including but not limited to, employment contracts, project funding and appointment to tribal committees. A Tribal Council member who is attending the meeting but unable to vote because of a conflict of interest will nevertheless count toward the quorum necessary to conduct business.

For purposes of this provision, "immediate family member" is defined as father, mother, son, daughter, husband, wife, brother, sister or any other relative living in the same household.

SECTION 5. VACANCY ON TRIBAL COUNCIL

If a member of the Tribal Council including Tribal Council Officers shall die, resign, or be found guilty of a felony or a misdemeanor involving dishonesty in any tribal, state or federal court, or be removed from office for any other reason, the Tribal Council shall declare that member's position on the Tribal Council vacant.

If the Tribal Council declares a member's position vacant within the first two years of the member's term of office, the Election Board shall initiate proceedings to hold an election to fill that vacancy pursuant to the provisions of the Election Ordinance.

If the Tribal Council declares a member's position vacant within the last year of his/her term, there shall be a special General Council meeting called within two weeks of the declaration of the vacancy for the purpose of nominations of tribal members to fill that vacancy. The nominees from the General Council shall be presented to the Tribal Council at the next regular meeting following the General Council meeting. The Tribal Council shall appoint a person to fill the vacancy from the list of nominees from the General Council.

SECTION 6. REMOVAL

a. Any member of the Tribal Council who, during the term for which she/he is elected or appointed, is convicted of a felony or crime involving dishonesty, in any court of competent jurisdiction, shall automatically forfeit her/his office effective the date of his/her conviction in court.

b. Any member of the Tribal Council found guilty of a misdemeanor involving moral turpitude, gross neglect of duty, malfeasance in office or misconduct reflecting on the dignity and integrity of the tribal government shall be removed from office by majority vote of the Tribal Council. Before any vote for removal is taken, the Tribal Council member subject to removal shall be given a written statement of the charges against him or her at least seven (7) days before the meeting of the Tribal Council called to consider the removal action. The accused member shall be given an opportunity to answer any and all charges at the designated Tribal Council meeting. No Tribal Council member shall preside over the meeting at which his or her removal is being considered. The final decision of the Tribal Council may be appealed to the Tribal Court.

ARTICLE VII

TRIBAL COURT

SECTION 1. ESTABLISHMENT

There shall be a Tribal Court. The development of the Tribal Court will begin within two years of adoption of this constitution by the General Council. The Tribal Court shall consist of one (1) Chief Judge and such Associate Judges and staff as are established by the Tribal Council and designated by tribal ordinance. The ordinance shall set forth the qualifications for the Chief Judge, and the terms of offices and qualifications for the Associate Judges and staff.

SECTION 2. APPOINTMENT OF JUDGES

The Tribal Council shall appoint the first Chief Judge within thirty days (30) after the establishment of the tribal court. The term of office for Chief Judge shall be three years. The Tribal Council shall have the authority to appoint the Chief Judge.

The Chief Judge may only be removed for conviction of a felony or misdemeanor involving moral turpitude in court of competent jurisdiction. The process for removal of the Chief Judge is the same for the removal of a member of the Tribal Council as set forth in Article VI, Section 6 of this constitution provided that a two thirds majority of the Tribal Council must vote for removal.

SECTION 3. RULES OF PLEADING, PRACTICE AND PROCEDURE

The Chief Judge, in consultation with the Tribal Council, shall promulgate rules of pleading, practice and procedure applicable to Tribal Court proceedings.

SECTION 4. POWERS

The Tribal Court and such inferior courts as the Tribal Council may from time to time ordain and establish shall be empowered to exercise all judicial authority of the Tribe.

The judicial power of the Tribal Court shall extend to all cases and matters in law and equity arising under this constitution, the laws and ordinances of or applicable to the Coquille Indian Tribe and the customs of the Coquille Indian Tribe. Provided that until such time as the Tribal Court is established, the judicial authority of the Coquille Indian Tribe shall vest in the Tribal Council.

SECTION 5.COURT OF RECORDS

The Coquille Tribal Court shall be a court of record. The Court shall be open for the transaction of business during regular judicial days.

ARTICLE VIII

TRIBAL MEMBERS' BILL OF RIGHTS

SECTION 1. ECONOMIC RESOURCES

All members of the Coquille Indian Tribe shall be accorded the opportunity to participate in the economic resources and activities of the Tribe. No per capita payments shall be made to any tribal members.

SECTION 2. CIVIL LIBERTIES

All members of the Tribe shall enjoy the freedom of worship, conscience, speech, press, assembly, and association.

ARTICLE IX

PROCEDURE FOR AMENDMENT OF CONSTITUTION

This constitution may be amended by a 2/3 majority vote of the qualified voters of the Coquille Indian Tribe voting in an election called for that purpose by the Secretary of Interior. The election shall be conducted in accordance with rules and regulations as set forth by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to authorize an election on any proposed amendment at the request of a majority of the Tribal Council or upon the presentation of a petition signed by at least one third of the General Council. No amendment shall be effective until it is approved by the Secretary of Interior.

ARTICLE X

ADOPTION OF THE CONSTITUTION

This Constitution, when adopted by a majority of the qualified voters of the Coquille Indian Tribe who actually vote at an election called for that purpose by the Secretary of Interior, and conducted pursuant to the Department of Interior's regulations, shall be submitted for approval to the Secretary of Interior, and shall become effective the date of such approval.

ARTICLE XI

SEVERABILITY

If any provision of this constitution is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the remaining provisions shall continue in full force and effect.

COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

RECEIPT NO: 7011 0470 0003 0036 2969
SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

February 5, 2013

Sherry Johns, Realty Specialist
Bureau of Indian Affairs
North West Regional Office
911 N.E. 11th Avenue
Portland, OR 97232-4169

Dear Ms. Johns:

As requested in your January 9, 2013, letter, enclosed, please find the following items:

- Copy of a title commitment that indicates that the form of title insurance to be issued will be the ALTA U.S. Policy – 9/28/91, the insured will be the United States of America in Trust for the Coquille Indian Tribe. This title commitment includes the exceptions and copies of all recorded documents.

In the future we expect to provide the remaining items as we actively work to pursue this application.

If you have any questions regarding this matter, please contact me at (541) 756-0904 or brettkenney@coquilletribe.org.

Thank you.

Sincerely,

Brett Kenney, Tribal Attorney
Coquille Indian Tribe

Encl.

First American

First American Title Company of Oregon

1225 Crater Lake Ave, Ste 101
Medford, OR 97504

January 31, 2013

Customer Reference:

Order Number: 7169-2025729

Attached please find the Title Commitment in connection with the above referenced order.

FOR ALL QUESTIONS REGARDING THIS TITLE COMMITMENT, PLEASE CONTACT:

Dwayne Rudisill, Title Officer
PH: (541)779-7250 - Fax: (866)399-8464 - Email: drudisill@firstam.com

THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!
WE KNOW YOU HAVE A CHOICE!

SCHEDULE A

Real property in the County of Jackson, State of Oregon, described as follows:

1. Commitment Date: January 15, 2013 at 8:00 A.M.

2. Policy or Policies to be issued:

	AMOUNT	PREMIUM
ZDNU-ALTA US Policy (9-28-91)	$ 1,600,000.00	$ 2,250.00

Proposed Insured:
United States of America in Trust for the Coquille Indian Tribe

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

Fee

4. Title to the above described estate or interest in said land is at the effective date hereof vested in:

Southern Oregon Property Holdings LLC

5. The land referred to in this Commitment is described as follows:

The land referred to in this report is described in Exhibit A attached hereto.

COMMITMENT FOR TITLE INSURANCE

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY of OREGON

First American Title Insurance Company of Oregon, an assumed business name of Title Insurance Company of Oregon, an Oregon corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefore; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of the Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, First American Title Insurance Company of Oregon Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

Title Insurance Company of Oregon
dba FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON

By: _____ *President*

Attest: _____ *Secretary*

SCHEDULE B - SECTION 1
REQUIREMENTS

The following are the Requirements to be complied with:

Item (A) Payment to or for the account of the Grantors or Mortgagors of the full consideration for the estate or interest to be insured.

Item (B) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record.

Item (C) Pay us the premiums, fees and charges for the policy.

Item (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

SCHEDULE B - SECTION 2
GENERAL EXCEPTIONS

The Policy or Policies to be issued will contain Exceptions to the following unless the same are disposed of to the satisfaction of the Company.

A. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

B. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of person in possession thereof.

C. Easements, claims of easement or encumbrances which are not shown by the public records.

D. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.

E. (1) Unpatented mining claims; (2) reservations or exceptions in patents or in acts authorizing the issuance thereof; (3) Water rights, claims or title to water; whether or not the matters excepted under (1), (2) or (3) are shown by the public records; (4) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.

F. Any lien, or right to a lien, for services, labor, materials or medical assistance theretofore or hereafter furnished, imposed by law and not shown by the public records.

G. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.

H. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effect date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgages thereon covered by this Commitment.

SCHEDULE B - SECTION 2
(continued)
SPECIAL EXCEPTIONS

1. City liens, if any, of the City of Phoenix.
***(NO SEARCH HAS BEEN MADE.** If inquiry is desired, please contact your Title Officer for a lien search)*

2. The premises herein described are within and subject to the statutory powers of the Rogue Valley Sewer Services.
***(NO SEARCH HAS BEEN MADE.** If inquiry is desired, please contact your Title Officer for a lien search)*

3. These premises are situated in the Medford Irrigation District, and subject to the levies and assessments thereof, water and irrigation rights, easements for ditches and canals and regulations concerning the same.

   Note: The herein described land is exempt from future assessments pursuant to Medford Irrigation District Resolution recorded as Document No. 92-39676, Official Records of Jackson County, Oregon.

4. The effect of being within the Charlotte Ann Water District, a Municipal Corporation, organized under and pursuant to Chapter 346, General Laws of Oregon for 1917.

5. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.

6. Easement, including terms and provisions contained therein:

Recording Information:	Volume 283, Page 423 and Volume 376, Page 337, Jackson County, Oregon, Deed Records.
In Favor of:	The California Oregon Power Company
For:	transmission and distribution of electricity (Specific location not given)

7. Perpetual right, license and easement for a drainage ditch, granted the State of Oregon, by and through its State Highway Commission, by deed recorded in Volume 371, Page 250, Jackson County, Oregon, Deed Records. (Specific location not given)

8. Perpetual easement and right of way for sanitary sewer lines, and rights in connection therewith, granted the South Bear Creek Sanitary District, a Municipal Corporation of the State of Oregon, by instrument recorded in Volume 428, Page 248, Jackson County, Oregon, Deed Records.

9. Easement, including terms and provisions contained therein:

Recording Information:	Volume 513, Page 413; Volume 572, Page 153; and Volume 576, Page 35, Jackson County, Oregon, Deed Records, an In instrument recorded as Document No. 72-16824, Official Records of Jackson County, Oregon.
In Favor of:	The Pacific Power and Light
For:	transmission and distribution of electricity (Specific location not given)

10. Right to enter and construct an interceptor sewer line, and rights in connection therewith, granted the Bear Creek Valley Sanitary Authority, by instrument recorded as Document No. 70-09960, Official Records of Jackson County, Oregon.

11. Permanent right of way and easement for sewer lines, and rights in connection therewith, granted the Bear Creek Valley Sanitary Authority, by instrument recorded as Document No. 71-01901, Official Records of Jackson County, Oregon.

12. A non-exclusive right of way and easement for ingress and egress and rights in connection therewith, as more fully set forth in instrument recorded as Document No. 76-21632, Official Records of Jackson County, Oregon.

13. An easement, including the terms and provisions thereof, for a permanent easement to construct and maintain highway slopes, and to construct, relocate, operate, and maintain T.V., telephone, and electric powerline facilities, and appurtenances therefor, necessitated by the widening and improvement of the S.C.L. Medford-Phoenix Section of the Rogue Valley Highway, granted to the State of Oregon by and through its Department of Transportation Highway Division, in Document No. 86-12392, Official Records of Jackson County, Oregon.

- END OF EXCEPTIONS -

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.

2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. This Commitment is a contract to issue one or more title insurance policies and is not en abstract of title or a report of the condition of title, Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>*

The First American Corporation

First American Title Company of Oregon

First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web Sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

Form 50-PRIVACY (8/1/09) Page 1 of 1 Privacy Information (2001-2010 First American Financial Corporation)

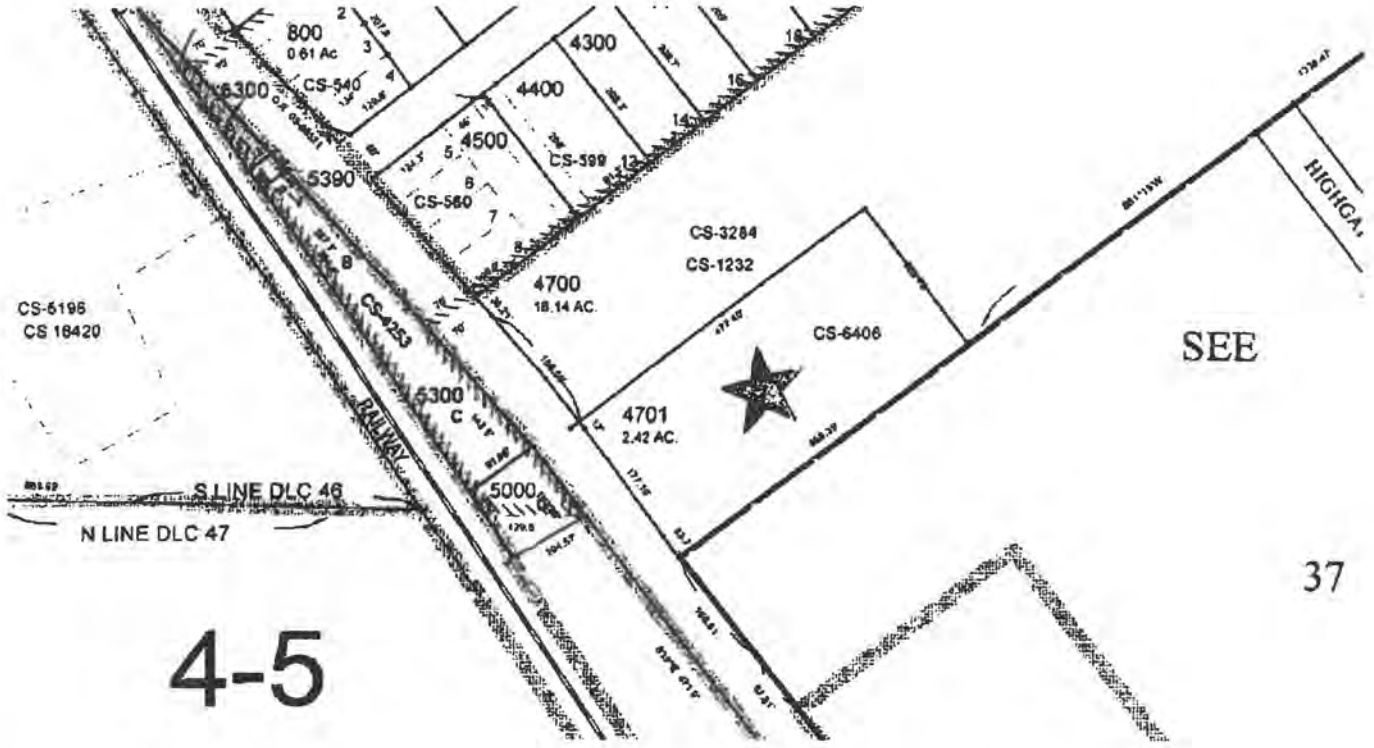
Exhibit "A"

Real property in the County of Jackson, State of Oregon, described as follows:

BEGINNING AT THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 46, TOWNSHIP 37 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON; THENCE SOUTH 00° 02' 40" EAST ALONG THE EAST LINE OF SAID DONATION LAND CLAIM LINE 1163.22 FEET (RECORD SOUTH 1163.80 FEET); THENCE SOUTH 51° 15' 00" WEST, 1338.47 FEET TO A 5/8 INCH IRON PIN AT THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 51° 15' 00" WEST 468.33 FEET TO INTERSECT THE NORTHEASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 99 AT A 5/8 INCH IRON PIN; THENCE ALONG SAID HIGHWAY RIGHT OF WAY LINE ON A SPIRAL CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 39° 58' 20" WEST, 33.73 FEET) TO A 5/8 INCH IRON PIN, SAID PIN BEING A POINT OF SPIRAL CURVE (P.S.C.), STATION 490+28.72 OF SAID HIGHWAY; THENCE 177.14 FEET ALONG SAID HIGHWAY LINE ON AN ARC OF A 5761.16 FOOT RADIUS CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 41° 03' 50" WEST 177.14 FEET) TO A 5/8 INCH IRON PIN, SAID POINT BEING A P.S.C., STATION 492+4.90 OF SAID HIGHWAY; THENCE ALONG SAID HIGHWAY RIGHT OF WAY LINE ON A SPIRAL CURVE TO THE LEFT (THE LONG CHORD TO WHICH BEARS NORTH 42° 00' WEST 12.00 FEET) TO A 5/8 INCH IRON PIN; THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 51° 15' 00" EAST, 477.40 FEET TO A 5/8 INCH IRON PIN; THENCE SOUTH 38° 36' 27" EAST, 222.70 FEET TO THE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 1, 2008.

Tax Parcel Number: 1-056851-1



TOWNSHIP 37 RANGE 14 SECTION 32 C
THIS SKETCH IS FOR LOCATION PURPOSES ONLY.
NUMBER ON SKETCH ARE COMPANY NUMBERS
AND NO LIABILITY IS ASSUMED FOR VARIATIONS
DISCLOSED BY SURVEY OR COUNTY RECORDS.

5.00

92-39676

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

9:37 DEC 23 1992 AM

KATHLEEN S. BECKETT
CLERK and RECORDER

In the Matter of the Exclusion Petition of:)
)
RONALD DIXON & JUDITH FRAIL)
)
Petitioner(s))

ORDER OF EXCLUSION

THIS MATTER having come for hearing at a regular meeting of the Board of Directors of the Medford Irrigation District at 1:30 p.m. on the 15th day of December, 1992, there being personally present all of the Directors of said District, and Bill Caldwell, Secretary/Manager; and

IT APPEARING that pursuant to an order of the Board of Directors, notice of the exclusion proceedings were duly published in the Medford Mail Tribune, a newspaper of general circulation in Jackson County, Oregon, in the manner and for the time required by law; and

IT FURTHER APPEARING that no person interested in the District has shown cause, in writing, why the lands petitioned for exclusion, or some portion thereof, should not be excluded from the District; and

IT FURTHER APPEARING that it is for the best interest of the Medford Irrigation District that said lands be excluded from the District.

NOW, THEREFORE, it is ordered that the following described lands be, and the same hereby are, excluded from the Medford Irrigation District.

RONALD DIXON & JUDITH FRAIL - ACT.#1-56851-1 37-1W-32C TL 4701 2.4 ACRES

Beginning at the Northeast corner of Donation Land Claim No. 46, Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence South 00 02'40" East along the East line of said Donation Land Claim 1163.32 feet (record South 1163.80 feet); thence South 51 15'00" West 1338.47 feet to a 5/8" iron pin at the point of beginning; thence continuing South 51 15'00 West 468.33 feet to intersect the Northeasterly right of way line of U.S. Highway No. 99 at a 5/8" iron pin; thence along said Highway right of way line on a spiral curve to the left (the long chord to which bears North 39 58'20" West 33.73 feet) to a 5/8" iron pin, said pin being a point of spiral curve (p.s.c.), Station 490+28.72 of said Highway; thence 177.14 feet along said Highway line on an arc of a 5761.16 radius curve to the left (the long chord which bears North 41 03'50" West 177.14 feet) to a 5/8" iron pin, said point being a P.S.C., Station 492+4.99 of said Highway; thence along said Highway right of way line on a spiral curve to the left (the long chord to which bears North 42 00' West 12.0 feet) to a 5/8" iron pin; thence leaving said right of way line North 51 15'00" East 477.40 feet to a 5/8" iron pin; thence South 38 36'27" East 222.70 feet to the point of beginning. Containing 2.42 acres, more or less.

IS FURTHER ORDERED that a certified copy of the entry of this order in the minutes of the Board of Directors excluding said lands be certified by the Secretary of the Board and filed for record in the Recorder's office of Jackson County, Oregon.

DATED this 15th day of December, 1992

Mike Russell, President

Edward Earnest, Director

Richard Payne, Director

Attest:

Bill Caldwell, Secretary/Manager

Vol 283

ANTHONY BOITANO ET. AL
TO
283-423
THE CALIFORNIA OREGON POWER COMPANY

Kind of Instrument:
GRANT OF RIGHT OF WAY
230931
1.00

STATE OF OREGON, County of Jackson, ss.
I hereby certify that the annexed instrument of writing was received and filed for record at 8:00 o'clock AM on the 25rd. day of July 1947
G. R. Carter Clerk
By Deputy

GRANT OF RIGHT OF WAY

THIS AGREEMENT, made this 12th day of June A. D., 1947 by and between Anthony Boitano, Anne Boitano, Chas_ Bottjer and Nora Bottjer parties of the first part, and THE CALIFORNIA OREGON POWER COMPANY, a California corporation, party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One Dollar ($1.00) to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to said party of the second part, its successors and assigns, a right of way for its pole and wire lines and other facilities for the transmission and distribution of electricity, also the right to remove the trees and make the clearing necessary or desirable for the purpose aforesaid, across that certain real property, situated in Jackson County, State of Oregon and more particularly described as_

In the West Half (½) of the Southeast Quarter (SE¼) of Section 32, Township 37 South, Range 1 West, W.M., as described in R-5703 and R-5704, Register of Titles, Jackson County, Oregon_

Said right of way to be 80 feet wide, 10 feet on each side of the pole and wire line as now surveyed through said premises or hereafter constructed.

Said parties of the first part grant to the party of the second part the right of ingress and egress to the right of way for the purpose of erection, maintenance, repair, or removal of the second party's electrical and transmission equipment, but reserve_ the right to cultivate said right of way.

IN WITNESS WHEREOF, said parties of the first part have hereunto set their hands and seals, on the day and year first above written.

WITNESSES
. . . .
. . . .

Anthony Boitano . . . . . (Seal)
Anne Boitano . . . . . (Seal)
Chas. Bottjer . . . . . (Seal)
Nora Bottjer . . . . . (Seal)

STATE OF Oregon } ss.
County of Jackson }

THIS CERTIFIES that on this 12th day of June A. D., 1947, before me A. L. Sams, Notary Public in and for said County and State, personally appeared _ within named Anthony Boitano, Anne Boitano, Chas_ Bottjer and Nora Bottjer, to me personally known to be the individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal the day and year in this certificate first written.

Notarial Seal of
A. L. SAMS

A. L. Sams
Notary Public in and for the County of Jackson State of Oregon
My Commission expires March 25, 1950

341963

Vol. 376 Page 337 Film No. 3

GRANT OF RIGHT OF WAY

L. O. M. 5456

THIS AGREEMENT, made this 5th day of January, A. D. 19 53

by and between Clyde C. Pittenger and Rosalind Pittenger, husband and wife

part ies of the first part, and THE CALIFORNIA OREGON POWER COMPANY, a California corporation, party of the second part.

WITNESSETH: That the said part ies of the first part, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to said party of the second part, its successors and assigns, a right of way for its wire lines and other facilities for the transmission and distribution of electricity; and to make the clearing necessary or desirable for the purposes aforesaid, across that certain real property, situated in Jackson County, State of Oregon and more particularly described as

A portion of the South Half (S½) of the Southwest Quarter (SW¼) of Section 32, Township 37 South, Range 1 West, W.M.

Wire lines and other facilities for the transmission and distribution of electricity to overhang above described property within a strip six (6) feet in width to adjoin and parallel U. S. Highway " 99 ".

One down guy to be located on above described property and to be located within six (6) feet of U. S. Highway " 99 " right of way line.

Said part ies of the first part grant to the party of the second part the right of ingress and egress to the right of way for the purpose of erection, maintenance, repair, or removal of the second party's electrical and transmission equipment, but reserves the right to cultivate said right of way.

IN WITNESS WHEREOF, said part ies of the first part have hereunto set their hands and seals, on the day and year first above written.

Witness

Clyde C. Pittenger (Seal)

Witness

Rosalind Pittenger (Seal)

State of Oregon (
ss.
County of Jackson (

THIS CERTIFIES that on this 5th day of January, A. D. 19 53, before me M. E. Deverell, Notary Public in and for said County and State, personally appeared within named Clyde C. Pittenger and Rosalind Pittenger, to me personally known to be the individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. E. Deverell
Notary Public in and for the County of Jackson
State of Oregon
My Commission expires February 7, 1954

State of Oregon, County of Jackson, ss.
I hereby certify that the within instrument of writing was received and filed for record this 11th day of Nov. 1953 and is recorded in Deed Records of Jackson County Oregon
C. D. Carter, County Clerk By [illegible] Deputy

329148

Vol. 332 Page 250 File No. 10425

WARRANTY DEED

(Individual)

This Indenture Witnesseth, That we, Clyde C. Pittenger and Rosalind Pittenger, husband and wife, grantor, for the consideration of the sum of One Thousand Two Hundred and 00/100 ($1,200.00) DOLLARS to us paid, have bargained and sold and by these presents do bargain, sell and convey unto the STATE OF OREGON, by and through its STATE HIGHWAY COMMISSION, the following described premises, to wit:

A parcel of land lying in D. L. C. No. 46 and D. L. C. No. 47, also in the Southwest quarter (SW¼) of Section 32, Township 37 South, Range 1 West, W. M., Jackson County, Oregon, and being a portion of that property described in that deed to Clyde C. Pittenger and Rosalind Pittenger, recorded in Book 261, Page 3, of Jackson County Records of Deeds. The said parcel being that portion of said property included in a strip of land 35 feet in width, lying on the Southwesterly side of the center line of the Pacific Highway as said highway has been relocated, which center line is described as follows:

Beginning at Engineer's center line Station 465+24.7, said Station being 2006.9E feet South and 1091.76 feet East of the Northeast corner of said D. L. C. No. 46; thence North 37° 32' 30" West 30.92 feet; thence on a spiral curve left (the long chord of which bears North 37° 52' 20" West) 200 feet; thence on a 5729.58 foot radius curve left (the long chord of which bears North 39° 25' 11" West) 176.18 feet; thence on a spiral curve left (the long chord of which bears North 40° 58' 02½" West) 200 feet; thence North 41° 18' 02½" West 95.30 feet to Engineer's center line Station 495+80. The Northeasterly line of said strip of land intersects the Southeasterly and Northwesterly lines of said property approximately opposite Station 490+42 and Station 496+44 respectively, containing 0.10 acre outside of the existing right of way.

(Bearings used herein are based upon the Oregon Co-ordinate System, South Zone.)

As an essential part of this transaction, we, the undersigned, as the owners in fee simple of the tract of land abutting on the relocated Pacific Highway, as described in that certain deed wherein Clyde C. Pittenger and Rosalind Pittenger, were grantees, recorded in Volume 261 Deed Records of Jackson County, Oregon at Page 3, of which the real property covered by this deed is a part, do, for ourselves, our heirs and assigns, sell, transfer, convey and relinquish to the State of Oregon, by and through its State Highway Commission, its successors and assigns, forever, all existing, future or potential easement of access and all rights of ingress, egress and regress to, from and between the real property described in said recorded deed and the real property above described including the highway constructed or to be constructed thereon or along.

EXCEPT, there is reserved the right of access from said abutting land to said highway of a width not to exceed 16 feet on the East side thereof opposite Highway Engineer's Station 493+20.

Grantee, State of Oregon, shall have the right at its option to build at any future time at its sole cost, a frontage road within the right of way. Upon construction of such frontage road, all right of access to and from the highway, if any be herein specifically reserved, shall cease, but grantors, their heirs and assigns, shall have access to the frontage road. Said frontage road shall be connected to the main highway only at such point or points as the State of Oregon may designate.

It is expressly intended that these covenants, burdens and restrictions shall run with the land and shall forever bind the grantors, their heirs and assigns.

There is also hereby granted a perpetual right, license and easement for a drainage ditch on the following described premises to wit:

A strip of land 10 feet in width adjacent to and Northeasterly of the above described parcel, containing 0.10 acre.

Together with the right to construct, install and repair existing irrigation and drainage ditches on the grantors abutting private property.

525488

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TO HAVE AND TO HOLD the said premises with their appurtenances, in fee simple, unto the said State of Oregon, by and through its State Highway Commission, its successors and assigns forever.

And ...we... the said grantor s.. do hereby covenant to and with the said State of Oregon, by and through its State Highway Commission, its successors and assigns, that ...we.. are..... the owner s.. in fee simple of said premises; that they are free from all incumbrances

and that ...we..... will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, ...we..... have hereunto set ...our..... hand s.. and seal...s this ...13... day of ...September..., 19...52

Done in presence of:

..... } Clyde C. Pittenger [SEAL]

..... } Rosalind Pittenger [SEAL]

525488

Form 215—Ed.—Revised 1-51

Warranty Deed
(Individual)

FROM
Clyde C. Pittenger et ux

TO
STATE OF OREGON
BY AND THROUGH ITS
STATE HIGHWAY COMMISSION

STATE OF OREGON,
County of Marion } ss.

I certify that the within was received at 1:30 o'clock P. M. on the 19 day of Sept. 1952, and duly recorded at Page ..... County Records, by me in Book of Deeds, Volume .....

By Dulcie Jenkins, Deputy

Return to
OREGON STATE HIGHWAY COMMISSION
Salem, Oregon

1.50 X

STATE OF OREGON,
County of Marion } ss.

On this 13 day of September, 1952, personally came before me, a Notary Public in and for said county and state, the within named Clyde C. Pittenger and Rosalind Pittenger, his wife, to me personally known to be the identical person A described in, and who executed, the within instrument, and who each personally acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and official seal the day and year last above written.

Notary Public for Oregon

My commission expires April 11, 1954

4090099 Vol. 428 Page 248

RIGHT-OF-WAY DEED

KNOW ALL MEN BY THESE PRESENTS, That C. C. PITTENGER, widower, for valuable consideration, hereby grants to the SOUTH BEAR CREEK SANITARY DISTRICT, a municipal corporation, organized under the laws of the State of Oregon, Grantee, and to its successors and assigns, a perpetual easement and right-of-way to construct, repair, maintain and use sanitary sewer lines to be constructed beneath the surface of the ground, within and upon a strip of land ten feet in width through Grantor's land in Sec. 32, Twp. 37 South, Range 1 West, W. M., lying five feet on each side of a center line described as follows:

> Beginning at a point on the Southerly line of Lot 12, Elroy Subdivision; thence South 38° 39' East 102 feet; thence South 51° 21' West 175 feet to a point 15 feet Easterly of and at right angle to the Easterly right-of-way line of U. S. Highway 99; thence Southeasterly along a line parallel to and 15 feet Easterly at right angle to the said Easterly right-of-way line of said highway, 345 feet, more or less, to the Southerly line of Grantor's land, described in Vol. 251, Page 3, Deed Records of Jackson County, Oregon.

hereby giving and granting to said Sanitary District, its agents, officers and employees ~~full right to enter upon the land of Grantor, particularly a reasonable strip on each side of said sanitary sewer lines as hereafter constructed~~, to do any such acts and things as may be necessary for the purposes above mentioned, doing no unnecessary damage to said lands or any improvements thereon, upon the condition, however, that all trenches shall be backfilled properly and the property, particularly any driveway, shall be left in as good condition as it was just prior to the construction or maintenance work.

TO HAVE AND TO HOLD the said easement and the rights hereby granted unto the said SOUTH BEAR CREEK SANITARY DISTRICT, its successors and assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 26 day of January, 1956.

C. C. Pittenger (SEAL)

State of Oregon)
County of Jackson) ss.

On this 26 day of January, 1956, before me, the undersigned Notary Public personally appeared C. C. PITTENGER, who is known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same freely and voluntarily.

NOTARY PUBLIC FOR OREGON
My Commission expires:
July 20, 1958

Vol. 429 Page 249 409099

State of Oregon, County of Jackson - SS.
The within instrument received and filed at 8:00 o'clock
A.M. the 27 day of January 1976
recorded in Deeds Records of Jackson County
Oregon. Beth L. Stephens County Clerk.
By Sharon Gobel Deputy

10 — 10.00

37-14-34

rosm 1088 REV. 1-59

Vol. 513 Page 413

3
2160

521673

GRANT OF RIGHT OF WAY

THIS AGREEMENT, made this 26 day of June, A. D. 19 61, by and between

Anthony Boitano and Anna P. Boitano husband and wife;

Charles W. Bottjer and Nora C. Bottjer, husband and wife;

PACIFIC POWER & LIGHT COMPANY, Maine

party of the first part, and ~~THE CALIFORNIA-OREGON POWER COMPANY~~, a ~~California~~ corporation, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, to said party of the second part, its successors and assigns, a right of way for its pole and wire lines and other facilities for the transmission and distribution of electricity and the transmission of communication and control signals;

also the right to remove or trim trees in said right of way, and trim those trees outside of the right of way, which may contact the wire lines by encroaching on the right of way;

and to make the clearing necessary or desirable for the purposes aforesaid, across that certain real property, situated in Jackson County, State of Oregon, and more particularly described as a portion of the West Half (W½) of the Southeast Quarter (SE¼) of Section 32, Township 37 South, Range 1 West, W.M.

Said right of way to be 20 feet wide, 10 feet on each side of the pole and wire lines as now surveyed through said premises.

Said parties of the first part grant to the party of the second part the right of ingress and egress to the right of way for the purpose of erection, maintenance, repair, or removal of the second party's electrical and transmission equipment, but reserves the right to cultivate said right of way.

Nothing herein contained shall be construed as making the party of the second part an operator, owner or person in possession as defined by the Forestry Code of the respective States of either Oregon or California, whichever State may be the one wherein the premises, which are the subject matter hereof, are located.

IN WITNESS WHEREOF, said parties of the first part have hereunto set their hands and seals, on the day and year first above written.

Witness

Witness

Anthony Boitano (Seal)

Anna P. Boitano (Seal)

Charles W. Bottjer (Seal)

Nora C. Bottjer

STATE OF Oregon, County of Jackson } ss.

THIS CERTIFIES that on this 26 day of June, A. D. 1961, before me G. C. Kessee, Notary Public in and for said County and State, personally appeared within named Anthony Boitano, Anna P. Boitano, Charles W. Bottjer, Nora C. Bottjer to me personally known to be the individual described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

G. C. Kessee
Notary Public in and for the County of Jackson, State of Oregon
My Commission expires March 12, 1965

State of Oregon, County of Jackson—ss.
The within instrument received and filed at 12:53 o'clock P. m. the 19 day of Sept. 1961, recorded in Deeds Records for Jackson County, Oregon. C. W. McKay County Clerk.
By Eleanor E. McIntyre Deputy.

32C - 375 - 1W -

31 - 18456 - 133 - 1

Vol. 572 Page 153

FORM 1061 REV

605327

GRANT OF RIGHT OF WAY

THIS AGREEMENT, made this 6 day of July, A. D. 19 64, by and between Herschel H. Dixon, Kenneth F. Dixon, John G. Crawford

part ies of the first part, and PACIFIC POWER & LIGHT COMPANY, a Maine corporation, party of the second part,

WITNESSETH: That the said part ies of the first part, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to said party of the second part, its successors and assigns, a right of way for the installation of one anchor and guy s on that certain real property, situated in Jackson County, State of Oregon

and more particularly described as A portion of the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section 32, Township 37 South, Range 1 West, W.M.

Said part ies of the first part grant to the party of the second part the right of ingress and egress to the right of way for the purpose of erection, maintenance, repair, or removal of the second party's electrical and transmission equipment, but reserves the right to cultivate said right of way.

Nothing herein contained shall be construed as making the party of the second part an operator, owner or person in possession as defined by the Forestry Code of the respective States of either Oregon or California, whichever State may be the one wherein the premises, which are the subject matter hereof, are located.

IN WITNESS WHEREOF, said part ies of the first part ha ve hereunto set their hand s and seal s, on the day and year first above written.

Herschel H. Dixon (Seal)
Kenneth F. Dixon (Seal)
John G. Crawford (Seal)

Witness

Witness

STATE OF Oregon
County of Jackson } ss.

THIS CERTIFIES that on this 6 day of July, A. D. 1964, before me G. G. Keenan Notary Public in and for said County and State, personally appeared the within named Herschel H. Dixon, Kenneth F. Dixon, John G. Crawford to me personally known to be the individual s described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

G. G. Keenan
Notary Public in and for the County of Jackson
State of Oregon
My Commission expires March 19, 1965

NOTARY PUBLIC STATE OF OREGON

State of Oregon, County of Jackson--SS.
The within instrument received and filed at 11:4 o'clock A.m. the 23 day of Dec 1964 recorded in Deed Records for Jackson County Oregon.
[illegible] County Clerk.
[illegible] Deputy

32-379-DM-46

FORM 1086 REV.

31-70-133-14227

610780

GRANT OF RIGHT OF WAY

Vol. 576 Page 35

THIS AGREEMENT, made this 9 day of September, A. D. 1964, by and between John G. Crawford and Janet M. Crawford, husband and wife; Herschel H. Dixon; Kenneth F. Dixon

part ies. of the first part, and PACIFIC POWER & LIGHT COMPANY, a Maine corporation, party of the second part.

WITNESSETH: That the said part ies. of the first part, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to ...them... ...in hand paid, the receipt whereof is hereby acknowledged, do..... by these presents grant to said party of the second part, its successors and assigns, a right of way for its pole and wire lines and other facilities for the transmission and distribution of electricity and the transmission of communication and control signals, ...

also the right to remove or trim trees in said right of way, and trim those trees outside of the right of way, which may contact the wire lines by encroaching on the right of way; .....

and to make the clearing necessary or desirable for the purposes aforesaid, across that certain real property, situated in Jackson County, State of Oregon, and more particularly described as a portion of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of Section 33, Township 37 South, Range 1 West, W.M.

Said right of way to be 12 feet wide adjoining and substantially parallel with the Northerly boundary of the premises as now surveyed through the said premises.

Said part ies. of the first part grant ... to the party of the second part the right of ingress and egress to the right of way for the purpose of erection, maintenance, repair, or removal of the second party's electrical and transmission equipment, but reserves the right to cultivate said right of way.

Nothing herein contained shall be construed as making the party of the second part an operator, owner or person in possession as defined by the Forestry Code of the respective States of either Oregon or California, whichever State may be the one wherein the premises, which are the subject matter hereof, are located.

IN WITNESS WHEREOF, said part ies. of the first part ha ve hereunto set their hand s and seal s, on the day and year first above written.

John G. Crawford (Seal)

Janet M. Crawford (Seal)

Herschel H. Dixon (Seal)

Kenneth F. Dixon (Seal)

Witness

Witness

STATE OF Oregon } ss.
County of Jackson }

THIS CERTIFIES that on this 9 day of September, A. D. 1964, before me O. A. Keene, Notary Public in and for said County and State, personally appeared within named John G. Crawford, Janet M. Crawford, Herschel H. Dixon, Kenneth F. Dixon to me personally known to be the individual s described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

O. A. Keene
Notary Public in and for the County of Jackson
State of Oregon
My Commission expires March 19, 1965

State of Oregon, County of Jackson—SS.
The within instrument received and filed for record this 22nd day of Oct. 1964 at 2:30 o'clock P. M., and recorded in Misc. Records for Jackson County, Oregon.
E. W. Madden, County Clerk
By Grace Bell, Deputy

File No. 111-7872 (Medford)
RR/WO No. 700-9012

72-16824

RIGHT-OF-WAY EASEMENT
(Individual) Partnership

For value received the undersigned, hereinafter referred to as Grantors, (whether singular or plural), do hereby grant to PACIFIC POWER & LIGHT COMPANY, a corporation, its successors and assigns, the Grantee, an easement or right-of-way 20 feet in width for an electric transmission and distribution line of one or more wires and all necessary or desirable appurtenances (including telephone and telegraph wires, towers, poles, props, guys, anchors and other supports and the right to place all or any part of such line underground and the right to place such guys and anchors outside of said right-of-way), the centerline of which is at or near the location and along the general course now located and staked out by the Grantee over, across and upon the following described real property in Jackson County, State of Oregon, to wit:

a portion of the South Half (S½) of the Southwest Quarter (SW¼)

of Section 32, Township 37 South, Range 1 West W.M.

JACKSON COUNTY OREGON
RECORDED
Offered Record

1972 DEC 13 AM 9 57

HART CHIPMAN
CLERK AND RECORDER
BY Helen Louise Dudley

Including the right to clear said right-of-way and keep the same clear of brush, trees, timber and structures, and the right to top, trim, clear or cut away all trees outside of said right-of-way which might endanger such line.

Together with the right of ingress and egress over the adjacent lands of the Grantors for the purpose of constructing, reconstructing, string new wires on, maintaining and removing such line and appurtenances, and exercising other rights hereby granted.

At no time shall any building or anything flammable be erected, permitted or placed within the boundaries of said right-of-way, nor shall any material or equipment of any kind or nature which exceeds 18 feet in height be used thereon by Grantors, or by Grantors' heirs or assigns.

Grantors reserve the right to use said right-of-way for roads, agricultural crops or other purposes not inconsistent with the easement granted hereby, but in using or operating any irrigation pipes, motorized vehicles or other equipment, or in any other such use of said right-of-way, Grantors and Grantors' heirs or assigns, shall conform strictly to the provisions of any then applicable safety code or regulation pertaining to required clearances from the wires or conductors of such line.

All rights hereunder shall cease if and when such line shall have been abandoned.

Dated this 2 day of November 1972

partnership

Kenneth F. Dinsel (SEAL)
Kenneth F. Dinsel, Partner

Herschel E. Dinsel (SEAL)
Herschel E. Dinsel, Partner

STATE OF Oregon }
County of Jackson } ss.

On this 2 day of November, 1972, personally appeared before me a notary public in and for said State, the within named Kenneth F. Dinsel & Herschel E. Dinsel, partners to me known to be the identical persons described therein and who executed the foregoing instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year above written.

NOTARY PUBLIC STATE OF OREGON

Dana R. Roberts
Notary Public for Oregon
Residing at Medford
My commission expires: June 15, 1974

'70-09960

RIGHT OF ENTRY

WHEREAS, the Bear Creek Valley Sanitary Authority, Jackson County, Oregon, has deemed it necessary to obtain for public use certain easements for the purpose of constructing, operating and maintaining an interceptor sewer line, and related facilities, over, across and under the real property hereinafter described, and

WHEREAS, agreement has not been reached between the Bear Creek Valley Sanitary Authority and the Grantors hereinafter named as to compensation and damages therefor, and

WHEREAS, the Grantee by the acceptance hereof, claims no waiver on the part of the Grantors of any rights to such compensation or damages or defenses to a suit for condemnation, and

WHEREAS, the Grantee, by the acceptance hereof, waives no rights to condemnation of said premises;

NOW, THEREFORE, the undersigned, JOHN G. CRAWFORD and JANET M. CRAWFORD, husband and wife, HERSCHEL H. DIXON and KENNETH F. DIXON, RAY OFFORD, JR. and JAMES L. SHELDON, Grantors, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration to them in hand paid, grant to BEAR CREEK VALLEY SANITARY AUTHORITY, Grantee, the right to enter and construct said interceptor sewer line and related facilities upon the following described real property, to-wit:

PARCEL A:

A strip of land 40.0 feet in width over and across that tract of land described in deeds recorded in Volume 471, page 494, and Volume 596, page 70, Jackson County, Oregon, Deed Records. From the following described center line of easement, 15 feet abuts the Southwesterly side and 25 feet abuts the Northeasterly side:

Commencing on said center line, Station "P" 0 + 00 from which the Southwest corner, Donation Land Claim No. 51, Section 23, Township 37 South, Range 1 West, Willamette Meridian, bears South 1666.93 feet and East 338.97 feet; thence South 35° 26' 40" East, 743.82 feet to Station "P" 7 + 43.82; thence South 45° 35' East, 502.96 feet to Station "P" 12 + 46.78; thence South 19° 03' 40" East 615.75 feet to Station "P" 18 + 62.53.

On said center line enter said tract at approximately Station "P" 2 + 54.5 and leave at approximately Station "P" 15 + 70.2.

PARCEL B:

A strip of land 50 feet in width along and abutting the Northeasterly side and 50 feet in width along and abutting the Southwesterly side and for the full length of the aforementioned and described permanent easement referred to as Parcel A above, excepting that portion within the area of No. 5 Green of Roxy Ann Links and Range.

Grantors reserve all rights to compensation for the granting of a permanent easement over, across and under Parcel A for the purposes aforesaid, and a construction easement over and across Parcel B, and all rights to damages arising from the use of said easements for the purposes aforesaid.

The Grantors further reserve all rights and defenses to any condemnation suit or proceedings brought by the Grantee for said easements.

The Grantee agrees to maintain the contour of Bear Creek as it abuts the land along and Easterly of No. 4 Fairway of Roxy Ann Links and Range, and to riprap the bank thereon and fill the area where undergrowth and small trees are removed with material to fairway level and seed the same. The Grantee further agrees to resod all areas now in sod that are disrupted by said construction in a good and workmanlike manner as soon as practicable after the completion of said construction. The Grantee further agrees that construction within the area of Roxy Ann Links and Range shall commence on or about October 1, 1970, and be completed within 30 days from the commencement thereof.

70-09960

The Grantee shall dispose of all brush and debris and replace all fairways and improved areas in as good or better condition than the same are now in.

Dated this 28th day of September, 1970.

APPROVED AS TO FORM:

John G. Crawford

Alan B. Holmes

Janet M. Crawford

Herschel H. Dixon

Kenneth F. Dixon

Ray O'Ford, Jr.

James L. Sheldon

STATE OF OREGON)
) ss.
County of Jackson)

September 28, 1970

Personally appeared the above named JOHN G. CRAWFORD and JANET M. CRAWFORD, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

MARILYN R. WEBER NOTARY PUBLIC STATE OF OREGON

Notary Public for Oregon
My Commission expires: 2-3-73

3 - Right of Entry

70-09960

STATE OF OREGON)
) ss.
County of Jackson)

September 28, 1970

Personally appeared the above named HERSCHEL R. DIXON, who acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: 2-2-72

STATE OF OREGON)
) ss.
County of Jackson)

September 28, 1970

Personally appeared the above named KENNETH P. DIXON, who acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: 2-2-73

STATE OF OREGON)
) ss.
County of Jackson)

September 28, 1970

Personally appeared the above named RAY OFFORD, JR., and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: 2-2-73

STATE OF OREGON)
) ss.
County of Jackson)

September 28, 1970

Personally appeared the above named JAMES L. SHELDON, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: 2-2-73

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

11133 OCT 2 1970 A.M.

HARRY CHIPMAN
CLERK of RECORDS
By Viola Renie Smith Deputy

4 - Right of Entry

71-01901

SEWER EASEMENT

The undersigned, RAY OFFORD, JR. and JAMES L. SHELDON, Grantors, hereby grant to the BEAR CREEK VALLEY SANITARY AUTHORITY, Jackson County, Oregon, its successors and assigns, Grantee, a permanent right of way and easement to construct, reconstruct, operate, repair and maintain sewer lines and all necessary related facilities over, across and under the following described real property, to-wit:

> An easement as surveyed being 40.0 feet in width over and across that tract of land described in Deeds recorded in Volume 471, page 494, and Volume 596, page 70, Jackson County, Oregon Deed Records. From the following described center line of easement, 15 feet abutts the Southwesterly side and 25 feet abutts the Northeasterly side:
>
> Commencing on said center line, Station "P" 0 + 00 from which the Southwest corner, Donation Land Claim No. 51, Section 32, Township 37 South, Range 1 West, Willamette Meridian, bears South 1666.93 feet and East 336.97 feet; thence South 35° 26' 40" East, 743.82 feet to Station "P" 7 + 43.82; thence South 45° 35' East, 502.96 feet to Station "P" 12 + 46.78; thence South 19° 3' 40" East 615.75 feet to Station "P" 18 + 62.53. On said center line enter said tract at approximately Station "P" 2 + 54.5 and leave at approximately Station "P" 13 + 70.2.

To Have and to Hold the above easement unto the said Grantee, its successors and assigns forever.

In addition thereto, the Grantors do hereby grant unto the Grantee, a construction easement 50 feet in width along and abutting the Northeasterly side and 50 feet in width along and abutting the Southwesterly side and for the full length of the aforementioned and described permanent easement, excepting that portion within the area of No. Five green of Roxy Ann Links and Range.

To Have and to Hold said construction easement unto the said Grantee, its successors and assigns, during construction of the sewer and its related facilities. The construction easement shall terminate on August 1, 1971.

In consideration of the granting of the within easement, Grantee agrees to maintain the contour of Bear Creek as it abutts the land along and East of No. Four fairway of Roxy Ann Links and Range, and to riprap the bank thereon and fill the area where undergrowth and small trees are removed with material to fairway level. Grantee further agrees to resod all areas now in sod that are disrupted by said construction in a good and workmanlike manner as soon as practicable after the completion of said construction. ~~The Grantee agrees that~~ construction within the area of the golf course of Roxy Ann Links and Range shall commence on or about October 1, 1970, and that construction within the area of said Golf Links and Range shall be completed within thirty (30) days from the ~~commencement thereof.~~

The Grantee shall dispose of all brush and debris and shall replace all fairways and improved areas in as good or better condition than the same are now in.

The Grantors reserve the right to use the surface of the land within the permanent easements hereinabove described for walkways, driveways, planting, the construction and operation of a golf course and related purposes; no building shall be placed on the permanent easement without the written permission of the Grantee.

The Grantors, their successors and assigns, agree to refrain from removing any subsurface material within said permanent easement, or any material from an area within one and a half horizontal to one vertical slope on either side thereof.

71-01901

without written permission of the Grantee.

DATED this 16 day of February, 1971.

Ray Offord, Jr.

James L. Sheldon

STATE OF OREGON)
) ss.
County of Jackson)

February 16, 1971.

Personally appeared the above named Ray Offord, Jr. and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: 10-6-74

STATE OF OREGON)
) ss.
County of Jackson)

February 16, 1971.

Personally appeared the above named James L. Sheldon and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: 10-6-74

JACKSON COUNTY, OREGON
RECORDED FILED

1971 MAR 4 AM 11 37

HARRY CHAPMAN
CLERK AND RECORDER
BY Laura Patterson

2:52 2/00

76-21632

MUTUAL EASEMENT

This mutual easement entered into between HERSCHEL H. DIXON and KENNETH DIXON, hereinafter referred to as "Dixons", and JOHN G. CRAWFORD and JANET M. CRAWFORD, husband and wife, hereinafter referred to as "Crawfords",

WITNESSETH:

WHEREAS, the parties heretofore jointly owned a parcel of real property which has been partitioned pursuant to a court decree awarding Dixons the property more particularly described in exhibit "A" attached hereto and made a part hereof and Crawfords the property more particularly described in exhibit "B" attached hereto and made a part hereof and

WHEREAS, the property described in exhibits "A" and "B" attached hereto is subject to a lease to Ray Offord, Jr. dated September 30, 1966 wherein John G. Crawford and Janet M. Crawford and Herschel H. Dixon and Kenneth F. Dixon are lessors and Ray Offord, Jr. is lessee, and

WHEREAS, the parties desire to enter into a mutual easement for ingress and egress, parking and signs over certain areas used in common by the parties, their patrons, their lessees and their lessees' patrons,

NOW, THEREFORE, for and in consideration of the sum of $1.00 and the mutual promises contained herein, the Crawfords hereby give and grant unto the Dixons, their heirs, successors, assigns, lessees and patrons as follows:

1. A nonexclusive right of way and easement for ingress, egress and parking over and

across that portion of a 30 foot wide strip of property 477.40 feet in length adjacent to and running along that portion of the southeasterly boundary line of the real property described in exhibit "B" attached hereto that is contiguous with the real property described in exhibit "A" attached hereto and which is presently paved and being used for access, driveways and parking.

2. A nonexclusive right of way and easement for ingress and egress over and across that portion of the 50 foot strip of property which is presently paved and being used for access and driveways and which is contiguous and southwesterly of the most southwesterly end of the property now leased to Ray Offord, Jr., his successors and assigns, and which runs from the northwesterly boundary of the above described 30 foot easement to the northwesterly boundary of the property described in exhibit "B" attached hereto.

3. An easement for that portion of the sign and its foundation which is presently situated upon a portion of the southerly end of the 30 foot strip of land described in paragraph 1 above.

and the Dixons hereby give and grant unto Crawfords, their heirs, successors, assigns, lessees and patrons as follows:

A nonexclusive right of way and easement for ingress, egress and parking over and across that portion of a 30 foot wide strip of property 477.40 feet in length adjacent to and running along the northwesterly boundary line of the real property described in exhibit "A" attached hereto, which is contiguous with the property described in exhibit "B" attached hereto and which is presently paved and is being used for access, driveways and parking.

It is understood that those portions of the above described mutual easements subject to parking shall be only those areas which are presently being used for parking and that the primary use for which said easements are being created is for ingress and egress.

As long as the above described mutual easements are in effect, the ground surface and surfacing, if any, shall be maintained by the fee owners of the real property over which said easements traverse.

At such time as the above described lease to Ray Offord, Jr., his successors and assigns shall terminate (for any reason), the easements numbered 1 and 2 from Crawfords to Dixons, and the easement from Dixons to Crawfords described herein shall cease and terminate. In the event the sign and its foundation described in easement number 3 from Crawfords to Dixons shall be removed or its use discontinued for a period of six months or more in the future, then, in either event said easement shall cease and terminate.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 3rd day of December, 1976.

John G. Crawford

Herschel H. Dixon

Janet M. Crawford

Kenneth Dixon

STATE OF OREGON)
) ss.
County of Jackson)

On this 3 day of December, 1976, personally appeared the above named Herschel H. Dixon and Kenneth Dixon and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

NOTARY PUBLIC - STATE OF OREGON

Notary Public for Oregon
My Commission Expires: 1-26-79

76-21632

STATE OF OREGON)
) ss.
County of Jackson)

On this 7th day of December, 1976, personally appeared the above named John G. Crawford and Janet M. Crawford, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Notary Public for Oregon
My commission expires:

NOTARY PUBLIC — OREGON
MY COMMISSION EXPIRES MARCH 25, 1977

76-21632

Beginning at the Northeast corner of Donation Land Claim No. 46, Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence South 00° 02' 40" East along the East line of said Donation Land Claim line 1163.22 feet (Record South 1163.80 feet); thence South 51° 15' 00" West 1338.47 feet to a 5/8 inch iron pin at the point of beginning; thence continuing South 51° 15' 00" West 468.33 feet to intersect the Northeasterly right of way line of U.S. Highway No. 99 at a 5/8 inch iron pin; thence along said Highway right of way line on a spiral curve to the left (the long chord to which bears North 39° 58' 20" West 33.73 feet) to a 5/8 inch iron pin, said pin being a point of spiral curve (P.S.C.), Station 490+28.72 of said Highway; thence 177.14 feet along said Highway line on an arc of a 5761.16 foot radius curve to the left (the long chord to which bears North 41° 03' 50" West 177.14 feet) to a 5/8 inch iron pin, said point being a P.S.C., Station 492+4.90 of said Highway; thence along said Highway right of way line on a spiral curve to the left (the long chord to which bears North 42° 00' West 12.00 feet) to a 5/8 inch iron pin; thence leaving said right of way line North 51° 15' 00" East 477.40 feet to a 5/8 inch iron pin; thence South 38° 36' 27" East 222.70 feet to the point of beginning. Containing 2.42 acres, more or less.

Herschel H. Dixon
June 22, 1976

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
NOV 7, 1967
J. A. HOFFBUHR
222

J. A. Hoffbuhr
Professional Land Surveyor

Exhibit "A".

3

Beginning at the Northeast corner of Donation Land Claim No. 46, Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence South 00° 02' 40" East along the East line of said Donation Land Claim line 1163.22 feet (Record South 1163.30 feet to the point of beginning; thence leaving said Donation Land Claim line South 51° 15' 00" West 1338.47 feet to a 5/8 inch iron pin; thence North 38° 35' 27" West 222.70 feet; thence South 51° 15' 00" West 477.40 feet to intersect the Northeasterly right of way line of U. S. Highway No. 99 at a 5/8 inch iron pin; thence along said Highway right of way line on a spiral curve to the left (the long chord to which bears North 42° 39' 10" West 188.59 feet) to a 5/8 inch iron pin, said pin being a point of tangent (P.T.), Station 494.04.90 of said highway; thence along the said Highway right of way line North 42° 56' 40" West 36.21 feet to intersect the Southeasterly line of El Rey Subdivision, according to the Official Plat thereof, now of record in Jackson County, Oregon, at a 5/8 inch iron pin; thence leaving said Highway right of way line North 51° 21' 00" East along the Southeasterly line of said subdivision 2186.49 feet (Record 2244.1 feet) to intersect the Easterly line of said Donation Land Claim No. 46; thence along said Easterly line South 00° 02' 40" East (Record South) 568.20 feet, more or less, to the point of beginning. Containing 17.97 acres, more or less.

TOGETHER WITH a tract of land being more particularly described as follows:

Commencing at the Northeast corner of Donation Land Claim No. 46, Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence along the East line of said Claim, South 00° 02' 40" East 527.765 feet to a 5/8 inch iron pin on the Southwesterly right of way line of Interstate Highway No. 5 and being the true point of beginning; thence along aforementioned Southwesterly right of way line, South 39° 45' 40" East 1566.24 feet to a 5/8 inch iron pin; thence South 00° 03' 05" West (Record South) 70.87

76-21632

feet to a 5/8 inch iron pin; thence North 89° 56' 55" West (Record West) 537.80 feet to a 5/8 inch iron pin; thence North 51° 26' 55" West 592.25 feet (Record North 51° 30' West 591.36 feet) to a 5/8 inch iron pin on the East line of said Donation Land Claim No. 46; thence along aforementioned East line, North 00° 02' 40" West (Record North) 905.28 feet to the true point of beginning. Containing 13.48 acres, more or less.

Record Description
Jack G. Crawford
June 22, 1976

REGISTERED
PROFESSIONAL
LAND SURVEYOR
J. A. Hoffbuhr
OREGON
NOV. 7, 1947
J. A. HOFFBUHR
322

J. A. Hoffbuhr
Professional Land Surveyor

Jackson County, Oregon
Recorded
OFFICIAL RECORDS
2:52 DEC 8 1976 P.M.
HARRY CHIPMAN
CLERK and RECORDER
By [illegible] Deputy

Exhibit "B" - 2

80-12392

OR... STATE HIGHWAY DIVISION
RIG... OF WAY SECTION
STATE HIGHWAY BLDG. ROOM 110
SALEM, OREGON 97310

Highway Division
File 44203
98-22-16

ORIGINAL

EASEMENT

HERSCHEL H. DIXON and VIRGIE M. DIXON, husband and wife, Grantors, hereby grant unto the STATE OF OREGON by and through its DEPARTMENT OF TRANSPORTATION, Highway Division, Grantee, its successors and assigns, a permanent easement to construct and maintain highway slopes, and to construct, relocate, operate, and maintain T.V., telephone, and electric powerline facilities, and appurtenances thereto, necessitated by the widening and improvement of the D.C.L. Medford-Phoenix Section of the Rogue Valley Highway, over, under, across, and upon the following described property, to wit:

A parcel of land lying in the Charles F. Jones D.L.C. No. 46 and Geo. W. Merle D.L.C. No. 47, Township 37 South, Range 1 West, W.M., Jackson County, Oregon and being a portion of that property described in that deed to Gudrun L. Dixon, recorded as Document No. 79-27144 of the Official Records of Jackson County; the said parcel being that portion of said property lying Southeasterly of a line at right angles to the retraced center line of the Rogue Valley Highway at Engineer's Station 491+60 and included in a strip of land 40 feet in width, lying on the Northeasterly side of said center line which center line is described as follows:

Beginning at Engineer's center line Station 483+24.73, said station being 2606.72 feet South and 1091.91 feet West of the Northeast corner of the Charles F. Jones D.L.C. No. 46, Township 37 South, Range 1 West, W.M.; thence North 37° 32' 20" West 503.99 feet; thence on a spiral curve left (the long chord of which bears North 37° 32' 20" West 200 feet) 200 feet; thence on a 5729.58 foot radius curve left (the long chord of which bears North 33° 25' 11.75" West 176.17 feet) 176.18 feet; thence on a spiral curve left (the long chord of which bears North 40° 38' 02.5" West 200 feet) 200 feet; thence North 41° 18' 02.5" West 269.80 feet; thence on a spiral curve right (the long chord of which bears North 40° 18' 02.5" West 199.98 feet) 200 feet; thence on a 1909.86 foot radius curve right (the long chord of which bears North 37° 27' 58.75" West 55.62 feet) 55.63 feet; thence on a spiral curve right (the long chord of which bears North 34° 37' 55" West 199.98 feet) 200 feet; thence North 33° 37' 55" West 802.15 feet to Engineer's center line Station 509+32.48.

Bearings are based on an Oregon State Highway Division Survey. See Drawing No. 78-10-12, dated October, 1951.

The parcel of land to which this description applies contains 825 square feet, more or less.

IT IS EXPRESSLY UNDERSTOOD that the easement herein granted does not convey any right, title, or interest in the above-described land, except those expressly stated herein, nor prevent Grantors from the use of said property; provided, however, that such use does not interfere with the rights herein granted. Grantee, its successors and assigns, shall have the right to go upon the real property hereinabove described for the purpose of constructing and maintaining highway slopes; constructing, relocating, operating, and maintaining T.V., telephone, and electric powerline facilities, it being understood that Grantee shall have the right to assign its rights in said T.V., telephone, and electric powerline facilities to the owners of said facilities.

1-28-81

86-12392

Highway Division
File 34203
OR-22-16

IT IS ALSO UNDERSTOOD that Grantors shall not place or erect any buildings or structures upon the easement area without the written consent of Grantee.

IT IS FURTHER UNDERSTOOD that nothing herein contained is intended to create any obligation on the part of Grantee for the maintenance of said T.V., telephone, and electric powerline facilities or by reason of the installation and maintenance of said sign and post.

Grantors hereby covenant to and with Grantee, its successors and assigns, that they are the owners of said property, and will warrant and defend the easement rights herein granted from all lawful claims whatsoever.

The true and actual consideration received by Grantors for this easement is $ 250.00.

Dated this 20 day of May, 1986.

X Herschel H. Dixon
Herschel H. Dixon

X Virgie M. Dixon
Virgie M. Dixon

STATE OF OREGON, County of Jackson

May 20, 1986. Personally appeared the above named Herschel H. Dixon and Virgie M. Dixon, who acknowledged the foregoing instrument to be their voluntary act. Before me:

Notary Public for Oregon

My Commission expires 5-26-89

SUBORDINATION OF INTEREST BELOW

~~We, KENNETH F. DIXON and HERSCHEL H. DIXON, Partners, doing business as Roxy Ann Lanes,~~ Roxy Ann Lanes, Inc., being the holders of a leasehold interest in the real property described in the easement hereinabove set forth, do hereby consent to said easement, and do hereby subordinate all interest that they have in said real property to said easement.

Dated this 20 day of May, 1986.

~~KENNETH F. DIXON and HERSCHEL H. DIXON, Partners, doing business as~~
Roxy Ann Lanes, Inc.

X Virgie M. Dixon
Herschel H. Dixon, Secretary
Virgie M. Dixon

X Herschel H. Dixon
Herschel H. Dixon, President

Jackson County, Oregon
Recorded
OFFICIAL RECORDS
8:31 JUL 8 1986 A M
KATHLEEN E. BECKETT
CLERK and RECORDER
Deputy

1-28-86
Page 2 - Easements
slb/7f

2

The World

North Bend, tribe settle dispute

FEBRUARY 04, 2010 12:00 AM • BY JESSICA MUSICAR, STAFF WRITER

NORTH BEND — A new agreement between the city of North Bend and the Coquille Indian Tribe to put aside a breach of contract lawsuit will mean the city will lose about $100,000 for providing services.

On Wednesday, the two governments settled a lawsuit that's been stewing since last fall. They agreed to a 10-year contract in which the tribe will pay $362,500 this year, with a 5.25 percent increase annually, for police and fire protection, water, sewer and storm water drainage services at its The Mill Casino-Hotel.

Based on information from city press releases in 2009, the tribe failed to make two quarterly payments of $115,000 in July and October 2009. If The Mill paid that amount each quarter, it would have paid $460,000 in a year. That means the city will be losing at least $97,500 annually over current fees.

The tribe also will no longer collect a transient room tax for the city and may gather its own as a sovereign nation. The 7 percent hotel/motel tax, paid by hoteliers in the area, supported city operations along with the Coos Bay-North Bend Visitor and Convention Bureau. During the nearly yearlong dispute, the tribe refused to pay a $44,750 quarterly payment for the tax, which was due in October.

How the terms of the new agreement will affect the city and the tourism group remain unclear.

At a press conference held at the Southwest Oregon Regional Airport, U.S. District Judge Michael Hogan, who mediated the case, put the final signature on the consent decree setting out the terms of the settlement.

It effectively ended the lawsuit in which North Bend officials contended the tribe and its business arm, Coquille Economic Development Corp., failed to make in-lieu of tax payments for services. At the time, tribal officials said a contract with the city developed in 1994 was unfair.

"This consent decree is in the best interest of everyone," Hogan said. "Resolving disputes like this is never easy."

On Wednesday, six members of the tribal council and seven from the city met on opposite sides of a u-shaped table, while Hogan signed the decree. They made no comments upon Hogan's advice. He said that doing so could stir up emotions.

According to a press release provided by the judge, Mayor Rick Wetherell said the settlement is preferable to litigation with an uncertain outcome.

"We have provided the Coquille Indian Tribe with public safety services for the past 15 years. We will continue to do so under a new contract for services and put the legal dispute behind us," Wetherell said.

Ed Metcalf, the tribal council chairman, said his council is pleased to restore the government-to-government relationship with the city. The contract sunsets on Dec. 31, 2019.

"My hope is that during this 10-year period, that the two governments become quite adept at working out (disputes) between themselves," Hogan said.

Through the agreement, the tribe will make annual payments to the city for police and fire protection, along with water, sewer and storm water drainage services. According to an increasing payment schedule provided by the city, by 2019, North Bend is expected to receive $574,522 from the tribe. The tribe also will have to pay $275,000 for services it received from the city while the fee was in dispute.

Hogan said issues about the tribe's financial support for the Visitor and Convention Bureau have not been resolved.

City Administrator Jan Willis would not say whether that loss will have an impact on the city. She said staff members are working on a new budget, which will state if any jobs or services will go unfunded.

"It's not up to me to say today what that budget will look like," Willis said.

In 2009 during the dispute, Willis said that if the tribe didn't make its payments for municipal services, the city would face cuts. That could have included losing more than $500,000, leading to layoffs.

Application of Lottery Impact Methodology on the Case of a Casino in Medford

Replication of 2010 Study

March 27, 2013

ECONorthwest
ECONOMICS • FINANCE • PLANNING

The KOIN Tower
222 SW Columbia Street
Suite 1600
Portland OR 97201
503-222-6060

www.econw.com

1 Introduction

In the November 2010 election, Oregon voters faced a ballot measure that would have amended state law to allow the construction and operation of a casino in Wood Village, a town east of Portland. The measure failed. A second measure calling for a change to the Oregon Constitution to allow a casino failed to make it onto the ballot.

Prior to the election, in June 2010, ECONorthwest published a report examining the fiscal impacts of these measures on the Oregon Lottery, and the state and local agencies that depend on lottery funding.

In March 2013, the Cow Creek Band of Umpqua Tribe of Indians engaged ECONorthwest to apply the same methodology used in the Wood Village analysis to a proposed casino in Medford. This report summarizes that analysis.

Previous Research

ECONorthwest's 2010 analysis determined that people who live near casinos bet less at video lottery retailers than people who live farther away. These retailers offer games on video lottery terminals ("VLT") that are owned by the Oregon Lottery.

An Oregon Lottery VLT is functionally identical to a slot machine. Because video lottery retailers must also be licensed to serve alcohol, most VLTs are located in bars, but some are also located in restaurants, clubs, bowling alleys, and delis. Video lottery retailers can have up to six VLTs, and about 80 percent of them also sell traditional lottery products, such as scratch-off tickets, keno, and lotto drawing tickets like Powerball.

Oregon had nine tribal casinos in 2012, and all of them have VLTs. The casinos operate on a different scale than video lottery retailers; four have more than a thousand machines.

The Oregon Lottery serves as source of revenue for both the state and the video lottery retailers. Lottery players' "spending" on gaming is defined as the difference between the amount they wager and amount they win. In short, players' spending is equal to their loss. From the perspective of the Oregon Lottery, player spending equals gaming revenue. That revenue is split between the Oregon Lottery, which uses its share to cover costs and fund state government, and lottery retailers, who receive commissions.

Substitution effect

ECONorthwest's 2010 analysis found that a new casino would lead to a drop in local lottery revenues because VLTs at tribal casinos function as substitutes for VLTs at lottery retailers. Casino VLTs share many of the same game titles, have similar odds, and attract many of the same patrons. A survey conducted by ECONorthwest found that 57 percent of Oregon's casino VLT players were also Oregon Lottery VLT players.

Video lottery retailers face restrictions that casinos do not: they are limited to six machines, their marketing choices are few, and they are supposed to operate primarily as a bar, restaurant, or other non-gambling purpose. By contrast, gambling is the primary function of tribal casinos, which offer many types of games and other amenities attractive to players, and the tribes face fewer restrictions on marketing.

While video lottery retailers and tribal casinos in Oregon are not perfect substitutes for each other, they are substantial substitutes nonetheless, and they do compete for the same customers.

Findings of the 2010 study

The 2010 ECONorthwest study found clear evidence of substitution arising from competition. In 2009, residents in ZIP codes less than 15 minutes from a tribal casino spent an average of $80.49 on Oregon Lottery games at video lottery retailers, compared to a statewide average of $192.33 per person. People living farther from tribal casinos spent more on the Oregon Lottery at video lottery retailers: an average of $126.75 for people living 15 to 30 minutes from the nearest casino, and $163.33 for people living 30 to 60 minutes away.

The 2010 analysis also revealed that proximity to a casino had a stronger impact on VLT revenues than on traditional Oregon Lottery games. This provides further evidence of competition, because all tribal casinos have VLT games but lack nearly all types of traditional lottery games (the exception is keno offered at five casinos).

Using the actual per capita Oregon Lottery play during 2009 for ZIP codes at various driving distances from tribal casinos, ECONorthwest estimated the fiscal impact on Oregon Lottery revenues if Oregon's tenth casino opened in Wood Village.

This report describes our analysis using the same methodology as in 2010, but with four changes:

1. A casino is added in Medford instead of Wood Village

2. The analysis is based on 2012 data. The Oregon Lottery provided sales by retailer and location for the period between January 1, 2012 and December 29, 2012, approximating the calendar year.

3. The analysis is based on updated population and geographic data, including ZIP code-level population data from Nielsen (formerly Claritas), and driving times from a GIS program.

4. The Warm Springs Tribe closed their casino at Kahneeta in February 2012 and relocated it to the town of Warm Springs. The analysis reflects the effect of this change on driving times.

Current Market

This analysis applies the methods used in our 2010 analysis to current market conditions so we can estimate the fiscal impacts of a new casino in Medford on Oregon Lottery revenues.

Video lottery retailers operated about 12,000 VLTs, on average, in 2012. At the beginning of that year, Oregon's nine tribal casinos operated 7,469 VLTs, amounting to about 38 percent of the all VLTs in the state.

Analysis

The Oregon Lottery supplied ECONorthwest with a database of its retailers, including addresses, commissions earned, and gaming revenues for both VLTs and traditional games.

ECONorthwest sorted the data by business name and location, and calculated the traditional lottery game sales generated by video lottery retailers. We excluded 1,693 non-video retailers from the analysis because they do not compete directly for casino players. Most non-video lottery outlets are supermarkets, convenience stores, snack shops, and other businesses that do not dispense alcoholic beverages.

Then, we sorted the list and subtotaled it by ZIP code. Eight ZIP codes in the database did not appear in Nielsen's database of 385 Oregon residential ZIP codes. One was a transcription error by the Oregon Lottery, which we corrected. Seven were rural ZIP codes that Nielsen combines with neighboring ZIP codes from which post offices operate home delivery services. For example, the ZIP code for the coastal town of Wheeler is incorporated into nearby Garibaldi, so Nielsen reports Wheeler's residents as part of the Garibaldi ZIP code.

For each ZIP code, ECONorthwest used GIS software to calculate the driving time from a representative address to the address of the nearest tribal casinos. We used the same representative addresses we used in the 2010 study, which in most cases were post offices or other public destination in the population center. For Medford, we used the address of the Jackson County Library (the intersection of E. 10th Street and S. Riverside Avenue), which is located in the commercial area of 97501.

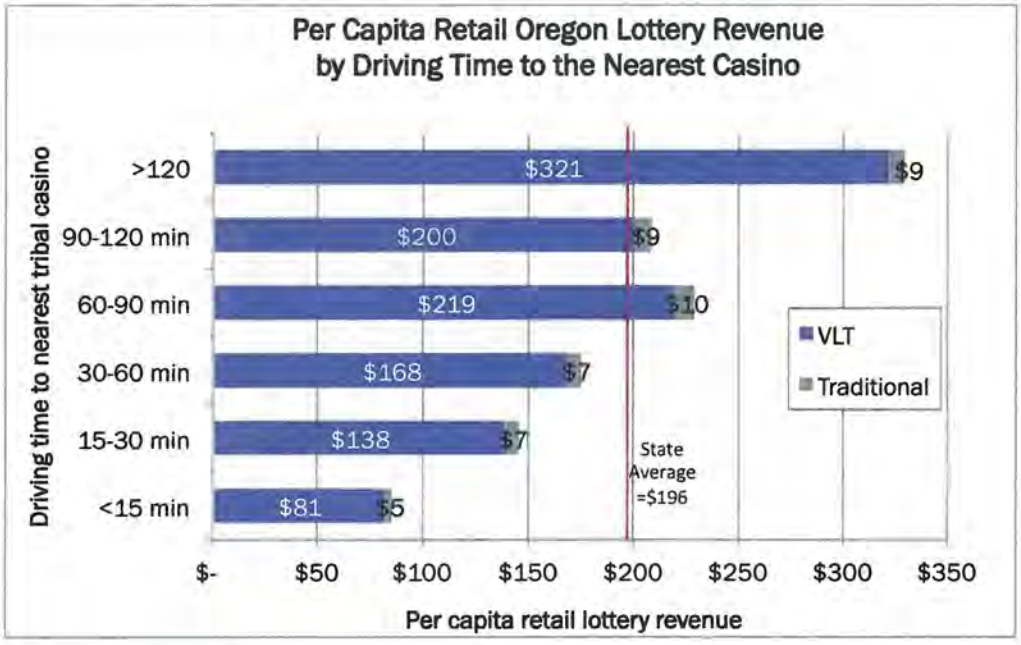
Casino proximity versus per capita gaming: 2012 findings

For each ZIP code in Oregon, ECONorthwest calculated the driving time to the nearest tribal casino in Oregon, and then categorized the ZIP codes into six ranges based on driving time (the same ranges we used in the 2010 analysis). We calculated the total gaming revenues for the ZIP codes falling into each range (from the video lottery retailer database), and divided it by the number of people in each range (from the Nielsen population estimates), to estimate per capital gaming revenues (see Table 1).

Table 1: Per capita gaming revenue of Oregon video lottery retailers by proximity to the nearest tribal casino, 2012

Drive Time Range	Avg. Drive Time to a Casino	VLT Retailer Gaming Revenues per Capita		
		VLTs	Traditional	Combined
Under 15 minutes	6	$80.63	$4.60	$85.23
15 to 30 minutes	25	137.96	7.21	145.17
30 to 60 minutes	47	168.30	7.12	175.42
60 to 90 minutes	69	219.48	10.22	229.70
90 to 120 minutes	103	199.67	8.68	208.35
Over 120 minutes	133	321.29	8.62	329.91
Statewide	58	$187.96	$8.50	$196.47

The analysis reveals a strong relationship between proximity to a casino and VLT retailers' Oregon Lottery gaming revenues. For example, retailers in ZIP codes less than 15 minutes from a casino saw VLT revenues of $80.63 per capita, while retailers in ZIP codes 15 to 30 minutes from a tribal casino saw VLT revenues of $137.96 per capita. Retailers 30 minutes to an hour away from a casino produced $168.30 per capita from their VLTs, and at over an hour's drive, VLT gaming revenue exceeded the statewide average of $188. Retailers also saw revenue from traditional lottery games rise with driving distance from a casino.



Like the 2010 study, the 2012 analysis reveals that Oregonians tend to spend less at video lottery retailers if they live close to a casino. If a tenth casino were built in Oregon and placed in Medford, more Oregonians would live in closer proximity to a casino. Those residents would spend less at video lottery retailers, so Oregon's lottery revenues would decline.

Change in residents' proximity to a casino with Medford addition

In 2012, 167,605 Oregonians lived in ZIP codes within a 15-minute drive of an Oregon casino (Table 2). If casino existed in Medford, this number would rise by 192,223, for a total of 359,828 people. An additional 44,957 would live 15 to 30 minutes from a casino. Those same people shift out of the longer ranges when they move into the shorter ones, offsetting the increase. The net effect is that 237,180 more Oregonians would live within 30 minutes of a casino, where they are likely to spend some of the money they would have spent on the Oregon Lottery otherwise.

Table 2: Population of ZIP codes by drive time to the nearest casino in Oregon, 2012

	Population Within Range of a Casino		
Drive Time Nearest Casino	Current 9 Casinos	With a Casino in Medford	Difference
Under 15 minutes	167,605	359,828	192,223
15 to 30 minutes	276,853	321,810	44,957
30 to 60 minutes	1,531,732	1,486,945	(44,787)
60 to 90 minutes	1,811,409	1,619,016	(192,393)
90 to 120 minutes	80,014	80,014	-
Over 120 minutes	29,482	29,482	-
Statewide	3,897,095	3,897,095	-

A casino in Medford would also increase the number of VLTs in close proximity to a casino. Table 3 shows the proximity impact on Oregon video lottery retailers from adding a casino in Medford. In 2012, retailers located in ZIP codes within 15 minutes of a casino had 426 VLTs. If there were a casino in Medford, 906 VLTs would have been located within 15 minutes of a casino.

Table 3: Oregon Lottery VLTs in ZIP codes by drive times to the nearest casino in Oregon, 2012

Drive Time to VLT	Current Configuration of 9 Casinos	With a 10th casino in Medford
Under 15 minutes	426	906
15 to 30 minutes	824	1,001
30 to 60 minutes	4,149	3,961
60 to 90 minutes	6,103	5,634
90 to 120 minutes	330	330
Over 120 minutes	117	117
Total Lottery VLTs	11,949	11,949

Estimated Impacts of a Medford casino on lottery gaming

Gaming Revenue

Using the data in Tables 1 and 2, ECONorthwest estimated the change in video lottery retailers' gaming revenues if a casino were added in Medford. For each range of driving time from the nearest casino under the current mix of nine tribal casinos, we multiplied the 2012 per capita revenues at video lottery retailers by the number of people residing within that range should there be ten casinos with one added in Medoford.

Table 4 shows the results. In 2012, with the current mix of nine casinos, video lottery game revenues amounted to $732.5 million. Assuming the same revenues per capita by driving distance, the addition of a casino in Medford would decrease video lottery revenues by $28.1 million throughout Oregon. Traditional lottery game revenues at these same retailers would decrease by $1.1 million.

Table 4: Impact of a Medford casino on annual gaming revenues from video lottery retailers, 2012

Casino Status	Video Lottery	Traditional	Total
Current 9 Indian casinos	$732,517,201	$33,137,489	$765,654,690
With a casino in Medford	704,454,230	32,061,005	736,515,234
Change	**($28,062,971)**	**($1,076,485)**	**($29,139,456)**

Commissions to Retailers

Video lottery retailers receive a commission in proportion to gaming revenue. In 2012, video lottery retailers earned almost $182.0 million in commissions. Based on the 2012 relationship between per capita gaming revenues at video lottery retailers and the proximity of residents to the nearest casino, an additional casino located in Medford would have cost video lottery retailers approximately $6.4 million in commission revenue (Table 5).

Table 5: Impact of a Medford casino on commissions earned by video lottery retailers, 2012

Casino Status	Video Lottery	Traditional	Total
Current 9 Indian casinos	$175,449,677	$6,546,987	$181,996,664
With a casino in Medford	169,290,079	6,308,292	175,598,371
Change	**($6,159,598)**	**($238,695)**	**($6,398,292)**

Oregon Lottery Operating Expenses

Because a casino in Medford would lower video and traditional lottery sales in the state, the Oregon Lottery's 2012 operating expenses (net of commissions and prizes) would decrease by $446,320 (based on Oregon Lottery financial information.)[1] Table 6 shows the change in operating expenses. We exclude depreciation from this analysis because we assume that retailers close to a Medford casino would retain the same number of VLTs they have now.

Table 6: Impact of a Medford casino on Oregon Lottery operating expenses, 2012

Casino Status	Video Lottery	Traditional	Total
Current 9 Indian casinos	$11,484,935	$194,806	$11,679,741
With a casino in Medford	11,044,943	188,477	11,233,421
Change	**($439,992)**	**($6,328)**	**($446,320)**

Oregon Lottery Revenues

The Oregon Lottery's VLTs and traditional lottery products produce revenues that help fund state and local governments.

The Oregon Lottery transfers about half its total operating revenue to two funds: an economic development fund and a general obligation bond fund. In 2012, this transfer amounted to $572.0 million, with more than 99 percent going to the economic development fund and less than one percent going to the bond fund

If there had been a casino in Medford in 2012, the resulting competition with video lottery retailers would have reduced the transfer to the economic development fund by about $22.3 million (Table 7). We assume no change in the amount to the general obligation bond fund.

Table 7: Impact of a Medford casino on Oregon Lottery funds transferred to the State of Oregon, 2012

Casino Status	Video Lottery	Traditional	Total
Current 9 Indian casinos	$545,582,589	$26,395,697	$571,978,286
With a casino in Medford	524,119,207	25,564,235	549,683,442
Change	**($21,463,382)**	**($831,462)**	**($22,294,843)**

[1] State of Oregon. "Preliminary official statement dated March 22, 2013." Department of Administrative Services Oregon State Lottery Revenue Bonds. Page 42.

Summary of the fiscal impacts of a Medford casino

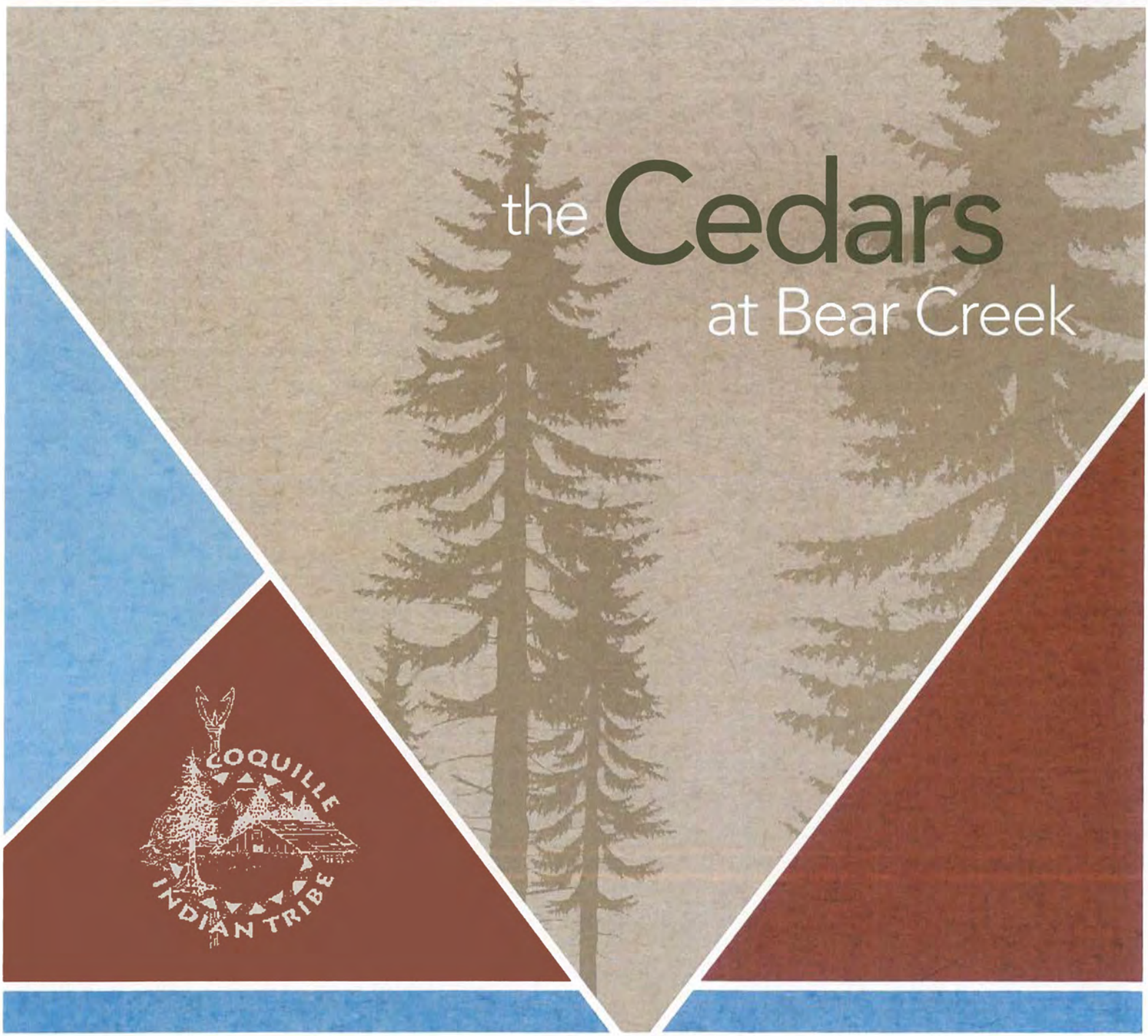
If the impacts of competition from a casino in Medford were the same as the average Oregon casino in 2012, Oregon Lottery gaming revenues at video lottery retailers would decrease by approximately $29.1 million (Table 8). This would reduce Oregon Lottery transfers to the state economic development fund by $22.3 million, meaning approximately $13.2 million less for public education (K-12 schools), $5.6 million less for economic development funding, $1.7 million less for both state parks and watershed restoration and salmon recovery projects, and $222,948 less for problem gambling treatment.

Table 8: Impacts of a Medford casino on the State's annual net lottery revenues generated by video lottery retailers, 2012

Impact on Video Lottery Retailers	2012
Change in Oregon Lottery Gaming Revenue	($29,139,456)
Distribution of Change by Source:	
Retailer commissions	($6,398,292)
Reduced Lottery operating expenses	(446,320)
State Lottery funds	(22,294,843)
Distribution of Change in Economic Development Fund by Use:	
Public education	($13,153,958)
Economic development	(5,573,711)
State parks	(1,672,113)
Watershed enhancement/salmon recovery	(1,672,113)
Problem gambling treatment	(222,948)
Total Change in State Funds	($22,294,843)

Making the Case

Executive Summary



the Cedars at Bear Creek

COQUILLE INDIAN TRIBE

Continuity. Community. Commitment.

Contents

Overview

In 2012 the Coquille Tribe purchased 2.42 acres of commercial land along Highway 99 in south Medford. The property is currently the site of Roxy Ann Lanes. Following approval of the fee-to-trust transfer, the Tribe intends to completely renovate the property into a restaurant and gaming facility known as The Cedars at Bear Creek, which will also include a community outreach center for tribal members living in the area.

In February 2013 the Bureau of Indian Affairs (BIA) requested preliminary input from the City of Medford, Jackson County, and the State of Oregon on the Tribe's application to the BIA for a fee-to-trust transfer of 2.42 acres of commercial property in south Medford.

The City, County, and State responded to the BIA with additional information, questions, comments, and concerns about the project. This document is designed to address the questions and the concerns posed to the BIA by each of these jurisdictions.

NEPA Process and Opportunities to Provide Input

The Jackson County Board of Commissioners and members of the Medford City Council have expressed concern about their ability to fully analyze and comment on the scope and the impacts of the project. The City of Medford has formally requested status as a Cooperating Agency during subsequent analysis of impacts under the National Environmental Policy Act (NEPA) process.

Response

The letter sent by the BIA to the city, county, and state governments on February 1, 2013, was an initial step in a very lengthy federal process that emphasizes transparency and collaboration with state and local agencies and provides multiple opportunities for public input and comment. The process involves the following steps:

- *A federal determination that the land qualifies as restored land for gaming activity;*
- *A detailed Environmental Impact Statement (EIS) analyzing the impacts of the fee-to-trust decision; and*
- *A federal decision on whether to approve a fee-to-trust transfer for gaming purposes.*

The fee-to-trust decision will not be finalized until the EIS process is completed.

The NEPA process does not formally start until a Notice of Intent (NOI) is published in the Federal Register. The NOI details the federal government's intent to pursue an action and invites affected stakeholders to submit comments and information related to the proposal during the scoping period.

This process will assist the BIA in identifying the actions, impacts, issues, and alternatives that will be analyzed in the Draft Environmental Impact Statement (DEIS). Local agencies, including the City and the County, are invited to formally participate in the NEPA process as Cooperating Agencies.

Cooperating Agencies will be consulted and have the opportunity to assist the Department of the Interior (DOI) in the preparation of the DEIS and again in the preparation of the Final Environmental Impact Statement (FEIS).

During the NEPA process, the DOI will thoroughly analyze the environmental, social, and economic impacts of the Tribe's proposal as well as alternatives to the proposed action and a "no action" alternative. This process will directly address the financial and administrative concerns raised by the City and the County and will detail specific measures to mitigate any adverse impacts associated with the proposed action. All comments from the public and the Cooperating Agencies will be taken into consideration and addressed before or during the preparation of the FEIS.

Continued on page 6

Continued from page 5

The Coquille Tribe welcomes the opportunity to collaborate with the City, County, and State as Cooperating Agencies. The Tribe is also fully supportive of the public comment process and is committed to the transparency and the opportunity for input embodied in NEPA. The flowchart below explains where we are in the process and highlights the opportunities for public review and comment on The Cedars at Bear Creek project.

Project Initiation and Scoping *(Approximately 2 to 3 year process.)*

30 Days → *9-12 Months* → *6-9 Months*

Publish Notice of Intent in Federal Register

Following publication of the NOI in the Federal Register, agency staff, members of the public, and public agencies help focus the scope of the document by identifying issues of concern for detailed evaluation. The scoping period includes:

- *Public meeting*
  - *Opportunity for initial comments*
  - *Cooperating Agency requests*
  - *Develop proposed action and alternatives*
  - *30-day scoping period*
- *Scoping Report*

Develop Draft Environmental Impact Statement

After the scoping period, the proposed action and alternatives to the proposed action are analyzed in the DEIS.

- *BIA review and revisions*
- *DOI and Cooperating Agency review*
- *Revisions*
- *BIA review and approval*
- *DEIS Notice of Availability (NOA) to public*

Publish Draft Environmental Impact Statement

After the DEIS is published, the public and other interested parties can provide written and oral comments.

- *45-day Written and oral comment period*
- *Public meeting*

Abbreviations

AGA	American Gambling Association
BIA	Bureau of Indian Affairs
DEIS	Draft Environmental Impact Statement
DOI	Department of the Interior
EIS	Environmental Impact Statement
FEIS	Final Environmental Impact Statement
IGRA	Indian Gaming Regulatory Act
NEPA	National Environmental Policy Act
NOA	Notice of Availability
NOI	Notice of Intent
PL 280	Public Law 83-280
ROD	Record of Decision
VLTs	Video Lottery Terminals

9-12 Months

Prepare and Publish Final Environmental Impact Statement

The agency analyzes and responds to comments, revises the analysis where relevant, and prepares the FEIS. Preparation and publication of the FEIS include the following steps:

- *BIA review and revisions*
- *DOI and Cooperating Agency review*
- *Revisions based on input*
- *BIA approval of FEIS*
- ▶ *FEIS NOA to public*
- *30-day waiting period*

Record of Decision (ROD)

- *BIA prepares ROD based on FEIS*
- *Submission of decision to DOI*

For the latest EIS project updates visit: coquilleEIS.com

Key

▶ *Public comment and review opportunities*

Positive Economic Impact

The City of Medford raised questions about whether the Coquille Tribe's estimate of 233 new full-time jobs fails to consider that some of these jobs may not truly be new but rather come from existing establishments that currently offer similar services.

Response

Employment at The Cedars at Bear Creek is expected to total approximately 233 full-time-equivalent positions, with payroll and benefit costs estimated at $9.65 million per year. The Cedars will require personnel with experience in the food and beverage industry, security, information technology and surveillance, the gaming industry, maintenance and repair, and management. Hiring efforts for these personnel will target tribal members and the local Medford population. Based on current operations in Coos County, the Tribe estimates that more than 90 percent of the new jobs will be filled by non-tribal community members. The jobs represent a substantial opportunity for community members to fill jobs that provide benefits and pay substantially more than the current average wage in Jackson County.

Current establishments that offer up to six video lottery terminals (VLTs) include restaurants, bars, pizza parlors, and other businesses. With a few exceptions, the VLTs are not the primary purpose of these establishments, and employees are not likely to be hired solely for the purpose of supporting the VLTs. The Tribe believes that the vast majority of jobs created through the The Cedars will be new jobs. The NEPA process will fully analyze the economic impacts of the proposal, including any positive or negative impacts on local businesses, the local economy, and job creation. The Business Plan that the Tribe developed for The Cedars makes the following projections about job creation and other economic benefits to the city and the county.

Average Wage

The average wage for employees at The Cedars at Bear Creek, including benefits, is $41,416 per year. Jackson County's average wage, including non-mandatory benefits paid by the employer, is $35,148. As a result, jobs at The Cedars will on average pay a wage that is almost 18 percent higher than the 2012 average wage in Jackson County.

Benefits

Based on employment status (full-time, part-time, temporary, or on-call), the Tribe plans to offer employees at The Cedars benefits similar to those offered at The Mill Casino Hotel and RV Park in North Bend, Oregon. Benefits will include, among others, group health insurance, paid time off, employee assistance, and participation in a 401(k) plan.

Construction

Total opening costs for The Cedars at Bear Creek—including construction, furniture, fixtures, equipment, and gaming devices—are estimated at nearly $26 million. Approximately $15 million will be spent on gaming machines, with the remaining approximately $11 million spent on expanding and remodeling the existing structures. Total square footage in the remodeled building is estimated at 30,000 square feet.

Local Purchases

Local purchases consist of professional services, paper and other office products, cleaning and other maintenance supplies, parts and tools, outside maintenance services, printing, plates, flatware, glasses, food-and-beverage paper products, food and beverage products, and other products and services required by the business. Whenever possible, the Tribe endeavors to purchase goods and services from local markets, and the Tribe has developed a strong track record of supporting local businesses. Expenditures on local products and services are estimated to exceed $6.1 million in the first year of operation.

Indirect Economic Impacts

The indirect economic impacts of The Cedars at Bear Creek stem from the spending by recipients of the direct funds from the business and continue as those dollars are re-spent by the indirect recipients. This means that spending from The Cedars multiplies as it circulates throughout the local economy. Applying the multipliers described in a 2012 study of the contributions of Indian gaming to Oregon's economy,[1] The Cedars will generate the following beneficial impacts for the state and the county.

- *Every $1 million in wages and benefits paid to tribal employees generates another $1.4 million paid to second-tier workers. The Cedars payroll and benefits of $9.65 million will generate an estimated $13.51 million in additional payments to other workers, producing an estimated total of $23.16 million in direct and indirect wages and benefits. Because employees typically live near their workplace, the substantial majority of these dollars will stay in Medford and Jackson County.*
- *Every 100 jobs created by* The Cedars *are expected to create an additional 160 jobs in the community. The addition of 233 full-time-equivalent jobs at The Cedars is projected to generate an estimated additional 373 jobs, for a total of 606 direct and indirect jobs.*
- *Each $1 million in gaming revenue supports another $1.7 million of output in other industries. Local purchases of $6.1 million will translate into an estimated additional $10.4 million, for a total of $16.5 million.*

1. Indirect impacts are estimated using the multiplier ratios developed in Robert Whelan and Carsten Jensen, "The Contributions of Indian Gaming to Oregon's Economy in 2011 and 2010: A Market and Economic Impact Analysis for the Oregon Tribal Gaming Alliance," ECONorthwest, December 14, 2012.

The Tribe's Legal Basis for Land Acquisition and Development

Jackson County and the City of Medford commented on the legal standing of the Coquille Tribe in relation to the Coquille Restoration Act, the Indian Gaming Regulatory Act (IGRA), and whether the Tribe is required to apply for approval under § 2719(b)(1)(A) of IGRA, also known as the two-part determination test. The State of Oregon questioned whether the land meets the restored-lands exception under IGRA.

Response

IGRA is a federal law authorized by Congress in 1988. The law was designed to establish a legislative framework for regulating gaming on Indian lands and to protect gaming as a means for Indian tribes to become economically self-sufficient and to provide for the welfare of tribal members. Under IGRA, tribes are authorized to develop gaming facilities on newly acquired lands if those lands meet the requirements of "restored lands."

When the BIA set forth the requirements for lands to qualify as restored under IGRA (25 CFR § 292.7–292.12), the regulations distinguished between two categories of land: those where Congress has identified a specific geographical area where the Secretary of the Interior may take land into trust and those where it did not.

There are multiple ways to qualify for the restored-lands exception under § 2719(b)(1)(B)(iii) of IGRA. The simplest way is for a tribe to show that its restoration act authorizes the Secretary of the Interior to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within that geographic area. When a restoration act authorizes the secretary to accept lands into trust within a specific geographic area, the trust lands subsequently transferred in that area qualify under IGRA as restored. Authorization for the secretary to accept land into trust for the Coquille Tribe in Jackson County is explicitly provided for in the Coquille Restoration Act.

In the Coquille Restoration Act, Congress specifically and unequivocally authorizes the secretary to take land into trust for the benefit of the Tribe within "the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon" (25 USC § 715(5)). Because the 2.42-acre parcel in question lies within the defined geographic area, it qualifies as IGRA restored lands once it is transferred into trust.

The Coquille Restoration Act underscores Congress's confirmation that the Coquille Tribe was federally recognized, was terminated, and has since been restored to federal recognition. Because Congress designated a specific geographic area in the Coquille Restoration Act, the Tribe's application is reviewed under the requirements set forth in 25 CFR § 292.7– 292.11.

The City and the County have suggested that the Tribe's application to qualify land for gaming does not fall within IGRA's restored-lands exception. Where a tribe's application to qualify land for gaming does not fall within the restored-lands or one of IGRA's other exceptions, the land may still be eligible for gaming if IGRA's two-part determination is made. Under the two-part determination test, the Secretary of the Interior must determine whether the tribe's proposal is (1) in the best interest of the tribe and (2) not detrimental to the surrounding community, and the governor of the state must concur with that determination.

The Coquille Tribe's clear status as a restored tribe and the Coquille Restoration Act's unambiguous language establishing the specific geographic area within which the Tribe may acquire lands for the purpose of restoring its land base provide a clear path within IGRA and DOI regulations to qualify the land for gaming under IGRA's restored-lands exception.

It is also important to note that although the land in question meets the legal requirements of "restored lands," the land will not be taken into trust until after the NEPA process is completed.

The Cedars is Consistent with State and Local Laws

The City of Medford and Jackson County have raised concerns that The Cedars at Bear Creek is not consistent with state and local laws.

Response

Indian gaming activity is consistent with the public policy of the State of Oregon. The Indian Gaming Regulatory Act encourages and promotes the exercise of tribal jurisdiction to allow gaming activities on Indian lands consistent with the state's public policy.

By any measure gaming is already common in Jackson County, with more than 114 gaming establishments featuring 574 video lottery terminals spread throughout the geographic area. In Jackson County, VLTs are found in many local bars, pizza parlors, mini-marts, and other retail establishments and generate approximately $30 million in annual sales. There are six VLTs currently operating in the bowling center at the proposed site.

Since 2006 Oregonians have spent more than $1 billion on the Oregon State Lottery each year. Overall the State Lottery currently operates more than 12,000 VLTs and has nearly 4,000 retail outlets throughout the state. There are also nine tribes that operate legalized gaming facilities in Oregon. Additionally, the Oregon legislature and Governor John Kitzhaber just approved expansion of gaming with the passage of HB 2613, authorizing "instant racing" machines and off-track betting.

Fee-for-Service Agreements

The City of Medford expressed concern about the loss of regulatory jurisdiction over City land as well as potential financial losses stemming from the placement of the 2.42-acre parcel into trust for the Coquille Tribe. The City notes that if The Cedars at Bear Creek were to go forward under the City's jurisdiction, the City would realize approximately $150,000 in building permits and inspection fees alone.

In their response letters to the BIA, the City, County, and State also identified concerns about mitigating the impacts of the proposal, ranging from the loss of revenue to environmental and traffic impacts.

Response

It is true that if the property in question is placed into trust status, the City will no longer have civil-regulatory jurisdiction over the parcel. This is true for every fee-to-trust acquisition. The Coquille Tribe is willing to reach an enforceable written agreement, however, with attendant waivers of the Tribe's sovereign immunity to enable the City to ensure that its regulatory concerns are addressed.

Equally important is the enactment by Congress in 1953 of Public Law 83-280 (PL 280), which delegated federal jurisdiction from the United States to five (later six), states and significantly changed the division of legal authority among tribal, federal, and state governments. Although PL 280 does not waive tribal sovereign immunity, it does give six states (the so-called mandatory states), including Oregon, extensive criminal jurisdiction over tribal lands within the affected states as well as civil jurisdiction over disputes that occur on tribal lands. PL 280 did two major things:

- *It transferred criminal jurisdiction in the specified areas from the federal government to the respective states, which through practice has been extended to political subdivisions of the state, such as city police departments.*
- *It authorized state courts to adjudicate civil (i.e., noncriminal) matters that arise on tribal lands covered by PL 280. This state court jurisdiction runs concurrent with any tribal jurisdiction. So, for example, litigation over an auto accident on the Coquille Reservation can be brought in state court or, if the non-Indian parties consent, tribal court.*

With regard to concerns about mitigation of any negative impacts associated with the project—including economic, environmental, and social impacts—the NEPA process will analyze and describe potential impacts in detail. The City, County, and State will have multiple opportunities during the NEPA process to formally comment. As Cooperating Agencies the City, County, and State will have the opportunity to comment and provide input during the preparation of the DEIS. The FEIS will include a detailed mitigation plan to address impacts. The Coquille Tribe is committed to developing mitigating measures for any negative impacts identified during the NEPA process and, subsequently, as the proposed project becomes a viable business.

The Tribe has reached out to the City of Medford and to Jackson County to negotiate and execute enforceable agreements that contractually bind the Tribe. Such agreements would require the

Tribe to pay for local government services and would enable those governments to fund legitimate mitigation measures over which the Tribe lacks jurisdiction or is otherwise unable to fund or enact directly. Additionally, they may require the Tribe to construct and operate The Cedars at Bear Creek consistent with agreed-upon City, County, and State standards regarding environmental and regulatory issues. Those agreements would include effective dispute resolution provisions and limited waivers of the Tribe's sovereign immunity to ensure that those governments would be able to enforce the Tribe's compliance with the terms of the agreements.

The Tribe welcomes a dialogue with the City as to the specific areas within the City's regulatory jurisdiction that are of concern and would need to be addressed in a community services agreement. The City has provided some detail regarding lost property-tax revenue and a list of services the City currently extends to the property. Agreements between other tribes and cities typically include payments in lieu of taxes and address the types of services set forth in the City's letter.

Law Enforcement

The City of Medford has raised concerns about impacts on city services, such as the potential for additional service calls to the Medford Police Department. The City based its concerns on communication with the North Bend Police Department about an incomplete record of service calls generated by The Mill Casino Hotel and RV Park.

Response

As discussed above, the Coquille Tribe is willing to enter into binding enforceable agreements that would require the Tribe to pay for local government services.

Based on its experience in North Bend with The Mill Casino, the Tribe does not believe that the The Cedars at Bear Creek will have an adverse effect on crime or create any uncompensated or unsupported burdens for the Medford Police Department.

North Bend Police Chief Steve Scibelli noted in a July 3, 2013, letter to Medford Police Chief Tim George: "Most of the calls we receive are calls from The Mill security staff, who have a zero-tolerance policy. They are very professional, and with their surveillance equipment they are a great help to us in securing convictions for on-site crimes. In fact, I have hired two of them for our department" (see page 26).

Chief Scibelli also noted that in 2012 "the Tribe provided North Bend with over $400,000 to cover law enforcement, fire protection, water, storm water and sewer services. As you recognize, this level of support helps greatly with our staffing requirements."

Minimal Impact to State Lottery and Local Lottery Outlets

The City of Medford cites a study commissioned by the Cow Creek Band of Umpqua Indians and prepared by ECONorthwest that a tribal casino in Medford would reduce the revenue generated by the State Lottery. The City notes that as a beneficiary of State Lottery revenue, the City will realize an adverse impact if State Lottery revenue to schools and City programs is diminished.

Response

A critical part of the upcoming NEPA process will include an analysis of the economic impacts of The Cedars at Bear Creek on the community, the city, and the county. This analysis will include potential economic impacts—positive and negative—on the surrounding community and local jurisdictions. The FEIS will quantify losses and gains to local government revenue.

The Coquille Tribe is committed to mitigating any negative economic impacts through binding and enforceable inter-governmental community service agreements between the City and County and the Tribe. These contractually binding agreements could require the Tribe to pay for any net loss to the City or County through an agreed-upon mechanism. These agreements can include a wide range of fees to cover permit costs, lost revenue from taxes, additional services required of the City or County, and any reduction in revenue from the Oregon State Lottery.

With regard to the State Lottery, funds are deposited in Oregon's Department of Education general fund and are then distributed to individual districts. This distribution is not dependent on the lottery proceeds in those counties.

The study referenced by the City was commissioned by the Cow Creek Band of Umpqua Indians and completed by ECONorthwest. This study has several significant limitations, including the fact that it misrepresented the The Cedars as a Class III casino rather than a modest Class II gaming facility. A thorough and unbiased analysis in the EIS will examine this issue in detail. Some of the fundamental flaws in the study referenced by the City are outlined below.

- *The Cow Creek Study recycles a methodology designed for a very different, mega-casino in a different location (Wood Village, Oregon), without any adjustment for the variety of factors that influence lottery purchases and casino visits. The proposed Grange Casino would have been located at the dog track facility in Wood Village and was projected to include a 125-room four-star hotel, a casino with 100 table games and 3,500 gaming devices, an outdoor public plaza, restaurants, a water slide, a bowling alley, a performing arts space, and a cinema, employing about 2,100 people. ECONorthwest estimated the size of the casino floor of the proposed facility at 163,242 square feet, which would make it about the same floor area as the MGM Grand and the Bellagio, large Las Vegas Strip operations. ECONorthwest also estimated gaming revenues at the proposed Wood Village casino of $481.3 million. It would have been the largest casino in Oregon and would have generated gaming revenue greater than that currently being generated at all nine tribal casinos in the state combined. Contrast the proposed Grange Casino with The Cedars at Bear Creek, with 650 gaming machines and a restaurant, 233 full-time employees, and projected stabilized revenue after 24 months of operation of $32 million.*

- *The Cow Creek Study does not take into account any factors other than proximity to a casino in predicting the loss of revenue to the State Lottery.*
- *The flawed methodology used in the Cow Creek Study will predict the same impact to State Lottery revenue no matter how large or small The Cedars is. For example, the resulting State Lottery revenue loss will be the same if The Cedars has 40 machines or 40,000 machines.*
- *Finally, the Cow Creek Study gives no credit to the Oregon State Lottery for its competitiveness in the gaming market. Every tribal casino in Oregon opened before the State Lottery introduced VLTs. Even before the State Lottery introduced those games, lottery revenue outpaced tribal casino revenue. That pattern continues to this day. The State Lottery has continued to demonstrate a record of increasing revenue even as tribal gaming increased.*

Compliance with State Compact

The governor's office has noted that Governor John Kitzhaber is opposed to any one tribe operating more than one gaming facility.

Response

There is no federal law that limits the number of gaming facilities that a tribe may operate. Many tribes across the country operate several gaming sites. The so-called one-casino policy in Oregon originated during Governor Kitzhaber's first term. His preference for one casino per tribe was never formalized in the form of an Executive Order or official policy. In fact, in "Gambling in Oregon," a position paper issued during his first term, Governor Kitzhaber confirmed that under federal law "Tribes may offer Class II games... without a (state) compact."

Several Oregon tribes agreed to only one Class III gaming facility in their individual compacts with the State. The compact reached between the State of Oregon and the Coquille Tribe in 2000, however, reserves the Tribe's right to negotiate a compact for a second facility after a five-year period, which has long since expired. The current proposal, of course, does not invoke that provision because it is limited to non-compacted Class II gaming. The Tribe's compact clearly states that it does not affect the Tribe's ability to offer Class II gaming.

Governor Kitzhaber's statements regarding a check on the expansion of gambling in Oregon are inconsistent with at least two of his most recent actions. First, On June 4, 2013, the governor signed into law a bill, HB 2613, authorizing "instant racing" machines. These machines provide the player the experience of traditional machines, based on a large database of past horse races at multiple racetracks. This measure basically converts the state's racetrack, Portland Meadows, located a few miles from downtown Portland, into a "racino." Portland Meadows transmits its signals to 11 off-track betting parlors. Second, on July 2, 2013, prominent gaming manufacturer International Game Technology announced that it had reached an agreement with the Oregon State Lottery to provide brand-new State Lottery VLTs.

Historical Connection between the Coquille Tribe and Jackson County

The letters written by the City of Medford and Jackson County question the Coquille Tribe's historical connection to Medford and suggest that, because of this, the Tribe may not have legal standing to restore land to its reservation in Jackson County.

Response

The Coquille Tribe is not required by law to establish a significant historical connection to Medford to proceed with the transfer of land into trust for the reservation. The Tribe does, however, have a significant historical and contemporary connection to Medford and the Jackson County area.

From a legal standpoint, each tribe's restoration act as adopted by Congress establishes areas in which the tribe can establish new reservations. The Coquille Restoration Act authorizes the Secretary of the Interior to take land into trust in "the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties" (25 USC § 715(5)). As lands in these counties are placed into trust for the Tribe, the lands are restored to reservation status according to the Coquille Restoration Act. Medford is within the geographic area specifically defined by Congress in the Coquille Restoration Act.

If a tribe's restoration act does not provide a specific geographic area for the secretary to take land into trust, the tribe is required to establish modern, historic, and temporal connections to the newly acquired land (25 CFR § 292.12). Although the Coquille Tribe is not required to demonstrate modern, historic, and temporal connections to the newly acquired land, if required it could demonstrate such connections.

Historically, Indian villages and extended families along the Coquille River and the south coast of what is now Oregon were linked to villages in the Rogue River Valley by kinship, marriage, and shared cultural practices, including trade in material goods, visiting for communal hunting and gathering activities, and shared spiritual practices. The Rogue River was a major trading route that promoted not only trade but also intermarriage and communal activities. Significantly, current members of the Coquille Tribe are direct descendants of Rogue River Indians and Umpqua Indians.

Today the Coquille Tribe has an established connection to the Medford area. In fact, a significant concentration of tribal members lives in or near Medford. The Tribe also routinely convenes tribal council meetings, retreats, and cultural events in the Medford area and has since before the Tribe's restoration.

The Tribe's clear status as a restored tribe and the Coquille Restoration Act's unambiguous language establishing the specific geographic area within which the Tribe may acquire lands for the purpose of restoring its land base provide a clear path within the Indian Gaming Regulatory Act and the DOI's regulations to qualify the land for gaming under IGRA's restored-lands exception.

Comments from Other Tribes

The City of Medford cites opposition from other tribes as a one reason why it is withholding support for The Cedars at Bear Creek.

Response

To date the Cow Creek Band of Umpqua Indians is the only federally recognized tribe to oppose The Cedars at Bear Creek. The Cow Creek Band owns and operates Seven Feathers Casino Resort on Interstate 5 in Canyonville, Oregon. It is understandable that it would express opposition to any business that could detract from its current monopoly on gaming in this region. The Shasta Nation, a tribe without federal recognition, has also voiced opposition to the project.

It should be noted that the Karuk Tribe received a determination that lands held in trust by the Karuk adjacent to Interstate 5 in Yreka, California, are eligible for gaming. The Karuk Tribe is near completion of a Class III gaming compact with the State of California. This Yreka facility will be 20 miles closer for Medford residents than the Cow Creek Band's Seven Feathers Casino Resort in Canyonville. The Cow Creek Band has not expressed opposition to this project, and the Karuk Tribe has not voiced opposition to the Coquille Tribe's proposal.

Federal Land Holdings

The City of Medford and Jackson County both note that 48 percent of the land in Jackson County is under federal jurisdiction. The City and the County oppose the removal of any additional land from acreage currently controlled by the city, county, and state governments.

Response

Although the federal government controls 48 percent of the 1,793,280 million acres of land that constitute Jackson County, only a fraction of that land is within the city limits. Typically, the primary concern of local governments over federal land ownership is the lack of revenue that is returned to local government from the ownership or utilization of that land.

The Coquille Tribe has addressed this concern by offering to make local jurisdictions whole for the impact that federal control of its 2.42 acres would have on government services. This has been the Tribe's policy in working with the City of North Bend with regard to The Mill Casino Hotel and RV Park, where a formal agreement stipulates how the Tribe will pay for essential city services such as police, fire, and emergency response. It is important to consider that this policy differs significantly from agreements with the federal government. It also differs from agreements of many other government agencies and tax-exempt organizations that own or control property in Medford but pay no taxes and have no fee-for-service agreements with the City.

Social and Economic Effects of Gaming

The City of Medford is concerned that the development of a Class II gaming facility will foster problem gambling and gambling addictions. The City and the County have also questioned whether the proposed project will increase other social problems related to gaming.

Response

The Cedars at Bear Creek is designed to make money by entertaining people and making sure that they have an enjoyable experience. The Coquille Tribe has no desire to take advantage of individuals with psychological disorders or gambling problems. By bringing a Class II gaming facility to Medford, the Coquille Tribe is increasing the recreational quality of the gaming experience, not necessarily the ease of access to gaming, which already exists at more than 100 locations throughout Medford.

Gambling has become an accepted form of recreation and an important revenue source for the state and the tribes that operate legal facilities. Approximately 80 percent of Oregonians have gambled at least once, and more than 60 percent have gambled in the past year.

While some people assume that gambling disorders will increase if there is an expansion of gambling, the American Gambling Association (AGA)[2] states that research on this topic is not conclusive, and there is a significant body of research that has reached the opposite conclusion. In support of this statement, the AGA cites studies by the National Opinion Research Center at the University of Chicago, the National Academy of Sciences, and the Public Sector Gaming Study Commission.

According to the AGA, "The preponderance of evidence shows that social problems in communities with casinos are no different than social problems in communities without casinos," and "in many cases, studies have shown that because casinos are labor-intensive businesses, they can actually alleviate some common social problems."

A 2000 study by the General Accounting Office, which conducts investigations for the US Congress, found no conclusive evidence on whether legalized gambling caused increased social problems. Specifically, the report came to the following conclusions.

- *There is no definitive link between gambling and bankruptcy.*
- *Legalized gambling, especially in casinos, has resulted in an increased number of jobs in communities and decreased the unemployment rate and unemployment insurance payments.*

Research by the University of Chicago's National Opinion Research Center found that communities closest to casinos experienced a drop in welfare payments, unemployment rates, and unemployment insurance payments after legalized gaming was introduced. The National Gambling Impact Study Commission found that some of the most common indicators of social welfare improve after legalized gaming is introduced.

Finally, a PricewaterhouseCoopers[3] survey of 178,000 casino employees found that 16 percent used their casino jobs to replace unemployment benefits, 63 percent improved their access to health-care benefits, 65 percent had been able to improve their job skills, and 78 percent said that their employer provided them with training to better perform their job.

Oregon has done more than any other state to prevent gambling problems and to provide free treatment for those who develop problems. The State puts 1 percent of all revenue generated by the Oregon State Lottery into treatment centers and preventive education across the state.

Class II Gaming Facility

The Coquille Tribe provided the City of Medford with a copy of its trust application for 2.42 acres of land to develop a Class II gaming facility. The City has indicated that it is opposed to this project in part because it believes that there is a "strong likelihood that the Medford site will ultimately have Class III gaming." The State has echoed this concern.

Response

A Class II gaming facility differs substantially from a Class III casino and offers only games commonly known as electronic bingo games. Players bet against each other and not against the house. The Cedars at Bear Creek is a Class II facility that cannot legally offer table games. Examples of Class III casinos in Oregon include Seven Feathers Casino and Resort in Canyonville and The Mill Casino Hotel and RV Park in North Bend.

Purposefully, the Coquille Tribe requested only to place 2.42 acres of land into trust for the development of a Class II gaming facility after analyzing the market prior to embarking on the project. Balancing community needs and tribal needs, the decision was made to pursue a modest Class II gaming facility and to leverage existing local lodging, restaurants, and services.

The Tribe has no plans to develop a Class III casino in this or any other location in Medford. The development of a Class II gaming facility does not open any legal loopholes that would make it easier for the Coquille, or any other tribe, to develop a Class III casino in Jackson County. In fact, the Coquille Tribe would need an amendment to its Tribal State Compact to operate Class III games on the Medford property, and it is clear that the State of Oregon is unwilling to negotiate for such an amendment. Additionally, any federal action related to a full-scale casino resort with Class III gaming would again trigger NEPA 42 USC §§ 4321 et seq. and entail all of the analysis and steps set forth in the federal fee-to-trust process.

2. State of the States: The AGA Survey of Casino Entertainment (Washington, D.C.: American Gaming Association, 2002).
3. Price Waterhouse Coopers, Gambling Industry Employee Impact Survey (Washington, D.C.: American Gaming Association, October 1997).

Tribal Trust Lands

The City of Medford is concerned that approval of this proposal would establish a precedent that encourages other tribes to seek additional trust land for gaming.

Response

The Cow Creek Band of Umpqua Indians has asserted that a "tribal casino arms race" will break out once the Coquille Tribe wins federal approval to locate a Class II gaming facility in Medford. Other tribes, the Cow Creek Band contends, will then race to locate similar facilities on newly acquired tribal trust lands.

Significantly, the Cow Creek Band, Klamath Tribes, Confederated Tribes of Siletz Indians, Confederated Tribes of Grand Ronde, and Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians already game on lands qualified under the restored-lands exception. Additionally, the Confederated Tribes of Warm Springs already operates a second, Class II–only casino at its Kah-Nee-Tah Resort. Long before the Coquille Tribe announced its plans for Medford, the Warm Springs, Burns Paiute, and Siletz all had submitted applications to qualify lands for gaming pursuant to 25 USC § 2719(b)(1)(A), the two-part determination test.

To dispel any notion that the Cow Creek Band could start this "arms race," the Cow Creek Band of Umpqua Indians Recognition Act allows for a reservation north of the Rogue River upstream of Agness, but land cannot be "taken into trust for gaming" (25 USC § 712e). The Cow Creek Band requested this provision from Congress, and it would take an act of Congress to allow them a second gaming facility.

Oregon's other restored tribes have specific provisions in their congressional acts limiting what lands may be taken into trust. All of them are operating gaming facilities within those constraints. The Coquille Tribe is simply seeking to do the same.

While it is true that any tribe can try to persuade the Secretary of the Interior and the governor to allow gaming on land acquired after the 1988 passage of IGRA, this is very difficult and has not been successful in Oregon. For example, when the Confederated Tribes of Siletz Indians (with their reservation in Lincoln County) tried to locate a casino in Brooks, they underwent the arduous IGRA two-part determination process, and Governor Barbara Roberts refused to concur in using the land for gaming, putting an end to the project.

Since 1988 only eight tribes nationwide have been successful in acquiring land for gaming under the two-part determination test. Four Oregon tribes pursued or are in the process of pursuing gaming on lands acquired under the two-part determination process, all initiated before the Coquille Tribe ever announced plans for Medford. All four have been unsuccessful. IGRA's exceptions to gaming on lands acquired after 1988 have been in place since 1988, and no "tribal casino arms race" has occurred.

Community Support Letters

Bay Area Chamber of Commerce

...our business is helping your business

July 15, 2013

Mayor and City Councilors
City of Medford
411 W. 8th Street
Medford, OR 97501

Honorable Mayor and City Councilors,

As the Medford area evaluates the impacts and potential of a new casino and other business operations to be developed by the Coquille tribe, we thought it might be useful to share with you our experience with them and their operations in Oregon's Bay Area over the last 15 years.

The Bay Area Chamber of Commerce is a non-profit, professional business organization made up of the Coos Bay, North Bend, and Charleston communities. The Chamber works for a healthy economic climate of good jobs, more customers and efficient government. The Chamber's strength lies in the number and diversity of its membership. With over 600 members strong representing every aspect of this area's economy, we use their vast collective experiences and energy to make a positive difference in our community.

The Coquille Tribe and its economic development arm, CEDCO, have been strong supporters of the Chamber's mission and success through the dedication of personnel, financial resources and professional partnerships. CEDCO members serve on our Chamber Teams and have attended the Leadership Coos program. They have served on our Board of Directors and one was our 2010 President. They have been active in the revitalization of our annual community awards banquet, helping to make it an event not to be missed. The Mill Casino-Hotel was recognized as our 2008 Business of the Year at that banquet a few years ago.

145 Central Avenue • Coos Bay, Oregon 97420 • 541-266-0868 • FAX: 541-267-6704
www.OregonsBayArea.org

Continued on page 22

Community Support Letters

Continued from page 21

Financially they have aided us in big and small ways. We have staged many successful events at the Casino to include our annual Economic Outlook Forum, the Lumberjack Competition, Monster Bash costume ball, a Murder Mystery, and the Bay Area Chamber awards banquet. As part of that awards banquet, they facilitated the donation of a music video, done by an emmy winning film crew, to introduce our new President and 2013 Board. CEDCO started a new event two years ago, BBQ, Brews and Blues. Besides barbequing, numerous beer brewers are featured. We were given the privilege to sell the beer sampling cards for breweries, which produced a significant amount of money for Chamber operations. For our beef raffle, the last two years, we stored the meat in their freezers, from County Fair time to December, until the drawings were held.

Professionally we have enjoyed a partnership with the Tribe for over 10 years in producing our Wednesday Business Connection luncheons at the casino. These networking business gatherings run every Wednesday from September through May with local participation ranging from 45 to 120. The high quality presentation by the casino plus our excellent programs has made this a "must see" event for the business community.

The Coquille tribe, through its operations, is an excellent local employer, a significant contributor to the area's quality of life through its community grant program which has given hundreds of thousands to many area non-profits and a great community partner.

Based on our experience, this proposed development is an excellent opportunity for the people, the businesses and the quality of life in your area.

Sincerely,

Brooke Walton
President

Community Support Letters

City of Coos Bay

Office of the City Manager

500 Central Avenue, Coos Bay, Oregon 97420 • Phone 541- 269-8912
Fax 541- 267-5912 • http:/www.coosbay.org

July 9, 2013

Jackson County Commissioners
Jackson County Courthouse
10 South Oakdale, Room 214
Medford, OR 97501
Fax No: (541) 774-6705

Dear Commissioners:

I am the City Manager of Coos Bay and have worked for the City for over twenty-two years. During my service with the City, I have had the opportunity on numerous occasions to work with employees and tribal members of the Coquille Indian Tribe. Based on my knowledge and experience, I am able without hesitation to commend the Coquille Indian Tribe as a community partner.

Over the years, the Tribe has assisted the Coos Bay Police Department by generously sharing funding from various grants from the Bureau of Indian Affairs, U.S Department of Justice, etc. The South Coast Interagency Task Force (SCINT) has also greatly benefited through the generosity and support of the Tribe. In addition, we have received a number of grants from the Coquille Tribal Community fund which have helped make possible a number of City related projects and programs.

In addition to funding, the City has had a contractual relationship with the Tribe as we provide law enforcement support to the Coquille Tribal Police Department. We also partner with the Tribe as well as the City of North Bend to fund the activities of the Coos Bay / North Bend Visitor's Convention Bureau. The Tribe has also graciously allowed our mayor and the mayor of North Bend board positions on the Board of Trustees for the Coquille Tribal Community Fund which has to date provided 456 community grants totaling $4,335,884.

Our community has also benefited from economic development arm of the Tribe, CEDCO as well. The Tribe serves as one of community's largest employers.

In conclusion, I believe that the Coquille Indian Tribe is an outstanding community partner; and I expect that their values, responsiveness, and generosity will make them valuable members of any other jurisdiction where they choose to create jobs and provide services.

Respectfully,

Rodger Craddock
Coos Bay City Manager

Cc: Danny Jordan, County Administrator (jordandl@jacksoncounty.org)

Community Support Letters

City of North Bend

Post Office Box B • North Bend, OR 97459-0014 • Phone: (541) 756-8500 • FAX: (541) 756-8527

May 2, 2013

Jackson County Commissioners
Jackson County Courthouse
10 South Oakdale, Room 214
Medford, OR, 97501

City Council
City of Medford
411 W. 8th Street
Medford, OR 97501

Dear Commissioners and City Councilors:

As Mayor of the City of North Bend I have been following with interest the news about the proposed casino and other business entities being contemplated by the Coquille Tribe for your Medford area community. I thought you and your council members might like to hear about the positive impact the partnership between the City of North Bend and Coquille Tribe has had on our community as you consider the Coquille Tribe's potential impacts upon Medford and the surrounding area.

Since before their restoration to federal tribal recognition, the Coquille Tribe always acted as good stewards of the land and waters of their ancestral homelands. Being restored to federal recognition brought with it the ability of the Coquille Tribe to impact the economics of not only the tribe and its people but also of the greater community. It is North Bend's experience with the Coquille Tribe's economic impact I wish to share with you.

- Since 2002 the Tribe has made grants of over $3.6 million to Coos County-based non-profits and charities.
- Through additional grant funding, the Tribe has assisted the Coos County Sheriff's office and South Coast Interagency Narcotics Team to acquire over $333,000 in equipment.
- The Tribe is the second largest employer in Coos County, offering family wage jobs with benefits and multiple opportunities for advancement.
- Tribal leadership is always accessible and very active in local charitable initiatives, nonprofit boards and committees, and they care deeply about the issues confronting our area in general and North Bend particularly.
- The Tribe generously pledged over $1million to the soon to be constructed Coos Historical & Maritime Center.
- The Tribe co-authored the Coquille Watershed Restoration Plan and is continually carrying out that plan, making real and substantial improvements to our salmon runs and fish habitat.
- They sponsor countless public and community improvement events and activities.

Community Support Letters

- Their innovative, FSC certified forest creates jobs and serves as an international model of forest stewardship.
- The Tribe partnered with the City by providing the City with an easement to develop a waterfront walkway which offers residents and visitors one of the very few pedestrian access points to Coos Bay in our area.
- And there are also many other non-economic endeavors which the Coquille Tribes undertake in our community which improve the health, social and educational aspects of our communities, both tribal and non-tribal.

The City of North Bend has been neighbors and partners with the Coquille Tribes for the 110 years of the City's existence. And as with any long term partnerships differences do on occasion arise. The City and Tribe both have continually sought ways to pro-actively work together on the difficulties as they occur, resolve them and move forward to our common future.

I can without hesitation tell you that the Coquille Tribe is a beneficial partner for my city and area. And I would expect that should their plans come to pass for your area, you too will come to know their values, their responsiveness and their generosity.

Sincerely,

Rick Wetherell, Mayor
City of North Bend

Cc: Danny Jordan, County Administrator
P. Eric Swanson, Medford City Manager
Terence E. O'Connor, North Bend City Administrator

Community Support Letters

POLICE DEPARTMENT

City of North Bend

835 California Avenue • North Bend, OR 97459-0014 • Phone: (541)756-3161 • FAX: (541) 756-0142

July 3, 2013

Chief Tim George
Medford Police Department
411 W 8th St.
Medford OR 97501

Dear Tim,

I received a call from one of your command staff and from the Jackson County Commission regarding the call volume at The Mill Casino. Although neither asked for detail, most are not of a serious nature.

It is my understanding that based upon my answer; some of your folks in Medford have determined that having a gaming facility in Medford would substantially increase the impact on police services.

Most of the calls we receive are calls from The Mill security staff, who have a zero tolerance policy. They are very professional and with their surveillance equipment, they are a great help to us in securing convictions for on-site crimes. In fact, I have hired two of them for our department.

We don't believe that we have an unusual volume. In fact, in 2012, the tribe provided North Bend with over $400,000 to cover law enforcement, fire protection, water, storm water and sewer services.

As you recognize, this level of support helps greatly with our staffing requirements.

The reason for this letter is that I have been contacted by a representative from The Mill Casino, and asked to provide you with this information.

Sincerely,

Steve Scibelli
Chief of Police
North Bend Police Department

Community Support Letters

July 11, 2013

Jackson County Commissioners
Jackson County Courthouse
10 South Oakdale, Room 214
Medford, OR 97501
Fax No: (541) 774-6705

Dear County Commissioners:

I am a current Coos County Commissioner, and I am writing to you to tell you about my experience with the Coquille Indian Tribe. I have a bit of perspective on the Coquille Tribe, as they were my employer prior to my election. The Coquille Tribe is heavily invested in this region, and they have been a great community partner to many local communities, businesses, and organizations.

Setting my time of employment aside, I can tell you that, as a County Commissioner, I have found the Tribe to be responsive and helpful regarding regional issues. They have been collaborative during times when collaboration is needed, and they have been eager to assist in finding local solutions. I consider them to be an asset to our community.

I would expect that the Tribe's generous nature and sense of community will make them an asset wherever they choose to create jobs and provide services. I believe that Jackson County will find the Tribe to be both reasonable and helpful.

Sincerely,

Melissa T. Cribbins
Coos County Commissioner

Cc: Danny Jordan, County Administrator (jordandl@jacksoncounty.org)

Community Support Letters

John Sweet
1291 N. 9th Street
Coos Bay, OR 97420

April 29, 2013

Al Densmore, President
City Council of Medford
411 W. 8th Street
Medford, OR 97501
Fax No: (541) 618-1700

Dear President Densmore:

I am the Chair of the Coos County Commissioners and I am more than happy to send you this letter extolling the great partnership between Coos County and the Coquille Indian Tribe. I am proud to have this Native American government in my community. Their active and positive influence has helped the people of my County socially, economically and environmentally, and I would like to illustrate a few examples for your consideration:

- Since 2002 the Tribe has made grants of over $3.6 million to Coos County-based nonprofits and charities.
- Through additional grant funding, the Tribe has assisted the Coos County Sheriff's office and South Coast Interagency Narcotics Team to acquire over $333,000 in equipment.
- The Tribe is an employer of choice in Coos County (our second largest), offering family wage jobs with benefits and multiple opportunities for advancement.
- Their leadership are always accessible and very active in local charitable initiatives, nonprofit boards and committees, and they care deeply about the issues confronting Coos County.
- They generously made a cornerstone contribution to the new Coos Historical & Maritime Center, pledging over $1 million.
- The Tribe co-authored the Coquille Watershed Restoration Plan and is continually carrying out that plan, making real and substantial improvements to our salmon runs and preventing further erosion.
- They sponsor countless public and community improvement events and activities.
- Their innovative, FSC certified forest creates jobs and serves as an international model of forest stewardship.
- And much, much more.

I have no hesitation telling you that the Coquille Indian Tribe is an outstanding member of my community and I expect that their values, responsiveness and generosity will make them valuable members of any other jurisdiction where they choose to create jobs and provide services.

Thank you for the opportunity to send this letter.

Sincerely,

John Sweet

Cc: Eric Swanson, City Manager

Community Support Letters

Coos Historical & Maritime Museum

July 15, 2013

Jackson County Commissioners
Jackson County Courthouse
10 South Oakdale, Room 214
Medford, OR 97501

City Council
City of Medford
411 W. 8th Street
Medford OR 97501

Dear Commissioners and City Council Members,

Understanding that you are currently attempting to evaluate the potential benefit of proposed Coquille Indian Tribe business operations in your community, I am writing on behalf of the Coos County Historical Society to describe the Tribe's impressive record of effective, cooperative action to improve the local economy and address the needs of Coos County residents.

In addition to outstanding assistance for our own nonprofit organization's services and in particular its support for a major new cultural facility for the region, the Tribe regularly grants funds to a diverse array of other social and cultural assistance groups. CIT's commitment to broad community betterment is evident on many levels: tribal representatives consistently go the extra mile, beyond merely financial support, to assist as needed to ensure that community goals are in fact achieved.

For example, what was initially conceived at our museum as essentially an inventory of traditional artifacts in our collections, quickly evolved with the assistance of CIT staff into an extraordinarily positive collaboration marked by mutual trust and shared passion for community education and cultural enrichment. With the benefit of tribal technical expertise, and unsolicited tribal funding, we were able to completely redesign a large exhibit area, install tribally-funded new track lighting, and open an entirely renovated exhibit which has since undergone updates and further improvements with tribal assistance.

In 2004, the tribal/museum team was inspired to add more community members in order to devise and test a small pilot schools program. The Coquille Indian Tribe provided, at no cost, literally weeks of staff and elder consultation time as we worked to develop age-appropriate content and design demonstrations and activities for young students. Tribal staff then committed work time to assist with program delivery, and recruited additional tribal members. As the capstone of the program the tribe offered use of its spectacular Community Plankhouse, and freshly-cooked wild salmon for every child.

1220 Sherman Avenue, North Bend, OR 97459 • (541) 756-6320 • info@cooshistory.org • www.cooshistory.org

Continued on page 30

Community Support Letters

Continued from page 29

The Tribe has maintained and expanded its commitment ever since as the program grew rapidly (and earned the Oregon "Excellence" award); CIT now annually provides at least $6,000 in in-kind support for the schools program, including constant revisions and updates in collaboration with local educators, for more than 800 4th graders each year, from every school district in Coos County, Reedsport, Florence, Port Orford and Gold Beach.

Perhaps most significantly, we and the entire community, are incalculably indebted to the Coquille Indian Tribe for its support for construction of the new Coos Historical & Maritime Center. The Center, a major waterfront economic redevelopment project strongly endorsed by state, county and area city governments (and residents), is expected to become an important economic engine for region. The initial fundraising campaign, launched in 2007, faced a daunting challenge, and the Coquille Indian Tribe, immediately recognized that its support could play a critical role. When the city of Coos Bay donated a building site, CIT immediately and generously responded with a $1 million pledge for construction. That pledge, in turn, triggered an avalanche of additional support from foundations and other funding sources. CIT remains the single largest donor to the project.

As significantly, that commitment has remained steadfast despite the more than six years required to overcome various project hurdles (construction is finally starting this month). During this time, we received informal guidance from tribal attorneys on a complex title issue, and the Tribal Council has remained engaged and anxious to assist, including offers to donate large planks and logs from tribally-managed forest lands to enhance the building interior. CIT has generously provided the assistance of its hotel facilities director and other building staff to advise on various logistical matters for Center operation, and in every respect made clear its desire to be of assistance if needed.

Additionally, as you doubtless already know, the Coquille Indian Tribe through its foundation generously provides direct and incidental support to many other non-profit organizations in our area. Its annual grant programs assist an astonishing array of groups providing essential human services, as well as arts and cultural entities. Consistent with CIT's community commitment, the tribe also sponsors a very popular annual networking luncheon for grant recipients which has led to greater collaboration among various groups. The tribe's economic arm, CEDCO, provides additional assistance to nonprofits by facilitating various fundraising activities with, e.g., reduced rates for use of facilities, invitations to partner in fundraising events on its casino grounds, and ensuring that guests at its facility are encouraged to visit other parts of the community.

In short, the Coquille Indian Tribe has a strong track record of very real commitment to positive community collaboration and broadly-beneficial community outcomes in our area. We deeply admire their achievements to date, and believe the tribe would demonstrate similar commitment to your community should it begin business operations there.

Sincerely,

Anne W. Donnelly
Executive Director

"The Coquille are a strong and industrious people. We have lived in this region for thousands of years and have a profound sense of connection to the land and the communities that make up Southern Oregon. We are dedicated to keeping our culture alive and creating a strong and prosperous future for our nation and the communities in which we live."

–Brenda Meade
Chairperson
The Coquille Tribal Council

Coquille Tribal Outreach Office

1257 N Riverside Ave., Suite 13
Medford, OR 97501

Telephone: (541) 756-0904
Fax: (541) 756-0847

medfordwins.com

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A-7

JACKSON COUNTY
Oregon

Office of County Counsel

Joel C. Benton
County Counsel

10 South Oakdale, Room 214
Medford, OR 97501
Phone: (541) 774-6160
Fax: (541) 774-6722
bentonjc@jacksoncounty.org

www.jacksoncounty.org

March 18, 2015

VIA CERTIFIED MAIL, FAX, AND EMAIL

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 Northeast 11th Avenue
Portland, OR 97232-4165
Fax: (503) 231-2275
stanley.speaks@bia.gov

RE: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Mr. Speaks:

The Bureau of Indian Affairs ("BIA") has initiated the preparation of an Environmental Impact Statement ("EIS") for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project ("Coquille Project"). Thank you for providing Jackson County with an opportunity to comment on the scoping of the proposed Coquille Project. As you are aware, the proposed Coquille Project will have significant impacts on Medford and surrounding areas of Jackson County. It is vitally important that the BIA carefully study and analyze the impacts from this unprecedented urban casino as well as reasonable alternatives. Below are some of the issues the BIA should explore during the EIS process. Additionally, the County suggests that the BIA reissue a new notice of intent to prepare an EIS that includes additional information in order to allow a more informed scoping and public comment process.

As you know, the purpose of the Notice of Intent is to announce a federal agency's intention to prepare an EIS to analyze the potentially significant impacts on the environment of a proposed federal action, in compliance with the National Environmental Policy Act ("NEPA"). NEPA's implementing regulations, promulgated by the Council on Environmental Quality ("CEQ"), provide that a notice of intent to prepare an EIS "shall briefly ... describe the proposed action and possible alternatives." 40 C.F.R. § 1508.22(a); *see also* BIA NEPA Handbook, § 8.3.2(1). The Notice of Intent issued in relation to the Coquille Project does not contain sufficient information regarding the Coquille Project in order to allow interested parties to identify all relevant environmental impacts, issues, and alternatives. In fact, the Notice of Intent does not list any potential alternatives to the proposed action. For this reason, Jackson County is requesting that the BIA issue a new notice of intent that contains more detailed information regarding the Coquille Project in addition to alternatives the BIA is considering. The additional information should include a more detailed statement regarding the proposed Coquille Project itself, the potential impacts to the human environment, and an explanation of the purpose and need for the project.

REASONABLE RANGE OF ALTERNATIVES

In the event the BIA does not issue a new notice with new timeline for public comment on the scoping of the EIS, Jackson County suggests that the BIA consider alternatives to the Coquille Project. Such alternatives should include a "no action" alternative, an expansion to the existing Coquille Tribal gaming establishments, alternative sites for the proposed gaming establishment, and development alternatives at the proposed site. A "no action" alternative should consider maintaining the status quo in which there is no fee-to-trust action and no development of a gaming facility in Medford. When evaluating alternative sites for the proposed gaming establishment, the BIA should especially consider alternative sites not located in a metropolitan area and preferably located on existing Coquille lands. When considering development alternatives at the proposed site in Medford, the development alternatives should address traffic and parking concerns, the size of the proposed facility, the square footage of any gaming areas within the facility, and a development that does not include any gaming activities. In examining a reasonable range of alternatives, the BIA should be careful not to make any decisions or take any action that would foreclose the possibility of a "no action" alternative.

DETRIMENTAL IMPACTS

The BIA's Draft EIS should carefully consider the detrimental impacts of the Coquille Project on the human environment. Potential detrimental impacts include impacts to land resources, water resources, air quality, biological resources, cultural and paleontological resources, socio-economic impacts, impacts to infrastructure and public services, the cumulative impacts, and the indirect effects of the Coquille Project. As discussed above, the initial notice describing the Coquille Project does not contain sufficient information for Jackson County to adequately assess all potential impacts, as such, it is probable that there will be additional impacts the BIA should explore beyond those explicitly mentioned here.

Impacts to land resources include potential impacts to geology, topography, seismicity, erosion, mineral resources, and soils. Impacts to water quality include storm water pollution, impacts to nearby Bear Creek, nearby wetlands, groundwater pollution, tribal water rights, agricultural water rights, and the use of scarce water resources. These impacts should be analyzed in the context of a changing climate and the historically low snow pack levels Jackson County has experienced in the past two winters. Impacts to air quality include impacts from the construction and operation of the Coquille Project as well as air pollution and emissions related to increased vehicular traffic from visitors to the Coquille Project. In evaluating the biological impacts of the Coquille Project, special attention should be paid to any endangered or threatened species in the area and the EIS should include a comprehensive survey of nearby wildlife. In evaluating the socio-economic impacts of the Coquille Project, special attention should be paid to the unprecedented placement of a casino in an Oregon metropolitan area. These impacts might include increased gambling addiction, crime, alcohol and drug use, and drunk driving. The draft EIS should also consider how the proposed casino would change the character of the City of Medford and surrounding communities in the Rogue Valley. Such changes could result in urban blight, the loss of family oriented businesses, and the loss of non-gambling tourists. Additionally, the proposed casino would result in impacts to communities with casinos in competition with the Coquille Project. Impacts to infrastructure and public services should be thoroughly examined. These impacts will include increased pressure on roadways, sewerage, public transit, law enforcement, non-profits serving Jackson County, public health services including Jackson County Health and Human Services, and firefighting services. The EIS should explore ways in which the

BIA should work with Jackson County, the City of Medford, and other cities to resolve concerns regarding increased pressure on public services and infrastructure.

The draft EIS should carefully consider cumulative and indirect impacts. In particular, the BIA should consider the indirect and foreseeable impacts that will result from the approval of the first urban casino in Oregon. Such impacts might include additional urban casinos in Jackson County and throughout the state. The cumulative impact analysis should include consideration of related past and reasonably foreseeable related projects including transportation projects, commercial development projects, and the expansion of public infrastructure. Indirect effects might include the growth in surrounding areas, changes in land use, and the impacts from any mitigation measures employed.

MITIGATION MEASURES

The draft EIS should carefully consider what mitigation measures are reasonable and necessary to ameliorate the negative impacts discussed above. In considering what mitigation measures are appropriate, the BIA should consult with Jackson County, the City of Medford, Tribes, and other affected communities.

Thank you for your consideration. Please do not hesitate to contact us should you need any additional information or have any questions.

Sincerely,

Joel C. Benton
County Counsel

cc: Board of Commissioners
County Administrator

TRIBAL COMMENT LETTERS

T-1

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

January 20, 2015

VIA CERTIFIED MAIL, FAX AND EMAIL

Stanley M. Speaks
B.J. Howerton, Ph.D.
Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, OR 97232-4169
Fax: (503) 231-2275
Fax: (503) 231-2201
bj.howerton@bia.gov
stanley.speaks@bia.gov

Re: Request to be Mailed Public Notices Pursuant to 40 C.F.R. § 1506.6(b)(1)

Dear Director Speaks and Dr. Howerton:

The Bureau of Indian Affairs ("BIA") has initiated the preparation of an Environmental Impact Statement ("EIS") for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project. It has come to our attention that in connection with the EIS preparation, there is an upcoming opportunity for public comment; it appears a scoping meeting will be held on February 3, 2015. We write to formally express our concern that the Cow Creek Band of the Umpqua Tribe of Indians did not receive individual notice of the public scoping meeting.

The regulations promulgated by the Council on Environmental Quality ("CEQ Regulations") require agencies to "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures" and "[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. § 1506.6. In regard to Indian tribes, the CEQ Regulations specifically require notice of NEPA-related hearings, public meetings, and the availability of environmental documents to be sent to "Indian tribes when effects may occur on reservations." 40 C.F.R. § 1506.6(b)(3)(ii). Accordingly, we are concerned that the Cow Creek Band of the Umpqua Tribe of Indians did not receive individual notice of the public scoping meeting.

The CEQ Regulations require "[i]n all cases the agency shall mail notice to those who have requested it on an individual action." 40 C.F.R. § 1506.6(b)(1). Please consider this letter a request, pursuant to 40 C.F.R. § 1506.6(b)(1), that the Cow Creek Band of the Umpqua Tribe of Indians be mailed notice of any "NEPA-related hearings, public meetings, and the availability of environmental documents" for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project.

As a separate but related matter, we reiterate our request for ongoing consultation with the BIA regarding Coquille's efforts to have its fee lands in Medford taken into trust for gaming purposes, pursuant to your agency's policies. BUREAU OF INDIAN AFFAIRS, GOVERNMENT-TO-GOVERNMENT CONSULTATION POLICY (2010). Tribal consultation per federal common law and agency policy—as distinct from notice and comment per NEPA and the CFRs—is required of the BIA and owed to the Cow Creek Band throughout your agency's fee-to-trust process. We have also made this standing request for consultation to the Department of the Interior (proper) and its Office of Indian Gaming.

Please do not hesitate to contact us should you need any additional information or have any questions.

Very truly yours,

Dirk Doyle
Tribal Attorney
Cow Creek Band of the Umpqua Tribe of Indians

Howerton, B <bj.howerton@bia.gov>

Re: FW: Public Notice

1 message

Howerton, B <bj.howerton@bia.gov> Thu, Jan 22, 2015 at 9:42 AM
To: "Jan Rose - GO \\ Legal Secretary" <janrose@cowcreek.com>
Cc: Stanley Speaks <stanley.speaks@bia.gov>, Bodie Shaw <bodie.shaw@bia.gov>

Ms. Rose,

Please let Mr. Dole know that the Notice he referred to in his Jan. 20th letter was sent to the Tribal Chairman and Mr. Dole via certified mail last Friday, Jan. 16, 2015 (copy attached of Tribal Chairman delivery date and time).

Additionally, as we discussed about 9 AM today, BIA is requesting a government-to-government consultation meeting with the Cow Creek Tribal Council to discuss the proposed project. Please let me know what future dates work for the Tribal Council and Mr. Dole.

Concerning the scheduled Feb. 3rd public hearing, Tribal Council can submit a comment letter for the record and/or comment in person. The Tribal government's comments (written and/or verbal) can be in addition to the government to government consultation meeting that will be scheduled with Tribal Council, i.e., the Tribe will have an additional opportunity to comment other than the Feb. 3rd public hearing.

BIA appreciates your assistance and that of Mr. Dole in helping arrange a mutually agreeable time for a consultation meeting.

I thank you for your time and help with this matter.

Best regards,

BJ

On Wed, Jan 21, 2015 at 8:32 AM, Jan Rose - GO \ Legal Secretary <janrose@cowcreek.com> wrote:

> At Dirk Doyle's request, I am e-mailing his letter regarding "Request to be Mailed Public Notices."
>
> Please let me know if you have any problems opening the attachment.
>
> Thank you.
>
> Jan
>
> **********
> Jan Rose, Secretary to Legal Department
> Cow Creek Band of Umpqua Tribe of Indians
> 2371 NE Stephens Street, Suite 100
> Roseburg, OR 97470
> Phone: 541-672-9405

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Dr. BJ Howerton, MBA
Northwest Regional Office
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COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
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January 27, 2015

VIA CERTIFIED MAIL, FAX AND EMAIL

15RD-0221

Dr. BJ Howerton
Stanley M. Speaks
Bureau of Indian Affairs
Northwest Regional Office
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bj.howerton@bia.gov
stanley.speaks@bia.gov

Re: Request to be Designated a Cooperating Agency

Dear Mr. Speaks and Dr. Howerton:

The Bureau of Indian Affairs ("BIA") has initiated the preparation of an Environmental Impact Statement ("EIS") for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project ("Coquille Project"). This letter is intended to be a request, pursuant to 43 C.F.R. § 46.225, for the Cow Creek Band of the Umpqua Tribe of Indians ("Cow Creek Tribe") to be designated a cooperating agency for the Coquille Project.

The National Environmental Policy Act ("NEPA") regulations, promulgated by the Council on Environmental Quality, require a lead agency to "[r]equest the participation of each cooperating agency in the NEPA process at the earliest possible time." 40 C.F.R. § 1501.6. Similarly, the Department of the Interior's ("DOI") regulations require the lead agency to "whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities." 43 C.F.R. § 46.155. The DOI's regulations also require the lead agency to "invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an environmental impact statement." 43 C.F.R. § 46.225. The BIA's NEPA Guidebook states that "Tribal governments and their delegated tribal programs should not only be consulted, but should be partners with the BIA in the NEPA process, and invited to serve as cooperating agencies." Indian Affairs National Environmental Policy Act (NEPA) Guidebook ("BIA's NEPA Guidebook"), 59 IAM 3-H, p. 6. Here, the Cow

Creek Band of the Umpqua Tribe of Indians has not yet been invited to participate as a cooperating agency.

Any agency that has "has jurisdiction by law **or** special expertise with respect to any environmental impact involved in a proposed action may become a cooperating agency." BIA's NEPA Guidebook, p. 29 (citing 40 C.F.R. § 1501.6; 43 C.F.R. § 46.225) (emphasis added). *See also Colorado Environmental Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1216 (D. Colo. 2001) (holding agency's failure to request EPA's participation as a cooperating agency, where EPA had special expertise, but not jurisdiction, was a violation of NEPA).

"An affected Indian tribe or state or local agency may similarly become a cooperating agency." *Id. See also* 40 C.F.R. § 1508.5. An agency may request cooperating agency status. 40 C.F.R. § 1501.6. The DOI's regulations require a lead agency to "consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency." 43 C.F.R. § 46.225. "Cooperating agencies should be identified and confirmed in writing by the time the scoping process is completed." BIA's NEPA Guidebook, p. 29.

The Council on Environmental Quality has urged "agencies to more actively solicit ... the participation of state, tribal and local governments as 'cooperating agencies' in implementing the environmental impact statement process under the National Environmental Policy Act." Council on Environmental Quality, *Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, dated July 28, 1999.

The Council for Environmental Quality has published a list of factors a lead agency should use when determining whether it should invite, decline or end an agency's cooperating status. Council on Environmental Quality, *Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, dated January 30, 2002 (emphasis in original). The memorandum notes, "**satisfying all the factors is not required and satisfying one may be sufficient.**" *Id.* (emphasis added). *See also Colorado Environmental Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1216 (D. Colo. 2001) (an agency's special expertise, by itself, is enough to trigger NEPA requirement to invite agency to participate as cooperating agency). A detailed examination of the applicable factors indicates that the Cow Creek Tribe should be designated a cooperating agency for the Coquille Project.

1. Does the cooperating agency have the expertise needed to help the lead agency meet a statutory responsibility?

The BIA has determined that the Coquille Indian Tribe's application for a proposed 2.4-acre fee-to-trust transfer and casino project would constitute a major federal action significantly affecting the

quality of the human environment, necessitating the preparation of an EIS. 42 U.S.C. § 4332. While "economic or social effects are not intended by themselves to require preparation of an environmental impact statement," once an agency decides to prepare an environmental impact statement, it must include the "effects on the human environment," including "economic or social and natural or physical environmental effects." 40 U.S.C. § 1508.14; *Friends of the Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1126-27 (8th Cir. 1999) (holding plaintiffs had standing to challenge EIS based on a failure to consider economic effects of proposed federal action). *See also* 40 U.S.C. § 1508.8(b) (defining effects to include economic and social impacts).

The Cow Creek Tribe operates the Seven Feathers Hotel and Casino Resort in Canyonville, Oregon. If the Coquille Project moves forward, it will result in a casino in Medford, Oregon that will operate in direct competition to the Seven Feathers Hotel and Casino Resort. A recent study suggested that:

- Seven Feathers Casino Resorts' gross gaming revenues will be $12.9 million (or 21.1%) less in the first year of the proposed Medford Casino's opening (CY 2017) as compared to what it would have been without the proposed Casino.
- Seven Feathers' non-gaming revenues will be approximately $2.8 million (or 11.3%) less in the first year of the proposed Medford Casino's opening (CY 2017) as compared to what it would have been without the proposed Casino.
- The proposed Medford Casino will thus capture or divert approximately $15.7 million in gross revenues (an 18.3% loss) in 2017 that otherwise would have gone to Seven Feathers.

Seven Feathers Casino Report: Market Impact of a Proposed Medford Casino, November 2014. The loss of gaming revenues at the Seven Feathers Hotel and Casino Resort would have severe socio-economic impacts on the Cow Creek Tribe. Accordingly, the Cow Creek Tribe has special expertise, under 40 C.F.R. § 1508.26, in regards to the matters of its own revenue. Accordingly, the Cow Creek Tribe has expertise that would help the BIA meet a statutory responsibility to analyze the economic and social effects of the Coquille Project.

2. Do the agencies understand what cooperating agency status means and can they legally enter into an agreement to be a cooperating agency?

The Cow Creek Tribe understands that a cooperating agency is defined as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment." 40 C.F.R. § 1508.5. Further, "[a] State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency." *Id.*

The Cow Creek Tribe understands that a cooperating agency is expected to: (1) participate in the NEPA process at the earliest possible time; (2) participate in the scoping process; (3) assume, on request, responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement where the cooperating agency has special expertise; (4) make available staff support, upon request, to enhance the latter's interdisciplinary capability; and (5) normally use its own funds. 40 C.F.R. § 1501.6.

Pursuant to the Cow Creek Tribe's Constitution, the Cow Creek Tribe has the authority to enter into an agreement to be a cooperating agency for the Coquille Project. The Constitution provides that the Board of Directors of the Tribe is authorized to "enter into . . . contract agreements with any Federal, state, county local or other agency." Constitution of the Cow Creek Band of Umpqua Tribe of Indians, Article VII, Section 1.

3. Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?

As the Cow Creek Tribe is submitting this request while the scoping process is still in progress, if granted cooperating agency status, the Cow Creek Tribe will have the opportunity to participate throughout the entire NEPA process, including the scoping process and the preparation of the environmental documents. During this process, the Cow Creek Tribe is prepared to meet the milestones necessary for completing the NEPA process.

4. Can the cooperating agency, in a timely manner, aid in:
    - identifying significant environmental issues [including aspects of the human environment (40 C.F.R. § 1508.14), including natural, social, economic, energy, urban quality, historic and cultural issues (40 C.F.R. § 1502.16)]?
    - eliminating minor issues from further study?
    - identifying issues previously the subject of environmental review or study?
    - identifying the proposed actions' relationship to the objectives of regional, State and
    - local land use plans, policies and controls (1502.16(c))?
    (40 C.F.R. §§ 1501.1(d) and 1501.7)

As discussed in the Cow Creek Tribe's response above, the Cow Creek Tribe has considerable expertise that will assist the BIA in completion of the NEPA process. This expertise will enable the Cow Creek Tribe to assist in identifying significant environmental issues.

5. Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?

The Cow Creek Tribe is able to assist in preparing portions of the review and analysis in order to fulfill the milestones and timelines required by NEPA.

6. Can the cooperating agency provide resources to support scheduling and critical milestones?

The Cow Creek Tribe is prepared to offer resources to support completion of the NEPA process.

7. Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues and analyses? For example, are either the lead or cooperating agencies unable or unwilling to consistently participate in meetings in a timely fashion after adequate time for review of documents, issues and analyses?

The Cow Creek Tribe is willing and able to consistently participate in the meetings required during the NEPA process.

8. Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

The Cow Creek Tribe recognizes that as a cooperating agency, it may have to develop information and analysis in support of a position that it does not favor.

9. Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

For any analysis or assessment that may be produced by the Cow Creek Tribe, the Cow Creek Tribe is willing and able to provide the data and rationale supporting the analysis or assessment.

As demonstrated above, the Cow Creek Tribe satisfies the factors required for an agency to be designated a cooperating agency under NEPA. Accordingly, the BIA should grant the Cow Creek Tribe cooperating agency status for the Coquille Project.

In the alternative, if the BIA does not grant the Cow Creek Tribe cooperating agency status, it should conduct government-to-government consultation with the Cow Creek Tribe. The NEPA regulations requires an agency to "consult[] early with appropriate . . . Indian tribes . . ." 40 C.F.R. § 1501.2(d)(2). The DOI's regulations require an agency to "consult, coordinate, and cooperate with relevant State, local, and tribal governments . . . concerning the environmental effects of any Federal action . . . related to the interests of these entities." 43 C.F.R. § 46.155. The BIA's NEPA Guidebook states "Tribal governments and their delegated tribal programs should not only be consulted, but should be partners with the BIA in the NEPA process . . ." BIA's NEPA Guidebook,

p. 6. Accordingly, the BIA has a duty under NEPA to consult and partner with the Cow Creek Tribe.

Further, separate and independent from NEPA's consultation requirements, federal agencies are charged with engaging in "regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications . . ." President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 57881 (Nov. 5, 2009). The DOI's policy requires tribal consultation for any ""Departmental Action with Tribal Implications," including "[a]ny Departmental . . . operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to . . . [t]ribal cultural practices, lands, resources ... [or] [t]he ability of an Indian Tribe to govern or provide services to its members." U.S. Dep't of the Interior, Department of the Interior Policy on Consultation with Indian Tribes (2011). The BIA's policy recognizes that the BIA "has a duty to consult with tribal governments," with consultation being defined as "a process of government-to-government dialogue between the Bureau of Indian Affairs and Indian tribes regarding proposed Federal actions in a manner intended to secure meaningful and timely tribal input." Bureau of Indian Affairs, Government-to-Government Consultation Policy (2000). Here, as discussed above, the Coquille Project will have considerable social and economic impacts upon the Cow Creek Tribe. Accordingly, the BIA has an independent duty to consult with the Cow Creek Tribe about the Coquille Project.

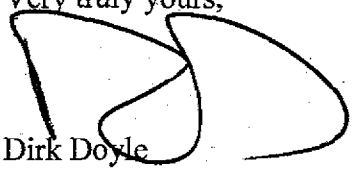
Under the BIA's policy, consultation "does not mean merely the right of tribal officials, as members of the general public, to be consulted, or to provide comments, under the Administrative Procedures Act or other Federal law of general applicability." *Id.* Rather, the Cow Creek Tribe is entitled to: (1) receive timely notification of the formulated or proposed Federal action; (2) be informed of the potential impact on Indian tribes of the formulated or proposed Federal action; (3) be informed of those Federal officials who may make the final decisions with respect to the Federal action; (4) have the input and recommendations of Indian tribes on such proposed action be fully considered by those officials responsible for the final decision; and (5) be advised of the rejection of tribal recommendations on such action from those Federal officials making such decisions and the basis for such rejections. *Id.* As part of the consultation process, the Cow Creek Tribe expects the BIA to allow the Cow Creek Tribe to participate in the NEPA process, including the scoping process, and assist the BIA in developing and preparing environmental analysis, particularly in the areas described above, where the Cow Creek Tribe has expertise. As stated in the Cow Creek Tribe's January 10, 2014, letter to you both, we are troubled that we did not get notification of the BIA's initial public scoping meeting regarding the agency's Notice of Intent regarding the Medford Project EIS. We should not have learned about that meeting through the news media.

In all, the Cow Creek Tribe has special expertise that would assist the BIA in fulfilling its statutory duties and, therefore, requests cooperating agency status for the Coquille Project. Failing that, the

Cow Creek Tribe request that the BIA conduct government-to-government consultation with the Cow Creek Tribe, in the precise manner described above and otherwise as required by federal law.

Thank you for your consideration. Please do not hesitate to contact us should you need any additional information or have any questions.

Very truly yours,



Dirk Doyle
Tribal Attorney
Cow Creek Band of the Umpqua Tribe of Indians

T-3

Lee Paterson

201 Darley Dr
Roseburg, OR 97470
541 643-4009
lpaterson7473@douglasfast.net

January 30, 2015

Director Stan Speaks

Regional Director, BIA, Northwest Region

911 NE 11th Avenue

Portland, OR 97232-4165

Re: **DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project.**

Dear Director Speaks,

I have had the great pleasure to meet and speak with you at our annual Veterans Reception at Seven Feathers Casino and Resort the past several years. I know you to be a caring and responsible representative of Native American concerns. The purpose of my writing is to express my own grave concerns regarding the Coquille Tribe's aggressive petition to sponsor, construct and manage a gaming facility in Medford, Oregon.

This proposal would seriously reduce the historic benefit that derives from current gaming in Canyonville to the Cow Creek Band of the Umpqua Tribe of Indians and the thousands of residents who are served by the Tribe.

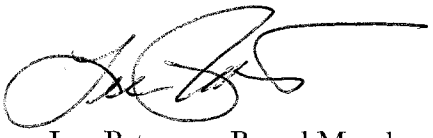
In preparing your Environmental Impact Statement please be cognizant of the potential loss to the communities that are traditionally served by the Cow Creeks. We have been assured that the loss of revenue would indeed effect residents in the communities in a disastrous way. We have already seen, because of changing demographics, a persistent economic decline and the potential for this Coquille project to go forward, that Seven Feathers Casino and Resort has issued layoff notices to nearly 100 employees. The Coquille proposal, if approved, would have further disastrous impacts on our people and our economy.

I take great pride in my duties as a member of the Cow Creek Umpqua Indian Foundation Board which has, over the past 17 years, granted a total of over $14,000,000 to non-profits who serve the poor and underrepresented people of this historic ancestral area of the Cow Creek Band of the Umpqua Tribe. These grants to non-profits are made possible through the current regulation of gaming within respective reservation areas. It is

not an exaggeration to say that should the Coquilles be granted gaming center authority in the Umpqua ancestral service area, some children who otherwise would be served by the Umpqua's generosity, will go hungry, centers for family services will close and some Boys and Girls Clubs and other organizations throughout the region will curtail service to the needy. The Cow Creek funding derived from gaming is critically important to sustaining such programs as community gardens, food pantries, cultural enterprises, homeless services, medical clinics and services to indigent people in the area which extends from Deschutes and Klamath Counties across the Cascades to Lane County and southward all the way to the California Border.

I cannot imagine any good purpose would be served if this expansion of tribal gaming is allowed to go forward beyond the current boundaries. This move would establish a new precedence, giving authority to Tribes to take lands into trust for the purposes of economic gain to the detriment of their neighbors. Once these lands have been taken into Trust, they are deemed part of a Tribe's permanent reservation for the beneficial uses of the Tribe. Don't allow the Coquille project to upset the healthy balance that has benefitted our respective communities.

Respectfully Submitted,



Lee Paterson, Board Member

Umpqua Indian Tribe Foundation

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: Duke Summers Organization: Coquille Indian Tribe

Address: 2634 Mexeye Loop Coos Bay, OR 97420

Comment: I live in the Ashland, Medford area for 35yrs I move away to Coos Bay to work for my Tribe, I would love to see New Job in Jackson County what is the impact? what the impact of Taxs? what the impact of Job?

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

February 3, 2015

Responding: Dan Courtney, Tribal Chairman
Cow Creek Band of Umpqua Tribe of Indians
2371 NE Stephens Street, Suite 100
Roseburg, Oregon 97470

"DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks:

My name is Dan Courtney. I am the Chairman for the Cow Creek Band of Umpqua Tribe of Indians, and the Head of the Cow Creek Tribal Nation.

The EIS should consider whether the Project should be subject to the two-part determination process. Section 2719(a) of the IGRA prohibits gaming unless a tribe can meet one of two exceptions:

- First is the two-part determination process, which requires (1) consultation state and local officials and nearby Indian tribes, and (2) a determination that the gaming operation will be in the best interests of everyone involved, including the surrounding community. In addition, it requires gubernatorial approval.

- Second is the "restored lands" exception, which requires, if a tribe is already gaming on other lands, that a tribe's Restoration Act authorize the taking of the subject lands into trust.

Coquille's Restoration Act states that (1) "The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres" into trust, and (2) "The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under" the Indian Reorganization Act or "IRA." Because the IRA

authorizes the second type of trust acquisition—not Coquille's Restoration Act itself—the restored lands exception does not apply to these types of acquisitions.

Because Coquille is already gaming on other lands, if it wishes to take lands into trust it must go through the two-part determination process. This process takes into account the affect that the project will have on the local community and other Indian tribes, and requires the state's blessing. This is the process that all other tribes must go through when taking off-reservation land into trust—it puts Coquille on par with all other tribes, which is what Congress intended.

Indeed, without consulting with tribal governments that are potentially affected by the proposed actions throughout the EIS process, especially regarding alternatives, BIA is likely breaching a trust and fiduciary duty to those tribes. The EIS should take this into account also. And along these same lines, the EIS should consider an alternative site for the proposed gaming establishment.

Sincerely,
Dan Courtney

Dan Courtney, Tribal Chairman
Cow Creek Band of Umpqua Tribe of Indians

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
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Phone: 541-672-9405
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February 3, 2015

Responding: Michael Rondeau, CEO
Cow Creek Band of Umpqua Tribe of Indians
2371 NE Stephens Street, Suite 100
Roseburg, Oregon 97470

"DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11thAvenue
Portland, Oregon 97232-4165

Dear Director Speaks:

First, I would like to express the Cow Creek Tribe's concern regarding the limited information provided in the Notice of Intent. The Notice of Intent should describe the proposed action and possible alternatives. However, the Coquille Notice of Intent did not provide adequate detail regarding the proposed action and it did not provide any alternatives. The scoping process is meant to be an early and open process, identifying significant issues related to a proposed action. When there is insufficient detail regarding the proposed action, it is difficult for participants of the scoping process to identify significant issues. Accordingly, the Cow Creek Tribe requests that the BIA publish additional detail regarding the proposed action at the earliest possible opportunity.

I would also like to express the Cow Creek Tribe's concern that the number of jobs that will be provided by the proposed action is overstated. The Coquille has stated that the proposed action will create 233 direct jobs. We believe that this estimate overstates the number of jobs that will be created by the proposed action. Our analysis, based on the type of facility, indicates that the proposed action will likely only employ 128 people, not 233. Further, the Coquille has failed to take into account the fact that the introduction of a casino in Medford will negatively impact nearby video lottery establishments. Our analysis indicates that the proposed action will result in the closure of a nearby video lottery establishment and the loss of 117 direct jobs. Accordingly, we believe that the net increase in jobs in Jackson County would only be 11. When determining the potential

impact of the proposed action, the EIS should consider whether the proposed action will create jobs or merely replace jobs that are lost.

NEPA requires an agency to present a reasonable range of alternatives in an EIS. Here, the BIA has not produced a list of the alternatives that will be considered in the Coquille EIS. We suggest that the EIS should consider, as an alternative, a potential expansion or improvement of the existing Coquille gaming establishments. The Coquille already operates the Mill Casino in North Bend. The improvement or expansion of the Mill Casino is a reasonable alternative that should be examined in the EIS, as it would meet the broad purpose provided in the Notice of Intent, to "improve the economic status" of the Coquille. Also, a gaming facility on an alternative site to the purposed site may also meet the Coquille's purpose. Further, the EIS should include an analysis of whether there are any non-gaming alternatives that would meet the Coquille's purpose.

NEPA also requires an agency to fully identify and evaluate the potential detrimental impacts of the proposed action and reasonable mitigation measures. The Coquille's proposal implicates concerns about the economic impacts to the Cow Creek Tribe. Implementation of the Coquille's proposal will have a significant, detrimental effect on the Cow Creek Tribe's governmental revenues, revenues that are used to fund education, health and social services for tribal members. Specifically, implementation of the Coquille's proposal could jeopardize the Cow Creek Tribe's ability to care for our elders, to provide our children with educational opportunities, and to continue providing other social services that our tribal members need and depend upon. The Coquille's proposal would also affect the Cow Creek Tribe's ability to support local governments, contribute to local infrastructure, provide employment opportunities and support related economic development in the area. In summary, the Coquille's proposal would directly and negatively impact the Cow Creek Tribe's ability to provide services to its tribal members. Accordingly, the BIA must carefully identify and evaluate these socio-economic impacts in the EIS.

Sincerely,

Michael Rondeau

Michael Rondeau, CEO
Cow Creek Band of Umpqua Tribe of Indians

February 3, 2015

"DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Mr. Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs, NW Region
911 Northeast 11th Avenue
Portland, OR 97232-4165

Dear Mr. Speaks:

My name is Anne Batzer and I work with the Cow Creek Umpqua Indian Foundation as a Program Officer. With the rest of the staff at the Foundation, I review grant applications and visit with local non-profit organizations that seek the Foundation's support.

The Cow Creek Umpqua Indian Foundation's goals are to support family, advance education, and, in recent years, make sure people are fed.

Since the Cow Creek Umpqua Indian Foundation's beginning in 1997, the Foundation has awarded more than $14,250,000 to seven counties in Southern Oregon - Coos, Deschutes, Douglas, Jackson, Josephine, Klamath, and Lane Counties. Jackson County has received $2,657,177. When amortized, this figures out to be $13,025 per month, for the last 16 years, to non-profit organizations in Jackson County.

Because of my 25 years of working with various nonprofits, I am very familiar with the high quality and critically important services these organizations in Jackson County provide.

The Cow Creek Foundation's ability to support and assist children and families in our region is directly linked to profits from the Cow Creek's only casino, a Class III facility, Seven Feathers Casino Resort.

The proposed Coquille Class II facility would potentially cut in half all profits from Seven Feathers according to a study by Nathan and Associates, a nationally renowned economic analysis firm.

Class II casinos are not asked to give charitably.

A very probable scenario could be that non-profits in Jackson County and throughout southwestern Oregon that our Foundation had supported would no longer receive funding. This is a serious matter in a community.

It's a matter that has impactful socioeconomic implications for Medford and all of the Rogue Valley.

Thank you,

Anne Batzer
Cow Creek Umpqua Indian Foundation
2371 NE Stephens Street
Roseburg, Oregon 97470

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
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Phone: 541-672-9405
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February 3, 2015

Responding: Jacob Ansures
40 South Central Avenue
Medford, Oregon 97501

"DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11thAvenue
Portland, Oregon 97232-4165

Dear Director Speaks:

I would ask that during the NEPA process, and while looking at alternatives, your office takes into account the disastrous outcome that interpreting the Coquille's Restoration Act as automatically qualifying all lands in its five-county service area—15,603 square miles of Coos, Curry, Douglas, Jackson, and Lane counties—as gaming eligible restored lands will have on those respective counties.

As we know, in order to create parity between landless restored tribes and existing tribes, Congress provided in Section 2719 that restored tribes, such as Coquille, may obtain land and have it taken into trust for gaming purposes if certain criterion is met. Essentially, it created a situation that treated mandatory land acquisitions as reservation lands under 25 C.F.R. § 292.11(a)(1)—making them almost automatically gaming eligible—and discretionary land acquisitions as off-reservation lands under 25 C.F.R. § 292.11(a)(2)—subjecting their eligibility for gaming to stricter scrutiny.

Coquille asserts that its Restoration Act provides the authority to take all land in its service area into trust—which would put 15,603 square miles of Oregon lands, spanning five counties, in the category to be treated as, essentially, its original reservation: No need for gubernatorial approval; no taking into account the effect that the gaming operation will have on the surrounding community; no limitations on distance from existing tribal lands and population; no need to show a modern, temporal, or historical connection to the land; and, most importantly, no limitation on the number of gaming operations that the tribe might open in its 15,603 square mile service area.

Allowing this land to be taken into trust under 292.11(a)(1), in other words, will allow Coquille to open up casinos throughout the greater State of Oregon, with no limit. In addition, it will set a precedent for all other tribes with similar restoration acts—such as the Ysleta del Sur Pueblo, the Keweenaw Bay Indian Community, and the United Auburn Indian Community—to operate gaming facilities on lands to which they have no historic connection. Virtually anywhere they please.

This is not what Congress intended. Congress intended two things: (1) to put newly restored tribes on an equal footing with existing tribes and (2) to give states and local communities a voice when off-reservation casinos are considered. Coquille is attempting to avoid the impact of federal law and, if Interior allows it to do so, will open the floodgates for gaming far beyond Indian Country, throughout the Nation. This effect needs to be taken into account during the NEPA process—on both national and local levels.

Sincerely,

Jacob Ansures
Tribal Member
Cow Creek Band of Umpqua Tribe of Indians

February 3, 2015

Responding: Andrea Davis
2371 NE Stephens Street, Suite 100
Roseburg, Oregon 97470

"DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11thAvenue
Portland, Oregon 97232-4165

Dear Director Speaks:

My name is Andrea Davis.

I am a Cow Creek Band of Umpqua Tribe of Indians Tribal Member. I am also the Director of Human Services for the Cow Creek Tribe.

I work closely with our Elder's Program, our Energy Assistance Program, our Tribal Food Bank, our Safety Program, our Child Care Assistance Program, and our Project Warmth-Shoes and Coats programs. All of these programs rely heavily on revenues generated by 7 Feathers Casino and Resort in Canyonville, Oregon. It is my understanding that if you were to approve a Casino in Medford for the Coquille Indian Tribe, 7 Feathers would lose 50% of its revenue. Such a steep decrease in revenues would severely reduce the important service my Tribe provides to our children, elders, employees, and other members. Many of our tribal members will have nowhere else to turn for the help the Tribe is currently providing them.

Your decision regarding the Medford Casino will not only impact the next few generations, nor the next 7 generations, but it will impact all future generations of my Tribe. Please decide against the Medford Casino. The Coquille should not benefit from our loss.

Sincerely,

Andrea Davis, Tribal Member
Cow Creek Band of Umpqua Tribe of Indians

T-10

February 3, 2015

"DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Mr. Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs, NW Region
911 Northeast 11th Avenue
Portland, OR 97232-4165

Dear Mr. Speaks:

My name is Kaitlyn Lee.

I am a Cow Creek Band of Umpqua Tribe of Indians Tribal Member, a resident of the Rogue Valley, and a student at Southern Oregon University. I have lived in the Rogue Valley all of my life, and I have been a student at SOU for 3 years. This coming spring I will be graduating from Southern Oregon University and I plan to continue my education to become a Social Worker

I have been told that the Coquille Indian Tribe wants to put a Casino in Medford, Oregon. I ask you today to please consider how the Coquille Casino will impact the services my Tribe provides its members. My Tribe provides many essential services to our Elders, to our youth, and to our general membership. I am one of several Tribal members who have benefited greatly from the educational support and services that my Tribe provides through the many programs, a few of the many such as youth education programs, higher education/college and universities, and vocational education.

Our experts have said that the Coquille's Medford Casino would reduce the revenue to 7 Feathers, our facility in Canyonville, by over 50%. This reduction in revenue will severely reduce the services my Tribe provides, and the jobs my Tribe provides the community. My Tribe currently employs over 1070 tribal and non-tribal people. Almost 500 of these people will be at risk of losing their job if you allow Coquille to build a casino in Medford. Students like myself will also encounter significant hardship as the Tribe reduces its funding of educational services.

The reduction in services will impact more than just myself. My community here in the Rogue Valley will also suffer economically because students like me will no longer be able to pay as much for housing, food, transportation, and other services that are an important part of the economy here in the Rogue Valley. So I ask you today to disapprove the Medford Casino.

Thank you,

Kaitlyn Lee
Cow Creek Tribal Member
1018 Olympic Ave,
Medford, OR, 97504

T-11

February 3, 2015

Responding: Vera Jones
25 Eagle View Drive
Eagle Point, Oregon 97524

"DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11thAvenue
Portland, Oregon 97232-4165

Dear Director Speaks:

My name is Vera Jones.

I am a Cow Creek Band of Umpqua Tribe of Indians Tribal Elder.

I received notice that the Coquille Indian Tribe has asked the Government for permission to place a Casino in Medford, Oregon. I ask you today to please consider the devastating economic impact this Casino will have on my Tribe. My Tribe's Casino in Canyonville currently receives 50% of its business from Medford and the Rogue Valley. If you were to approve the Coquille's second Casino, then my Tribe would lose at least half of its Casino revenue.

The loss of revenue would directly and severely impact services my Tribe provides to its members, including Tribal children and Tribal Elders. These services include emergency assistance, educational program, workforce, health insurance, housing program, cultural opportunities, elder benefits and burial benefits. My Tribe currently has 131 Elders who depend on Tribal services. We have limited resources already, and we would suffer greatly from a 50% reduction in services.

I ask you today to consider the severe negative socio-economic impact the Cow Creek Tribe would experience if you allow Coquille to place a Casino in Medford. The Coquille tribe should not enrich itself at the expense of my Tribe's welfare. Please deny the Coquille's application.

Sincerely,

Vera Jones

Vera Jones, Tribal Member
Cow Creek Band of Umpqua Tribe of Indians

T-12

Elk Valley
Rancheria,
California

2332 Howland Hill Road
Crescent City, CA 95531

Phone: 707.464.4680
Fax: 707.465.2638
www.elk-valley.com

February 6, 2015

VIA POSTAL SERVICE

Dr. BJ Howerton
Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, Oregon 97232

Re: Notice of Intent to Prepare EIS for Coquille Indian Tribe's Proposed Fee to Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon

Dear Dr. Howerton:

The Elk Valley Rancheria, California, a federally recognized Indian tribe (the "Tribe"), hereby submits its comments regarding the above-referenced matter.

The Tribe understands that the proposed action would approve the transfer of approximately 2.4 acres of land from fee to trust status and the Coquille Indian Tribe would renovate the existing bowling alley to convert it to a tribal government gaming facility.

The Tribe recommends that in addition to the areas identified in the Notice of Intent, the following issues be analyzed in the EIS:

- Project alternatives, including reduced intensity alternatives, non-gaming alternatives, alternative site options; and no action alternatives; and

- Regional socio-economic impacts associated with the proposed addition of tribal governmental gaming in Southern Oregon, including impacts to those tribes located within 100 miles of Medford, Oregon.

Thank you for your consideration of these issues in the EIS. We look forward to reviewing the Draft EIS when it is available.

Sincerely,

Dale A. Miller

Dale A. Miller
Chairman

T-13

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

February 11, 2015

15RD-0276

VIA FED EX, U.S. CERTIFIED MAIL & EMAIL

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232–4165

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Director Speaks:

The Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Tribe") submits these comments on the scope of the Environmental Impact Statement ("EIS") that the Bureau of Indian Affairs ("BIA") will prepare pursuant to the National Environmental Policy Act ("NEPA"), in assessment of the environmental impacts of the Coquille Indian Tribe's ("Coquille") application for a proposed 2.4-acre fee-to-trust transfer and casino project in the City of Medford, Jackson County, Oregon. The Cow Creek Tribe appreciates the opportunity to provide these comments as part of the BIA's NEPA process and requests that the comments be included in the administrative record, and that the comments be addressed and incorporated, as appropriate, as the BIA prepares its scoping report and begins preparation of an EIS.

I. NEPA Scoping Requirements

Scoping is defined as an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." 40 C.F.R. §§ 1501.7, 1508.25; *see also* BIA NEPA Handbook, § 8.3.3. Scoping should be commenced when there is "enough information available on the proposal so that the public and relevant agencies can participate effectively." Executive Office of the President: Council on Environmental Quality, Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (March 23, 1981). The agency should provide adequate information to "help the interested public to understand what is being proposed" and "enable participants to make an intelligent contribution to scoping the EIS." Executive Office of the President: Council on Environmental Quality, Memorandum for General Counsels,

NEPA Liaisons and Participates in Scoping: Scoping Guidance (April 30, 1981). To determine the appropriate scope of the EIS, the BIA must consider the proposed action, including connected, cumulative and similar actions; a reasonable range of alternatives, including a no action alternative; and impacts, which may be direct, indirect or cumulative. *See* 40 C.F.R. § 1508.25. Scoping should assist the BIA in determining the alternatives and the significant issues that will be analyzed in the EIS. *Id.*

NEPA's implementing regulations, promulgated by the Council for Environmental Quality ("CEQ"), require a lead agency to "[r]equest the participation of each cooperating agency in the NEPA process at the earliest possible time." 40 C.F.R. § 1501.6. The Department of the Interior's ("DOI") regulations also require the lead agency to "invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an environmental impact statement." 43 C.F.R. § 46.225. "An affected Indian tribe . . . may similarly become a cooperating agency." BIA NEPA Guidebook, § 8.2.3. "Cooperating agencies should be identified and confirmed in writing by the time the scoping process is completed." *Id.*

At a minimum, the BIA must consult with tribal governments, like the Cow Creek Tribe, that are affected by a proposed action. NEPA's implementing regulations requires an agency to "consult[] early with appropriate . . . Indian tribes . . ." 40 C.F.R. § 1501.2(d)(2). DOI's own regulations separately require the lead agency to "whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities." 43 C.F.R. § 46.155. Likewise, the BIA's NEPA Guidebook requires: "Tribal governments and their delegated tribal programs should not only be consulted, but should be partners with the BIA in the NEPA process . . .", BIA NEPA Guidebook, § 2.3. On these topics of consultation and partnership, the BIA should also consider the prior letters submitted by the Cow Creek Tribe on January 20, 2015 and January 27, 2015, regarding notice and consultation in accordance with NEPA statutes, regulations and agency policies, and cooperating agency status under NEPA, respectively. The Cow Creek Tribe remains concerned that the BIA did not initially provide the Cow Creek Tribe with individual notice of the initial public scoping meeting that occurred on February 3, 2015.

When the scoping process is completed, the BIA will prepare a scoping report that shall include: a statement of the purpose and need for the proposed action; the alternatives being considered; a summary of the significant issues identified during the scoping process; a list of agencies which have agreed to be cooperating agencies; and a summary of any scoping meetings that were held. BIA NEPA Guidebook, § 8.3.5. A copy of the scoping report shall be provided to affected tribe(s), any cooperating agencies, and any person who requested a copy." *Id.*

II. Specific Comments on the Scope of the Coquille EIS

a. Notice of Intent

NEPA's implementing regulations provide that a notice of intent to prepare an EIS "shall briefly . . . [d]escribe the proposed action and possible alternatives." 40 C.F.R. § 1508.22(a); *see also* BIA NEPA Handbook, § 8.3.2(1). The Notice of Intent to prepare the Coquille EIS ("NOI") announced the beginning of the scoping process, and solicited public comments on the proposed action. As previously indicated, scoping is defined as an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." 40 C.F.R. §§ 1501.7, 1508.25; *see also* BIA NEPA Handbook, § 8.3.3. When there is insufficient information about a proposed action, it makes it difficult to participate in the scoping process, as participants will have trouble identifying potential alternative actions or significant issues. As the CEQ's guidance on scoping makes clear, "[s]coping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a coherent proposal and a suggested initial list of environmental issues and alternatives." CEQ Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping, Section II.B.1 (April 30, 1981); *see also* CEQ Guidance Regarding NEPA Regulations (July 22, 1983), 48 Fed. Reg. 34262.

Here, the NOI does not meet the requirements of NEPA; the NOI does not provide adequate detail regarding the proposed action and entirely failed to list any of the alternatives that the BIA will consider in preparing the EIS. Accordingly, this lack of information made it difficult for the Cow Creek Tribe to identify significant issues and evaluate the sufficiency of any alternatives, both at the initial public scoping meeting on February 3, 2015 and during the drafting of these written scoping comments.

b. Purpose and Need

The BIA should better define the purpose and need for the proposed action. The NOI very broadly states that the "Tribe's stated purpose of the Proposed Action is to improve the economic status of the Tribe." The purpose and need for a proposed action dictates the reasonable range of alternatives that must be evaluated in an EIS. *See e.g.*, *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 865 (9th. Cir. 2004). Thus, an overly broad purpose and need statement makes it difficult to determine what alternatives are reasonable. In other words, without a well-defined purpose and need statement, an agency cannot identify, and the public cannot evaluate, whether an adequate range of reasonable alternatives are being evaluated in an EIS.

The BIA should use the NEPA scoping process, and the separate, but related tribal consultation process, to further define and clarify the purpose and need for the proposed action. The purpose and need for a proposed action must clearly answer, at a minimum, the following questions, "What Federal action triggered NEPA? Why here? Why now?" BIA NEPA Handbook, §§ 8.4.5; 6.4.3. "The proposed action and alternatives must address the purpose and need directly." BIA NEPA Handbook, §§ 8.4.5 (citing 40 C.F.R. § 1502.13). Accordingly, in the draft EIS, the purpose and need should be more clearly defined, explaining why the proposed action is needed, at this moment, in this location.

c. Alternatives

NEPA requires an EIS to "[r]igorously explore and objectively evaluate all reasonable alternatives . . ." 40 C.F.R. § 1502.14(a). An EIS must consider a no action alternative. 40 C.F.R. § 1502.14(d). As previously discussed, the BIA has not produced a list of the alternatives that will be considered in the EIS. In determining a reasonable range of alternatives, the BIA should consider that the Coquille currently operates a gaming establishment, the Mill Casino in North Bend, Oregon. As the Coquille have an existing casino, an expansion or improvement of the Mill Casino is a reasonable alternative, as it would meet the broad purpose provided in the NOI, to "improve the economic status" of the Coquille. Further, it would avoid many of the detrimental effects of the proposed action. Accordingly, the EIS should consider, as an alternative, the expansion or improvement of the Mill Casino. The EIS should also consider whether a gaming establishment on an alternative site would satisfy the purpose. Preferably, the alternative site would be located on land that has a more geographical and historical link to the Coquille. The EIS should also include an analysis of whether there are any non-gaming alternatives that would meet the Coquille's purpose.

d. Public Scoping Meeting

The public scoping meeting took place on February 3, 2015. To our knowledge, neither the BIA nor the meeting facilitators provided any information packet, or supplemental information or other documentation (e.g., site plans or renderings), regarding the proposed action during the public scoping meeting. It would have been helpful if the meeting attendees had been provided with any such information packets about the proposed action. The CEQ recommends that an agency "put together a brief information packet consisting of a description of the proposal, an initial list of impacts and alternatives, maps, drawings, and any other material or references that can help the interested public to understand." *See* Executive Office of the President: Council on Environmental Quality, Memorandum for General Counsels, NEPA Liaisons and Participates in Scoping: Scoping Guidance (April 30, 1981). "[T]he purpose of the information is to enable participants to make an intelligent contribution to scoping the EIS what is being proposed." *Id.* Accordingly, the BIA should have information regarding the proposed action available during the public scoping meeting, in order to encourage an effective scoping process.

Further, at the public scoping meeting, many of the oral comments that were provided were inaudible due to audio deficiencies. The meeting facilitators were informed of this issue during the meeting, by several attendees. We believe that the public scoping meeting would have been more effective if oral scoping comments made by the public would have been made in a manner that allowed all participants to hear the comments. If everyone could have heard the scoping comments, it would have generated more discussion and given participants an opportunity to ask questions and discuss the proposal as a group. As the CEQ has recognized, some of the "best effects of scoping" result when "all parties have the opportunity to . . . listen to the concerns of others" and the participants in a scoping meeting have the opportunity to discuss the proposal and

concerns raised by others. *See* Executive Office of the President: Council on Environmental Quality, Memorandum for General Counsels, NEPA Liaisons and Participates in Scoping: Scoping Guidance (April 30, 1981). Here, the Cow Creek Tribe, and other participants, were unable to consider the comments of others when offering our own comments.

e. Procedural Issues

i. IGRA's Two-Part Determination

The EIS should consider whether the proposed action should be subject to the two-part determination process outlined in the Indian Gaming Regulatory Act ("IGRA"). In general, the IGRA prohibits gaming being conducted on land acquired after 1988. The IGRA provides two exceptions. First, gaming will be allowed if the applicant tribe fulfills a "two-part determination process," which requires (1) consultation with state and local officials, including officials of other nearby Indian tribes; (2) a determination that the gaming establishment will be in the best interests of, and not detrimental to, the surrounding community; and (3) approval from the Governor of the State. 25 U.S.C. § 2719(b)(1)(A). Second, gaming is allowed on "restored lands," which requires, if a tribe is already conducting gaming on other lands, that a tribe's restoration act ""requires or authorizes the Secretary to take land into trust for the benefit of the tribe." 25 C.F.R. § 292.11(a)(1).

The purpose of the restored land exception is not to "advantage restored tribes relative to other tribes." *Redding Rancheria v. Salazar*, 881 F. Supp. 2d 1104, 1104 (N.D. Cal. 2012). Rather, the restored land exception "embodies a policy of promoting parity between restored and other tribes." *Id.*; *see also City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003) ("[T]he exceptions in IGRA § [2719](b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones."); *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S Attorney for the Western District of Michigan*, 198 F. Supp. 2d, 920, 935 (W D. Mich. 2002) (noting that the term "restoration maybe read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion."). The Coquille's interpretation of the IGRA, discussed in detail below, is contrary to the purpose of the restored lands exception. The proposed action has the ability to act as a catalyst for the rapid expansion of tribal gaming. If the proposed action goes forward, it will indicate that the Coquille have the authority to take lands into trust, for the purposes of economic gain, within any of the five counties in their service area, including Coos, Curry, Douglas, Jackson, and Lane Counties. Allowing the proposed action to qualify under the restored lands exception would set a dangerous precedent, allowing tribes to establish gaming establishments far away from lands with which they share any geographic or historical connection.

If the Coquille wishes to complete the proposed action, it should be required to pursue a two-part determination, which, in turn, requires a determination that the

proposed action is in the best interests of, and not detrimental to, the surrounding community. Indeed, Coquille's original fee-to-trust application with the BIA expressly relies on both the Coquille Restoration Act and the Indian Reorganization Act of 1934 ("IRA"). Coquille Restoration Act, Pub. L. No. 101-42, June 28, 1989, 103 Stat 91; 25 U.S.C. § 461 *et seq.* However, now the Coquille seeks to avoid the two-part determination process, arguing that the Coquille Restoration Act, alone, authorizes the Secretary to take the land associated with the proposed action into trust. While the Coquille Restoration Act required the Secretary to take land into trust in Coos and Curry Counties, the taking of land into trust in other counties, like Jackson County, "may" be authorized "pursuant to his authority under" the IRA. Coquille Restoration Act, § 5(a). In other words, the Coquille Restoration Act does not independently authorize the Secretary to do anything. Rather, as Coquille admits in its original fee-to-trust application, the Coquille Restoration Act indicates that the IRA provides the discretionary authority for the Secretary to take lands outside of the Coos and Curry Counties into trust. As the Coquille Restoration Act does not, in and of itself, authorize the Secretary to take land into trust for the benefit of Coquille, the restored lands exception is inapplicable, the IRA is applicable, and the Coquille must pursue a two-part determination. The EIS should include an analysis of whether the proposed action must complete the IGRA's two-part determination process.

ii. NEPA's Hard Look Requirement

Courts have consistently held that, at a minimum, NEPA imposes a duty on Federal agencies to take a "hard look at environmental consequences." *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972). Accordingly, it is important that the NEPA process be conducted carefully, thoroughly, and in a way that allows the BIA to take a hard look, as required by NEPA, before making a decision on the proposed action. The BIA anticipates that a draft EIS could be completed as early as summer of this year, and anticipates that a final EIS could be completed as early as spring of 2016. This estimate seems optimistic, and does not foster confidence that the BIA is going to engage in the careful, thorough analysis that is warranted in this case.

The NEPA demands a thorough process. An agency must consider and incorporate the public's comments in a scoping report; perform the necessary and appropriate investigation and analysis of impacts to produce a comprehensive and thorough draft EIS; hold public hearings and solicit written public comments on the draft EIS; consider and incorporate or address such comments and produce a final EIS; address any comments submitted after publication of the final EIS in the record of decision; as well as engage in the required review and coordination of preliminary draft documents with cooperating agencies. This process cannot be rushed; the BIA cannot reach a decision on the Coquille's application without full consideration of the environmental impacts and potential detriment to the surrounding community.

iii. Premature Demolition of Contiguous Fee Land

The Coquille has prematurely started demolition on contiguous fee land. Prior to the public scoping meeting, the BIA provided to the Cow Creek Tribe a Proposed Site Plan. Scoping Meeting Exhibits, Exhibit B.[1] The Proposed Site Plan includes areas marked as "Potential Parking Area[s]." As demonstrated on the Proposed Site Plan, there was a structure on one of these Potential Parking Areas, a structure that sat on the southeast corner of Rouge Valley Highway 99 and Charlotte Ann Road. It has come to the attention of the Cow Creek Tribe that the structure shown on the Proposed Site Plan has recently been demolished by the Coquille. Accordingly, it appears as if the Coquille has begun construction, prior to the completion of the NEPA process.

f. Detrimental Impacts

To determine the scope of an environmental impact statement, an agency shall consider the proposed action, including connected, cumulative and similar actions; a reasonable range of alternatives, including a no action alternative and mitigation measures; and the impacts of the proposed action. 40 C.F.R. § 1508.25. An EIS must analyze the direct, indirect, and cumulative impacts of a proposed action on the environment. *Id.* Here, there are numerous detrimental impacts of the proposed action; the BIA must identify and thoroughly analyze these impacts in the EIS. Additionally, the EIS must also identify and evaluate all practicable mitigation measures that may be used to avoid, minimize or otherwise address such detrimental impacts. *See* 40 C.F.R. § 1508.20.

i. Land Resources

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on land resources, including, without limitation:

- Soil, including soil quality and any potential erosion;
- Wetlands and any associated wildlife and vegetation;
- Topography caused by grading;
- Drainage, including the ability to provide for effective drainage and the impact of contaminated stormwater, wastewater, and other pollutant discharges on soils;
- Mineral resources/deposits; and
- Geologic hazards.

The EIS should also describe any steps that will be taken to ensure compliance with federal and state laws and policies governing land use and hazardous waste.

[1] The Cow Creek Tribe received this Exhibit via email from Dr. B.J. Howerton of the BIA on February 2, 2015, but no such information was provided at the public scoping meeting.

In particular, the EIS should address whether the proposed action will have any impact on the wetlands immediately surrounding the proposed site. The proposed site for the Medford Casino is in close proximity to three wetland areas that lay alongside Bear Creek. These three wetland areas consist of approximately 9.31 acres of freshwater forested/shrub wetlands. In the EIS, the BIA should consider whether a wetland mitigation plan is necessary.

ii. Water Quality

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on water resources, including, without limitation:

- Surface water and the wetlands, including the impact of contaminated stormwater, wastewater, and other pollutant discharges, erosion, and sedimentation on the quality of surface waters and wetlands;
- Groundwater, including the impact of contaminated stormwater, wastewater, other pollutant discharges on groundwater; and
- Floodplains.

The EIS should also analyze the impacts of any changes in water quality on terrestrial and aquatic wildlife and vegetation, including any species listed as threatened or endangered by the state or federal government. The EIS should also consider whether the proposed action would impact tribal water rights. The EIS should also describe any steps that will be taken to ensure compliance with federal and state laws and policies governing water and water quality, including the Clean Water Act.

The EIS should consider whether the proposed action would have any impact on the protected riparian corridors immediately surrounding the proposed site. The proposed site for the Medford Casino is in close proximity to Gore Creek and Bear Creek. The City of Medford's Riparian Corridors Ordinance protects both of the creeks. Medford Municipal Code §§ 10.920-10.928. Accordingly, any activities that impact the creeks must comply with the permitted uses and permit requirements contained in the Riparian Corridors Ordinance. The EIS should ensure that compliance with the Riparian Corridors Ordinance and outline any impacts to the creeks.

iii. Air Quality

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on air quality and the effects of any diminished air quality on:

- The governments of the City of Medford and the Jackson County, and other surrounding communities;
- Public health, including the health of children, the elderly, and persons with respiratory illnesses living in the area affected by diminished air quality;

- The region's compliance with federal air quality standards; and
- Wildlife and vegetation, including any species listed as threatened or endangered by the state or federal government.

The EIS should also analyze whether the proposed action will result in increased vehicular traffic and the impact of that traffic on air quality. The EIS should also describe any steps that will be taken to ensure compliance with federal and state laws and policies governing air and air quality, including the Clean Air Act.

iv. Biological Resources

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on biological resources, including, without limitation;

- Wildlife (aquatic and terrestrial) and vegetation, including any species listed as threatened or endangered by the state or federal government.

The EIS should also describe any steps that will be taken to ensure compliance with federal and state laws and policies governing biological resources, including the Endangered Species Act.

v. Cultural Resources

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on archaeological, historical and cultural resources at the proposed site. The EIS should also describe any steps that will be taken to ensure compliance with federal and state laws and policies protecting archaeological, historical, and cultural resources, including the National Historic Preservation Act and the Archaeological Resources Protection Act.

As part of the EIS process, the BIA should conduct a physical field survey of the proposed site to identify any archaeological, historical, and cultural resources. The EIS process should also include a cultural records search and consultation with the State Historic Preservation Office and Native American Heritage Commission.

The EIS process should also include consultation with affected federal and state recognized tribes under Section 106 of the National Historic Preservation Act. The Cow Creek Tribe and Karuk Tribe, both of which are federally recognized, and the Shasta Indian Nation, which is state recognized, have previously submitted written or oral comments to the BIA regarding archaeological, historical and cultural resources that may be impacted by the proposed action. There are other tribes in Oregon or California that may also be considered affected tribes, for the purposes of Section 106.

vi. Socio-Economic Conditions

The NOI announced the BIA's decision to prepare an EIS. While "[e]conomic or social effects are not intended by themselves to require preparation of an environmental impact statement," once an agency has decided to prepare an EIS, "the environmental impact statement will discuss [the] effects on the human environment," including "economic or social and natural or physical" effects. 40 C.F.R. § 1508.14. *See also* 40 C.F.R. § 1508.8 (defining effects to include economic and social effects).

Accordingly, the EIS should analyze the impacts to gaming competitors, including the impacts on revenue, social services, and employment. Both the Cow Creek Tribe and the Karuk Tribe operate casinos that would be in direct competition to the proposed Medford Casino. The Cow Creek Tribe operates the Seven Feathers Hotel and Casino Resort in Canyonville, Oregon. A recent analysis suggested that the proposed action, if implemented, would have the following impacts:

- Seven Feathers Casino Resorts' gross gaming revenues will be $12.9 million (or 21.1%) less in the first year of the proposed Medford Casino's opening (CY 2017).
- Seven Feathers' non-gaming revenues will be approximately $2.8 million (or 11.3%) less in the first year of the proposed Medford Casino's opening (CY 2017).
- The proposed Medford Casino will thus capture or divert approximately $15.7 million in gross revenues (an 18.3% loss) that otherwise would have gone to Seven Feathers, in only the first year of operation.

Seven Feathers Casino Report: Market Impact of a Proposed Medford Casino, November 2014. Therefore, the proposed action demonstrates a significant, detrimental, economic impact on the Cow Creek Tribe's governmental revenues. The Cow Creek Tribe uses its governmental revenues to fund education, health and social services for tribal members. Accordingly, implementation of the proposed action could jeopardize the Cow Creek Tribe's ability to care for our elders, to provide our children with educational opportunities, and to continue providing other social services that our tribal members need and depend upon. The proposed action could also impact the Cow Creek Tribe's ability to support local governments, contribute to local infrastructure, provide employment opportunities and support related economic development in the area. These impacts should be analyzed in the EIS.

The EIS should also address the impact on non-profit organizations in the community. For example, the proposed action could negatively impact the Oregon Lottery. The revenue from the Oregon Lottery is used to fund the Oregon Watershed Enhancement Board ("OWEB"). The OWEB then, in turn, uses the funds to issue grants protecting local streams, rivers, wetlands and natural areas. In addition to restoration work, the OWEB issues some of these grants to support watershed counsils, across the

state. Accordingly, the EIS should include the potential impact on this statewide program, and other non-profit programs that will be impacted by the proposed action.

The EIS should also consider the impact of the proposed action on the character of the City of Medford and Jackson County. The EIS should consider whether the proposed action would increase the availability of gaming and alcohol to the surrounding communities. The EIS should analyze whether the proposed action would result in an increase in addictive behaviors such as alcoholism and problem gambling.

vii. Resource Use Patterns

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on resource use patterns. Specifically, the EIS should consider the impact on local and regional transit systems, including any potential increase in traffic congestion and automobile accidents. The EIS process should include the development of a traffic plan, in conjunction with local governments.

viii. Public Services

The EIS should analyze the direct, indirect, and cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on the following public services, without limitation:

- Water;
- Wastewater treatment;
- Electricity;
- Natural gas;
- Police and fire protection;
- Schools;
- Social services; and
- Solid and hazardous waste disposal.

The EIS should analyze the impact on the availability of public services and whether there will be increased costs with providing the public services.

ix. Cumulative and Indirect Impacts

A cumulative impact is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. The purpose of a cumulative effects analysis is to ensure the agency "considers the full range of consequences of the proposed action and alternatives." BIA NEPA Handbook, § 7.3. As discussed in the preceding sections, the EIS should analyze the cumulative impacts of all phases of the construction and operation of the proposed Medford Casino on land, water, air and biological and cultural resources. Additionally, the EIS should develop a list of reasonably foreseeable

future actions and projects and includes these projects in the cumulative analysis. The list of future actions and projects should include any transportation projects, commercial development projects, infrastructure projects, and any potential expansion of existing wastewater treatment facilities.

Direct effects "are caused are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8. In contrast, indirect effects "are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* Both direct and indirect effects are considered in an EIS, in order "to make certain that no effects are overlooked." BIA NEPA Handbook, § 7.2. Indirect effects may include "growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." 40 C.F.R. § 1508.8. The EIS should include an analysis of indirect effects, including the indirect effects to public services from increased commercial development, the indirect effects on water resources from mitigation measures (such as off-site roadway and intersection improvements) and the indirect effects on the environment from changes to patterns of land use.

III. Conclusion

In conclusion, we appreciate the opportunity to comment on the BIA's scoping process and participate in the ongoing NEPA review process for this project. We expect that the BIA will consider the Cow Creek Tribe's comments as it conducts its review, fairly, openly and in compliance with the law. If you have any questions concerning these comments, or if you require any additional information, please feel free to contact me.

Sincerely,

Dan Courtney

Dan Courtney, Chairman
Cow Creek Band of Umpqua Tribe of Indian

T-14

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

February 11, 2015

15RD-0272

VIA FED EX, U.S. CERTIFIED MAIL & EMAIL

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
U.S. Department of the Interior
911 Northeast 11th Avenue
Portland, Oregon 97232–4165

Re: Extension of Time for Public Scoping Comments on Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Director Speaks:

The Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Tribe") will be submitting comments on the scope of the Environmental Impact Statement ("EIS") that the Bureau of Indian Affairs ("BIA") will prepare pursuant to the National Environmental Policy Act ("NEPA"), assessing the environmental impacts of the Coquille Indian Tribe's ("Coquille") application for a proposed 2.4-acre fee-to-trust transfer and casino project in the City of Medford, Jackson County, Oregon.

Currently, the Notice of Intent provides that the deadline to submit public scoping comments is February 17, 2015. As outlined below, there have been multiple issues during the scoping process that have negatively impacted the public's ability to provide significant comments. Accordingly, many of our constituents have expressed concern to tribal leaders about the inadequate length of time provided to the public to submit comments. Tribal members have made it clear that they do not think the current deadline provides enough time for them to develop significant comments. Accordingly, the Cow Creek Tribe is formally requesting an extension of time, the deadline to submit public comments should be extended an additional thirty (30) days.

The Notice of Intent provided by the BIA is inadequate, making it difficult for the public to provide scoping comments. NEPA's implementing regulations provide that a notice of intent to prepare an EIS "shall briefly . . . [d]escribe the proposed action and possible alternatives." 40 C.F.R. § 1508.22(a); *see also* BIA NEPA Handbook, § 8.3.2(1). Here, the NOI does not even meet these basic requirements, as it does not

provide adequate detail regarding the proposed action and entirely failed to list any of the alternatives that the BIA will consider in preparing the EIS. This lack of information makes it difficult for the public to submit both oral comments, at the public scoping meeting, and written comments, during the public scoping period. Scoping is defined as an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." 40 C.F.R. §§ 1501.7, 1508.25; *see also* BIA NEPA Handbook, § 8.3.3. As the Council on Environmental Quality's guidance on scoping makes clear, "[s]coping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a coherent proposal and a suggested initial list of environmental issues and alternatives." CEQ Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping, Section II.B.1 (April 30, 1981); *see also* CEQ Guidance Regarding NEPA Regulations (July 22, 1983), 48 Fed. Reg. 34262. Here, because of the limited information provided in the NOI, the public scoping process has been hindered.

The public scoping meeting took place on February 3, 2015. To our knowledge, neither the BIA nor the meeting facilitators provided any information packet, or supplemental information or other documentation (e.g., site plans or renderings), regarding the proposed action during the public scoping meeting. It would have been helpful if the meeting attendees had provided with any such information packets about the proposed action. The CEQ recommends that an agency "put together a brief information packet consisting of a description of the proposal, an initial list of impacts and alternatives, maps, drawings, and any other material or references that can help the interested public to understand." *See* Executive Office of the President: Council on Environmental Quality, Memorandum for General Counsels, NEPA Liaisons and Participates in Scoping: Scoping Guidance (April 30, 1981). "[T]he purpose of the information is to enable participants to make an intelligent contribution to scoping the EIS what is being proposed." *Id.* Accordingly, the BIA should have had additional information regarding the proposed action available during the public scoping meeting, in order to encourage a useful and effective scoping process.

Further, at the public scoping meeting, many of the oral comments that were provided were inaudible due to audio deficiencies. The meeting facilitators were informed of this issue during the meeting, by several attendees. We believe that the public scoping meeting would have been more effective if oral scoping comments made by the public would have been made in a manner that allowed all participants to hear the comments. If everyone could have heard the scoping comments, it would have generated more discussion and given participants an opportunity to ask questions and discuss the proposal as a group. As the CEQ has recognized, some of the "best effects of scoping" result when "all parties have the opportunity to . . . listen to the concerns of others" and the participants in a scoping meeting have the opportunity to discuss the proposal and concerns raised by others. *See* Executive Office of the President: Council on Environmental Quality, Memorandum for General Counsels, NEPA Liaisons and Participates in Scoping: Scoping Guidance (April 30, 1981). Here, the Cow Creek Tribe, and other participants, was unable to consider the comments of others when offering our own comments.

Due to the inadequate amount of information furnished to the public during the public scoping process, and the other deficiencies discussed above, the Cow Creek Tribe requests that the BIA provide additional information regarding the proposed action and extend the periods for the public to submit comments on the scope of the EIS for the proposed action.

Thank you for your consideration.

Sincerely,

Dan Courtney

Dan Courtney, Chairman
Cow Creek Band of Umpqua Tribe of Indian

cc: Dr. BJ Howerton

T-15

UMPQUA COMMUNITY COLLEGE
FOUNDATION
Partners in Excellence

February 18, 2015

Director Stan Speaks
Regional Director, BIA, Northwest Region
911 NE 11th Avenue
Portland, OR 97232-4165

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Dear Director Speaks,

I am the President of the Umpqua Community College Foundation Board. We are a 501(c)(3) entity with forty (40) prominent community members on our Board from throughout Douglas County. I am writing to request your denial of the Coquille Indian Tribe's efforts to encroach on the ancestral land of the Cow Creek Band of the Umpqua Tribe of Indians in Medford, Oregon. We view their petition to establish a gaming facility in Medford as an existential threat to the Cow Creek Tribe.

Nearly one hundred of our citizens were laid off last week by the Cow Creek Tribe in their attempt to prepare for a lawsuit in this matter. We have endured difficult financial circumstances for many years and have one of the Oregon's most challenging economies. The federal government owns 48% of our total county acreage and their rules on our timber lands have decimated our economy. The Cow Creek Tribe and their Seven Feather's property have employed many people in our community and brought visitors to our area.

The Cow Creek Umpqua Indian Foundation has granted over $14,000,000 to non-profits throughout Douglas County and beyond in their tribal region which extends from Lane County into northern California. Hundreds of non-profits have been helped to serve their many thousands of clients over the past fourteen years. The Cow Creek Tribe and their Board have often helped the UCC Foundation with child care grants and capital campaign needs.

Curtailment of help for non-profits and reduced employment at Cow Creek Tribal properties is unacceptable and cannot be supported by you. Please contact me if you need anything further on this matter.

Sincerely,

Neil Hummel
President, UCC Foundation

UCC
UMPQUA COMMUNITY COLLEGE

1140 Umpqua College Road | PO Box 967 | Roseburg, OR 97470 | TEL 541.440.7678 TOLL-FREE 800.820.5161 (COUNTY ONLY) | FAX 541.440.7707 | www.umpqua.edu

T-16

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

15RD-0323

February 20, 2015

VIA U.S. CERTIFIED MAIL/FACSIMILE

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
U.S. Department of the Interior
911 Northeast 11th Avenue
Portland, Oregon 97232–4165

Re: Cow Creek Band's Request to Participate as Cooperating Agency for the Coquille Indian Tribe's Fee-to-Trust and Gaming Facility Project in Medford, Oregon

Dear Director Speaks:

On January 27, 2015, the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Band") submitted a petition to participate as a cooperating agency during the environmental review process for the Coquille Indian Tribe's Fee-to-Trust and Gaming Facility Project located in Medford, Oregon ("Coquille Project"). On February 12, 2015, the Bureau of Indian Affairs ("BIA") notified the Cow Creek Band that it rejected its petition for cooperating agency status. However, the BIA notified the Cow Creek Band that it intends to consult with it on a government-to-government basis, regarding the substantial direct impacts of the Coquille Project on the Cow Creek Band and in accordance with Section 106 of the National Historic Preservation Act.

The BIA requested an initial consultation meeting with the Cow Creek Band. In response the Cow Creek Band proposes to schedule an initial consultation meeting with the BIA at our offices in Roseburg, in mid-March. At your earliest convenience, please let us know your preferred dates for that meeting. During the initial consultation meeting, we hope that the BIA and the Cow Creek Band will begin to discuss the joint creation of a tribal consultation plan that will detail the specifics of the consultation process regarding the Coquille Project.

As we previously mentioned to your agency, the National Environmental Policy Act ("NEPA") requires an agency to consult with tribes that may be impacted by a proposed action. 40 C.F.R. § 1501.2(d)(2). This requirement is recognized in the regulations and guidelines implementing NEPA, for both the Department of the Interior and the BIA. 43 C.F.R. § 46.155; BIA NEPA Guidebook, § 2.3. While NEPA does not

specify the consultation activities that an agency must perform, the Cow Creek Band would like to encourage the BIA to perform the following activities:

- Create a tribal consultation plan, which the Cow Creek Band intends to memorialize in Tribal law.
    - The plan should include major consultation milestones, details regarding the frequency of meetings, and information on how the BIA plans to coordinate consultation across disciplines, such as natural resources and cultural properties.
- Meet with the natural resource and cultural properties staff of any affected tribes.
    - These meetings should occur at the tribal offices. The consultation process may require multiple meetings.
- Provide a list of the environmental reports or technical memos the BIA expects to prepare for the proposed action to any affected tribes.

These suggested activities are based on the NEPA tribal consultation processes observed by other agencies in neighboring Washington. *See* Washington State Department of Transportation, *Model Comprehensive Tribal Consultation Process for the National Environmental Policy Act* 3:12-3:16 (July 2008). This list is not exhaustive; rather, the list serves as a starting point for the government-to-government consultation process.

As the Cow Creek Band have previously stated, in addition to NEPA and Section 106 consultation, we expect the BIA to fully consult with us in accordance with the agency's Government-to-Government Consultation Policy. We hope to also initially consult with you about the interplay of these various federally required consultation processes and related protocols.

Likewise, we expect your sister agency, the Office of Indian Gaming ("OIG"), to consult with us in accordance with the U.S. Department of the Interior's tribal consultation policy, which requires OIG to consult regarding "[a]ny Departmental . . . operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to . . . [t]he ability of an Indian Tribe to govern or provide services to its members . . ." Your request for "understanding [of] the potential socioeconomic issues" facing the Cow Creek Band in reference to the Coquille Project seems to acknowledge the substantial direct effect that project, and any related federal action, will have on our ability to govern or provide services to Cow Creek Band members. Therefore, we hope to also initially consult with you about the protocols for exchanging information such as the socioeconomic impact report you requested; and how the BIA, OIG, and any other agencies will interface with each other and the Cow Creek Band during the tribal consultation process(es).

Thank you in advance for your commitment to fully consulting with the Cow Creek Band. Having had our initial tribal consultation requests to the federal government regarding the Coquille Project denied, we are grateful for your agency's willingness to collaborate with the Cow Creek Band. We look forward to hearing from you soon.

Sincerely,

Dan Courtney

Dan Courtney, Chairman
Cow Creek Band of Umpqua Tribe of Indians

cc: Dr. B.J. Howerton

March 13, 2015

Responding: Vera Jones
25 Eagle View Drive
Eagle Point, Oregon 97524

"DEIS Scoping Comments, Coquille Tribe Fee-To-Trust & Gambling Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks:

Enclosed are 2 items related to the above mentioned issue. One is a newspaper item in today's Medford Mail Tribune; the other is a letter I submitted to your office last month. I also gave testimony based on this letter at the open meeting held in Medford February 3, 2015.

It is with the greatest respect I ask that as you evaluate this request from the Coquille Tribe you do so in a manner that is fair to all concerned. The conflict of interest expressed in today's newspaper causes me great concern.

Thank you for your time in reading this letter.

Sincerely,

Vera Jones

Vera Jones
Member of the Cow Creek Band of the Umpqua Tribe of Indians

MEDFORD CASINO PROPOSAL

Mayor cites 'conflict of interest'

Company hired by BIA to conduct study is client of Coquille tribe, city says

By Damian Mann
Mail Tribune

Medford officials fired off a 15-page letter this week to the U.S. Bureau of Indian Affairs that claims a conflict of interest in a federal process over the Coquille Indian Tribe's proposed casino in south Medford.

The letter, written by Mayor Gary Wheeler, expresses concerns over the contractor hired by the BIA to conduct the environmental analysis.

"It appears that the environmental contractor that the Department has selected and/or approved to prepare the EIS in this case is the same contractor that is used for virtually all

SEE CASINO, A3

CASINO
From Page A1

gaming-related trust acquisitions and many other tribal projects — Analytical Environmental Services ('AES')," the letter states.

The Coquille tribe is a client of AES, which the city says presents a conflict of interest. The city expressed concern that AES would fail to objectively analyze the Coquille's application with Indian Affairs.

"Indeed, AES has been alleged to have a 'revolving door' with BIA, where employees of BIA and AI have switched jobs and has history of conflict-of-intere complaints," the letter state The letter also listed numero negative effects the city fea the casino would have on tl area.

The city's concerns wi weigh into the BIA's Enviro mental Impact Statement th will analyze impacts from tl Coquilles' proposal to build casino along Highway 99. Tl tribe would convert the cu rent Roxy Ann Lanes bowlin alley and the former Kim's re taurant site into a casino wit video gambling machines.

The Coquille tribe has aske

Medford Mail Tribune
March 13, 2015

he BIA to place the 2.42-acre property, excluding an adjacent golf course, in a government trust. In addition, the Coquilles have asked the federal Office of Indian Gaming Management for an exception o a prohibition on gaming on ands acquired after October 988.

Both the city of Medford nd the Jackson County commissioners agreed Tuesday to become a cooperating agency fter receiving an invitation rom the Bureau of Indian ffairs.

The letter from Wheeler, o-signed by City Attorney ori Cooper and Jena A. MacLean, an attorney with the Washington firm of Perkins Coie LLP, asked the BIA to consider a range of potential impacts, from traffic and crime to schools and social services.

The city cited numerous issues it wanted raised in the federal analysis, including looking at studies that casino gambling may be related to domestic violence, divorce, bankruptcy, drug and alcohol abuse, risky or illicit sexual behavior and problem gambling.

"The increase in the number of pathological gamblers is another concerning issue regarding the development of casino gambling, and there are increasing concerns regarding child neglect and family problems associated with casinos," the letter sent by Wheeler on Thursday states. "It is safe to assume that there will be approximately 500 CFS (calls for service) per year at the proposed facility, with 450 that require a law enforcement response."

Medford officials disputed the Coquille tribe's claims that it wanted to place the casino on land already designated as reservation land, urging the BIA to undergo a more thorough process before making such a determination.

Ray Doering, spokesman for the Coquille tribe, said he fully expects the BIA to look at a variety of potential issues.

"That's the whole point of this," he said. "That's the idea of the EIS, which is to raise these concerns and address them."

Once the impacts are shown, he said the tribe will make a response.

"Every business has an impact of some kind," he said. "There are always pluses and minuses."

— Reach reporter Damian Mann at 541-776-4476 or dmann@mailtribune.com. Follow him on Twitter at @reporterdm.

February 3, 2015

Responding: Vera Jones
25 Eagle View Drive
Eagle Point, Oregon 97524

"DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11thAvenue
Portland, Oregon 97232-4165

Dear Director Speaks:

My name is Vera Jones.

I am a Cow Creek Band of Umpqua Tribe of Indians Tribal Elder.

I received notice that the Coquille Indian Tribe has asked the Government for permission to place a Casino in Medford, Oregon. I ask you today to please consider the devastating economic impact this Casino will have on my Tribe. My Tribe's Casino in Canyonville currently receives 50% of its business from Medford and the Rogue Valley. If you were to approve the Coquille's second Casino, then my Tribe would lose at least half of its Casino revenue.

The loss of revenue would directly and severely impact services my Tribe provides to its members, including Tribal children and Tribal Elders. These services include emergency assistance, educational program, workforce, health insurance, housing program, cultural opportunities, elder benefits and burial benefits. My Tribe currently has 131 Elders who depend on Tribal services. We have limited resources already, and we would suffer greatly from a 50% reduction in services.

I ask you today to consider the severe negative socio-economic impact the Cow Creek Tribe would experience if you allow Coquille to place a Casino in Medford. The Coquille tribe should not enrich itself at the expense of my Tribe's welfare. Please deny the Coquille's application.

Sincerely,

Vera Jones

Vera Jones, Tribal Member
Cow Creek Band of Umpqua Tribe of Indians

T-18

SHASTA NATION
P.O. BOX 1054
YREKA CA. 96032
(530)-468-2314

Date 3/14/15

Mr. Stanley Speaks
Northwest Regional Director, Bureau of Indian Affairs,
Northwest region, 911 Northeast 11th Avenue,
Portland Oregon 97232-4165

Roy Hall Jr., Tribal law Council, Chief of SHASTA NATION, Sovereign Indian Tribe and Authorized Representative of :SHASTA NATION & SHASTA TRIBE INC., and any combination thereof:.

"DEIS Scoping Comments, Coquille Indian Tribe Fee to Trust and Gaming Facility Project"

Thank you for the notice of extension.
The issues to be analyzed in the EIS are all of our concerns; however the Cultural, Historical and Archaeological issues need to be identified as they are inseparable from the Sovereign Shasta Nation Reserved Treaty Rights.

The Shasta Indians of Shasta County, Siskiyou County of California in addition to Jackson and Josephine Counties in Oregon are the same Tribe of Indians, speaking the same language, and of the same families. Chief Tolo lived in both Yreka area and Rogue River area. Oregon and Washington volunteers: Elisha Steel, Esquire;
Sup'g Agent Indian Affairs, Northern Dist., California

EIGHTEENTH ANNUAL REPORT
Of the
BUREAU OF AMERICAN ETHNOLOGY
to the
SECRETARY OF THE SMITHSONIAN INSTITUTION
1896-97
By
J. W. POWELL
Director

IN TWO PARTS-PART 2
WASHINGTON
GOVERNMENT PRINTING OFFICE
1899

INDIAN LAND SESSIONS
In the
UNITED STATES
Complied by
CHARLES C. ROYCE

Page 788 SCHEDUAL OF INDIAN LAND SESSIONS
Rogue River Shasta is number 312 on map, nearly all of the Rogue River drainage is within Rogue River Shasta Reserved Treaty Rights.

Page 790 SCHEDUAL OF INDIAN LAND SESSIONS
The Cow Creek Indian aboriginal Southern lands join the Rogue River Shasta at the Northern ridge dividing the waters of Cow Creek from those of the Rogue River Drainage. The Cow Creek Indian aboriginal lands are not a part of the Rogue River drainage.

Please **provide documentation** "CORP. UNITED STATES DEPARTMENT OF THE INTERIOR" or any U.S. Government entity **is NOT** an constitutional delegation of Congressional power, Commerce Clause, Trade and intercourse Act of the Constitution of the United States of America, transferring Indian Lands to the United States Government and States, without the benefit of extinguishing Shasta Nation Indian Land Title by ratified Treaty.

A copy of document(s) the UNITED STATES DEPARTMENT OF THE INTERIOR relies on to determine that the Coquille Tribe is the Native people of Jackson County Oregon, whereas the lawful Sovereign Shasta Nation of Rogue Valley in compliance to the Constitution of the United States of America, Commerce Clause and the Trade and Intercourse Act, cannot relinquish land Title to States or Individuals. Indian Land Title can **ONLY** be transferred to the United States of America by an **RATIFIED TREATY.** Please provide Congressional action Ratifying Rogue River Treaties. Coquille gaming lands are indeed not restored, and are within Shasta Nation Reserved Treaty Lands.

Please identify Congressional Act of restoration by Congress between the Coquille tribe and the Federal Government that includes Shasta Indian Lands.

Any law repugnant to the Constitution of the United States of America in a nullity from it's inception.

There is no information to reflect any nexus between "Coquille Tribe and the Sovereign Reserved Treaty Rights within Shasta Indian Aboriginal Lands of Jackson and Josephine Counties.
Chief Tolo was my Grandfather five generations back.

To place Sovereign Shasta Nation Aboriginal lands in Trust for a competing tribe will be a criminal act against the Shasta Nation. The Shasta Nation will suffer Mental Anguish, Custom Culture, Archeological and Economic injury.
Thank you for time and thoughts concerning this issue.

Roy V. Hall Jr.

Roy Hall Chief, Shasta Nation

T-19

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

March 18, 2015

VIA U.S. CERTIFIED MAIL/FedEx

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
U.S. Department of the Interior
911 Northeast 11th Avenue
Portland, Oregon 97232–4165

Re: Supplemental DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Director Speaks:

On February 11, 2015, the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Band") submitted comments on the scope of the Environmental Impact Statement ("EIS") that the Bureau of Indian Affairs ("BIA") will prepare pursuant to the National Environmental Policy Act ("NEPA"), in assessment of the environmental impacts of the Coquille Indian Tribe's ("Coquille") application for a proposed 2.4-acre fee-to-trust transfer and casino project in the City of Medford, Jackson County, Oregon ("Coquille Project"). After the submission of the Cow Creek Band's initial scoping comment letter, we learned from the Internet the public comment period had been extended until March 19, 2015. The Cow Creek Band hopes that you will consider these supplemental scoping comments, in conjunction with the Cow Creek Band's initial scoping comment letter, when preparing the EIS for the Coquille Project.

Updated Socio-Economic Analysis. The Notice of Intent states that the purpose of the Coquille Project "is to improve the economic status of the Tribe so it can better provide housing, health care, education, cultural programs, and other services to its members." The EIS should contain an updated socio-economic analysis to ensure that the EIS reflects the current financial needs of the Coquille. While the Cow Creek Band is not privy to the current financial status of the Coquille, it has learned of new economic opportunities that may be available to the Coquille. The Coquille Economic Development Corporation ("CEDC") develops and manages business enterprises for the Coquille. The CEDC put forth a zoning amendment to the Coos Bay Estuary Management Plan that would allow it to bring in a logging export terminal onto its

property. Kurtis Hair, *Logging Export Terminal Coming to North Bend Waterfront*, The Umpqua Post, Feb. 10, 2015. On February 10, 2015, the City of North Bend approved the amendment. *Id.* At a City Council Meeting, members of the CEDC acknowledged that an export terminal would be a huge asset and financial opportunity. The Coquille has also been investing significant resources into both land acquisition and Federal legislation that would preclude application of the Northwest Forest Plan to the Coquille Forest. If these endeavors are successful, Coquille will likely see an increase in timber receipts due to additional harvests from newly acquired lands, as well as an increased harvest from its existing Coquille Forest. Accordingly, a logging export terminal would provide a significant economic opportunity for the Coquille, while also providing it direct access to export markets. These are examples of information, available to the public, indicating that the financial status of the Coquille may have recently changed. The EIS should contain a revised socio-economic analysis, as the prior analysis is outdated and flawed. If the EIS relies on its original socio-economic analysis, the EIS will be based on incorrect data and may misrepresent the Coquille's financial need.

Conflict of Interest. The implementing regulations for NEPA require agencies to avoid conflicts of interest when selecting contractors to help prepare an EIS. 40 C.F.R. § 1506.5(c). Any delegation of work "should be arranged to be performed in as objective a manner as possible." CEQ Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34,263 (1983). While NEPA's regulations do not define the term, the Council on Environmental Quality has stated that it interprets conflict of interest "broadly to cover any known benefits other than general enhancement of professional reputation" including both direct "financial benefit[s]" as well as other "indirect benefits." CEQ Forty Most Asked Questions, Question 17a, 46 Fed. Reg. 18,026, 18,031 (1981). Here, it appears that the BIA has selected Analytical Environmental Services ("AES") as its environmental contractor for the Coquille Project. However, the Coquille is a client of AES. Analytical Environmental Services, *Clients: Tribal Clients*, AnalyticalCorp.com (Mar. 13, 2015), http://www.analyticalcorp.com/clients/. This presents a conflict of interest. The Cow Creek Band would like to express its concern over whether AES will be able to objectively analyze the impacts of the Coquille Project. The analysis performed by AES will have a substantial impact on one of its clients and may result in future work for AES. Accordingly, we believe the BIA should select an objective environmental consultant to assist in the preparation of the EIS for the Coquille Project.

Premature NEPA Process. The Cow Creek Band remains concerned that the NEPA process has been started prematurely and is proceeding before there has been legal resolution of the character of the land. The Coquille has applied for an opinion from the Office of Indian Gaming ("OIG"), holding that the lands that will be used for the Coquille Project qualify as restored lands eligible for gaming. As of the date of this letter, the OIG has not issued an opinion. The Cow Creek Band, along with other parties, has expressed opposition to the Coquille's position and believes that the Coquille's land does not qualify under the restored lands exception. The designation of this land will have a significant impact on whether the Coquille Project is feasible. This issue is not likely to be solved easily or quickly. Accordingly, during the preparation of the EIS, there should be some consideration as to whether the NEPA process has been started

prematurely, and whether an opinion from the OIG is required before the Coquille Project precedes any further.

Salmon Spawning Habitat. In the Cow Creek Band's initial scoping comment letter, we indicated our belief that the EIS should consider the Coquille Project's impact on Bear Creek and on local aquatic wildlife, as the Bear Creek is adjacent to the proposed site for the Coquille Project. Specifically, Bear Creek serves as a spawning habitat for the Coho and Chinook Salmon. There are three populations or evolutionarily significant units ("ESUs") of Coho Salmon and five populations of Chinook Salmon that are listed as either threatened or endangered under federal or state law. Oregon Department of Fish & Wildlife: Wildlife Division, *Threatened, Endangered, and Candidate Fish and Wildlife Species in Oregon*, Oregon Department of Fish & Wildlife, 1 (Mar. 13, 2015), http://www.dfw.state.or.us/wildlife/diversity/species/docs/Threatened_and_Endangered_Species.pdf. Accordingly, the EIS should include an analysis on whether the Coquille Project will impact any of the salmon species or populations that use the Bear Creek as a spawning ground.

Noise, Air and Light Pollution. The Coquille Project will likely operate beyond normal business hours. As a result, the local community will suffer additional noise, air and light pollution. Further, there will be additional noise from both the construction of the Coquille Project and from increased traffic after operation of the Coquille project begins. This would impact both the quality of life of the surrounding communities and the values of the surrounding properties. The EIS should include an analysis of the impact of any additional noise, air and light pollution on the local community. The EIS should include a noise study.

Again, the Cow Creek Band appreciates the opportunity to provides these comments as part of the BIA's NEPA process and requests that the comments be included in the administrative record, and that the comments be addressed and incorporated, as appropriate, as the BIA prepares its scoping report and begins preparation of an EIS. If you have any questions or concerns, please contact us.

Sincerely,

Sent Without Signature to Avoid Delay

Dan Courtney, Chairman
Cow Creek Band of Umpqua Tribe of Indians

COQUILLE INDIAN TRIBE

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Coquille Tribe's Formal Comments
NEPA Scoping Report Preparation
Coquille Tribe's Fee-to-Trust Application for the transfer 2.42 acres of land in Medford Oregon into trust status

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March 19, 2015

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Re: NEPA Scoping Comments; Coquille Tribe's Fee-to-Trust Application

Dear Director Speaks:

The Coquille Indian Tribe ("Coquille" or "the Tribe") submits these comments to the Bureau of Indian Affairs ("BIA") as the lead agency gathering information necessary for preparing an Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act ("NEPA") in connection with the Tribe's application for a proposed 2.4-acre fee-to-trust transfer and casino project to be located in the City of Medford, Jackson County, Oregon. These comments are intended to supplement the oral testimony of Brenda Meade, Chairperson of the Tribe, as provided at the February 3, 2015 public scoping hearing, as well as written comments submitted by various officials of the Tribe.

The project is of immense importance for the current and future generations of Coquille people. As described in our previously-submitted Unmet Tribal Needs Report, the Tribe must confront a deepening financial chasm that threatens its ability to provide even the most basic of governmental services. The Tribe also faces almost certain multi-year cataclysmic circumstances resulting from a Cascadia subduction zone earthquake and related tsunami that will wipe out virtually all of the Tribe's current economic development and governmental efforts.

Coquille appreciates that the NEPA scoping process has begun, and is encouraged by the opportunity for members of the public to have a proper forum for consideration of their comments and concerns. The Tribe is also encouraged that the City of Medford and Jackson County have accepted the BIA's invitations to be Cooperating Agencies in the context of the NEPA review. The Tribe had the opportunity to listen to the testimony provided at the February 3 hearing, and to review many of the written comments that were submitted. As comments continue to be submitted during the last days of the public comment period (after an extension and notice, which

confirmed that the process will consider appropriate alternatives), it is not possible for this letter to respond to each and every comment. The Tribe looks forward to the continuing opportunity to submit its comments and concerns during the NEPA process, both as a Cooperating Agency and as an interested party when the draft EIS is published for comment and review. As the Tribe has repeatedly stated, it supports the BIA's efforts to have a robust and considerate NEPA process, and encourages interested parties to submit comments.

A. COMMENTS APPROPRIATE FOR THE NEPA PROCESS.

It is premature for the Tribe itself to respond to each individual allegation of impact. Suffice it to say that an overwhelming volume of scholarly studies confirms that tribal gaming, through the generation of local jobs, the engagement of local businesses for goods and services, the generation of tax revenue, and the stimulation of economic growth throughout its surrounding region, greatly improves the quality of life in a region.[1] Additionally, successful tribes have a rich history of being great neighbors and sharing their prosperity through financial support and active involvement in community charities and activities.[2] Coquille has proven to be a great neighbor in North Bend. See Exhibit A, May 2, 2013, Letter from City of North Bend; Exhibit B, White Paper On Executive Community Involvement.

The Tribe anticipates that the final EIS will include a mitigation plan, which the Tribe will implement. The Tribe will undertake those measures that it may unilaterally perform. Measures that burden local governments will be addressed by offering to enter into fair, binding and enforceable inter-governmental agreements and/or direct payment to the impacted local government. If the local government is unwilling to reach agreement with the Tribe, (and the Tribe sincerely hopes that this will not be the case) the Tribe will make reasonable efforts to

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[1] See e.g.:

Lands of Opportunity: Social and Economic Effects of Tribal Gaming on Localities, Mindy Marks and Kate Spilde Contreras, Policy Matters, University of California, Riverside (2007).

National Gambling Impact Study Commission, Final Report (1999).

A History of the Intergovernmental Relations of the Mohegan Tribe of Connecticut, Kimberly Burgess, Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University (2004).

An Impact Analysis of Tribal Governmental Gaming in California, California Center for Native Americans, University of California Riverside (2006).

Social and Economic Consequences of Indian Gaming in Oklahoma, Kenneth W. Grant II, Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University (2003)

[2] See e.g.:

An Analysis of the Economic Impact of Indian Gaming in the State of Arizona, Stephen Cornell, Udall Center for Studies in Public Policy, University of Arizona (2001)

American Indian Gaming Policy and Its Socio-Economic Impacts, Lexicon (1998)

Background to a Dream; Impacts of Tribal Gaming in Washington State, Cheryl Simrell King, Evergreen State College (2002)

Economic and Fiscal Effects of Gaming in Washington 2010, Jonathan Taylor, Taylor Policy Group (2012)

secure mitigation efforts by other means, or to secure needed services from other sources.

1. Scope of Issues to be Addressed in the NEPA Process.

Many of the comments submitted were appropriate for the NEPA scoping process. The Tribe encourages the BIA to embrace the many topics raised when it takes a hard look at impacts, including, but not limited to:

land resources, which includes but is not limited to:
- soil quality and potential erosion;
- wetlands and associated wildlife and vegetation;
- topography caused by grading;
- drainage and the impact of contaminated stormwater, wastewater and other pollutant discharges on soils;
- mineral resources/deposits; and
- geologic hazards;

water resources, which includes but is not limited to:
- drainage and the impact of contaminated stormwater, wastewater and other pollutant discharges on soils;
- flood plains;
- impact on tribal water rights;
- compliance with the Clean Water Act; and
- impact on riparian corridors;

air quality, including but not limited to:
- compliance with the Clean Air Act; and
- impact of any increased traffic on air quality;

noise;

biological resources;

cultural/historical/archaeological resources, including but not limited to:
- a field survey of the site; and
- compliance with the National Historic Preservation Act;

resource use patterns;

traffic and transportation;

public health and safety;

hazardous materials and hazardous wastes;

availability and increased costs of public services and utilities, including but not limited to:
- water;
- wastewater treatment;
- electricity;

natural gas;
police protection;
fire protection;
schools;
social services; and
solid and hazardous waste disposal;

socioeconomics, including but not limited to:
competitive effects on other tribal casinos;
competitive effects on the Oregon State Lottery; and
addictive behaviors including problem gambling and alcoholism;

environmental justice;

visual resources/aesthetics;

compliance with the Endangered Species Act; and

cumulative, indirect, and growth-inducing effects.

Please note that the above list is merely a litany of appropriate issues to consider and not in any way an acknowledgement by the Tribe that any identified item will be negatively affected by this project.

Many of the comments misstate which laws are applicable to activities on the property once the land is taken into trust, and Coquille cautions that Coquille's acquiescence to the BIA's consideration of such issues should not be viewed as consent to inappropriate encroachment into tribal or federal jurisdiction over trust lands.

One comment was critical of the Tribe's demolition of a dilapidated structure on the property, and accused the Tribe of beginning construction of the proposed gaming facility well before the NEPA process is completed. The Tribe chose to demolish the existing hazardous, dilapidated structure on its fee lands as a responsible member of the greater community. The Tribe, as owner of the property in fee status, has the rights and responsibilities of any other person or private entity regarding the property. All activities currently occurring on the property, including the continued operation of the bowling alley and the lottery games, are conducted in strict compliance with state law. The allegation that the demolition of the dilapidated building was the beginning of construction of the gaming facility is baseless.

Several comments referenced a study that addresses the impacts the project will have on the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek") existing gaming facility. Although Coquille welcomes the BIA's assessment of competitive effects, Coquille cautions that mere cite sourcing a study, or providing a mere executive summary, without complete transparency as to the full text of the study, including its methodology, assumptions and source materials, should be flatly rejected as unreliable and/or biased. Although Coquille does not believe that any competitive impact on Cow Creek is grounds to disapprove the Tribe's application, Coquille understands and expects that the BIA will conduct its own analysis. Coquille expresses extreme skepticism regarding the claims made as to the impact of this project on Cow

Creek's current operation, which operation so greatly exceeds the needs of Cow Creek that Cow Creek is able to make significant per capita payments to each and every tribal member on a monthly basis, but Coquille will reserve specific comments until after the BIA is able to conduct its own objective analysis.

2. The Identification and Development of Alternatives.

Several of the comments were directed to the need for an alternative, and the type of alternative to be considered. Coquille embraces those comments and encourages the BIA to be thorough in its assessment of the suggested alternatives. Coquille expects that expansion of its existing facility in Coos County, a no-action alternative, a non-gaming alternative, and possibly a gaming project on other lands, will be included in the BIA's assessment. Some of the comments suggested that the alternatives needed to be specified prior to the opening of the public comment for scoping. Such action would be placing the cart before the horse. The scoping comment period has resulted in the submission of several comments regarding appropriate alternatives to be considered, and Coquille expects the BIA to consider them in the development of the scoping report. Whichever alternatives are selected to be included in the DEIS should be subjected to all of the criteria listed above, as well as their relative ability to address the issues identified in the Tribal Unmet Needs Report.

3. Many Stated Concerns of Impact Can be Satisfied by Embracing the Opportunity To Enter Into Binding and Enforceable Inter-Governmental Agreements with the Tribe.

Many, if not all, of the stated concerns of impact and loss of jurisdiction can be satisfied by embracing the opportunity to enter into binding and enforceable inter-governmental agreements with the Tribe. Comments stated concerns over an alleged inability to mitigate impacts of the proposal, ranging from loss of control over environmental and traffic impacts, to loss of revenue and jurisdiction, to the alleged "social ills'" of gambling.

Multiple times Coquille has voluntarily reached out to the City and the County to mitigate any impacts of the project through enforceable agreements that contractually bind the Tribe. Such agreements will require the Tribe to pay a fair amount for local governmental services, and will enable local governments to fund legitimate mitigation measures covering areas where the Tribe lacks jurisdiction or is otherwise unable to fund or enact measures directly. Those agreements will contractually bind the Tribe to undertake certain measures to mitigate impacts. Additionally, they may require the Tribe to construct and operate the project in a manner consistent with agreed City, County and State standards regarding environmental and regulatory issues. Unlike the January, 2006 agreement between the City of Roseburg and the Cow Creek, attached as Exhibit C, the Coquille agreements will include effective dispute resolution provisions and limited waivers of the Tribe's sovereign immunity to ensure that local governments will be able to enforce the Tribe's compliance with the terms of the agreements.

Coquille welcomes a constructive dialogue with the City and the County as to the specific areas of their regulatory jurisdiction that are of concern, such as lost property tax revenues and impacts upon the services the City or County currently provide to the property. Agreements between other tribes and cities, such as that between the Cow Creek and the City of Roseburg, typically include payments in lieu of taxes, and typically address the types of services identified

in the comments. Many of the ostensible concerns will be enhanced by the Tribe's presence well beyond the businesses currently operating on the site. Indeed, the items identified in the comments would serve as an excellent agenda if the City and County were to embrace the opportunity to negotiate agreements with the Tribe.

The Final EIS will likely include a detailed mitigation plan. That document will provide an analysis of the impacts of the proposed project, and the City and County will have the opportunity to comment and provide input as Cooperating Agencies. The Tribe remains ready, willing and able to negotiate mitigation agreements. Additionally, The Tribe will take all reasonable unilateral steps to implement the mitigation measures. It is our hope that interested local governments will demonstrate a desire and a willingness to mitigate the very issues that they have themselves raised.

B. COMMENTS NOT APPROPRIATE FOR THE NEPA PROCESS.

Coquille expects the BIA to properly consider all comments submitted in the scoping process. However, many of the comments submitted are inappropriate and/or irrelevant to the BIA's obligations under NEPA. Unfortunately, the public comment process is sometimes used, not to assist the BIA in its tasks, but to forge a platform for making untrue statements regarding the law and the history of the Coquille people. Because these comments will be part of the formal record, however inappropriate or irrelevant these comments may be, Coquille is compelled to respond.

1. **The Tribe's Legal Entitlement to Conduct Gaming on the Medford Land, Upon the Land's Conversion to Trust Status, is Simply a Matter of Law. As a Restored Tribe with a Congressionally-Defined Specific Geographic Area for New Trust Acquisitions as Expressly Set Forth in the Coquille Restoration Act, the Tribe's Medford Lands Qualify for Gaming.**

The Tribe's legal entitlement to conduct gaming on the Medford land, upon the land being taken into trust status, is simply a matter of law. Because the Coquille Restoration Act authorizes the BIA to take lands into trust within a specific geographic area including Jackson County, Oregon, the Tribe's Medford lands qualify for gaming. In passing the Indian Gaming Regulatory Act ("IGRA"), Congress generally prohibited gaming on lands taken into trust after October 17, 1988,[3] but provided specific exceptions, including lands taken into trust as part of the restoration of the land base of a wrongfully-terminated tribe:

> (b) Exceptions.
>
> (1) ***Subsection (a) of this section will not apply when***—
>
> (A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community,

[3] 25 U.S.C. § 2719(a)

but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; **or**

(B) ***lands are taken into trust as part of—***

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) ***the restoration of lands for an Indian tribe that is restored to Federal recognition.***

25 U.S.C. § 2719 (emphasis added).

DOI has promulgated rules to govern the implementation of these exceptions and codified them at 25 C.F.R. Part 292. The Tribe's application is made pursuant to 25 C.F.R. § 292.11(a)(1), which states:

> What are "restored lands"?
> For newly acquired lands to qualify as "restored lands" for purposes of § 292.7, the tribe acquiring the lands must meet the requirements of paragraph (a), (b), or (c) of this section.
>
> (a) ***If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that . . . :***
>
> ***(1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area.***
>
> ***

25 C.F.R. § 292.11(a)(1) (emphasis added). The DOI, in its formal comments explaining the rule, stated:

> The regulations include a contingency for legislation that requires or authorizes the Secretary to take land into trust for the benefit of a tribe within a specific geographic area because in such scenarios, Congress has made a determination which lands are restored.

Formal DOI Comments explaining Final Rule Federal Register, Vol. 72, No. 98 (May 20, 2008) at p. 29364.

The Coquille Restoration Act, adopted nine months after passage of the IGRA, expressly restores federal recognition of the Tribe and authorizes the Secretary to take land into trust in Jackson County for the Tribe's benefit:

> ***(a) Lands to be taken in trust***
>
> The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided*, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. ***The Secretary may accept any additional acreage in the Tribe's service area*** pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C.A. § 461 et seq.].
>
> (b) Lands to be part of reservation
>
> Subject to the conditions imposed by this section, ***the land transferred shall be taken in the name of the United States in trust for the Tribe and shall be part of its reservation.***

25 U.S.C. § 715c (emphasis added). The Tribe's "Service Area" is a specific geographic area that Congress identified in the Restoration Act:

> "Service area" means the area composed of Coos, Curry, Douglas, ***Jackson***, and Lane Counties in the State of Oregon.

25 U.S.C. § 715(5) (emphasis added).

Several comments insist that Coquille must apply for a two-part determination pursuant to 25 U.S.C. § 2719(b)(1)(A) in order for the lands to qualify for gaming. Because the Tribe's subject property meets the criteria of 25 C.F.R. § 292.11(a)(1), it need not also qualify under other provisions of § 292.11 or other exceptions in 25 U.S.C. § 2719. Moreover, a Tribe qualifying under 25 C.F.R. § 292.11(a)(1) need not meet the requirements of 25 C.F.R. § 292.12.

Coquille takes strong issue, however, with the suggestion that it does not have modern and historic connections to the Medford area. That analysis should be kept in perspective, because the opposition strategy is to redefine the debate through misdirection. The Coquille application should not be a referendum on which tribe, if any, has the superior claim to the Medford area.

a. Arguments that the lands fail to qualify under 25 C.F.R. § 292.11(a)(1) are legally unsound.

The Part 292 regulations identify the appropriate question of whether the Coquille Restoration Act:

> "*requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area*."

At least one comment attempts to argue that the Restoration Act only "requires" 1,000 acres of land to be taken into trust and merely references the "authority" of the Secretary to take additional land into trust under the Indian Reorganization Act ("IRA"). The comment suggests that the IRA, and not the Restoration Act, is the authorizing statute for the pending application, and therefore,

the Restoration Act is not relevant. Such analysis ignores the purpose of the language that Congress chose to use in the Restoration Act, which defines the geographic limits within which the Tribe may restore its land base. That the acquisition is made through the process established by the IRA, is irrelevant for the purpose of ascertaining the eligibility of Coquille restored lands under IGRA. If the logic underlying this comment were correct (and it was not), there would be no difference between Coquille pursuing gaming projects in Bandon, Oregon or San Francisco, California. What is relevant is that the Restoration Act, and not the IRA, establishes the limited geographic area in which the Secretary may take lands into trust.

Regardless of whether the Restoration Act extends the IRA's land-acquisition authority to the Tribe within the five-county geographic area, or whether it establishes independent authority within the five-county geographic area, the Act "authorizes" the land to be taken into trust and expresses Congressional intent as to the geographic parameters of the restored "Reservation." The DOI's authority to take land into trust within the five county area is expressly available to the Coquille Tribe:

> The Act of June 18, 1934 (48 Stat. 984) as amended [25 USCA §§ 461 et. seq. ***shall be applicable*** to the Tribe and its members.

25 USC § 715a(e) (emphasis added). By specifically availing the Tribe of the Secretary's authority under the IRA to take lands into trust status, and by qualifying such authority to a specific geographic area, the Restoration Act is authorizing such acquisitions within the five counties. Indeed, it is difficult to conceive of a way that Congress could have more clearly expressed its statutory intent.

If the comment is arguing that the reference to three counties beyond the two counties of mandatory acquisition is irrelevant, then the comment is taking a position that renders meaningless the statute's reference to three additional counties, including Jackson County. Such reading is contrary to traditional canons of construction. "It is generally presumed that Congress does not intend to enact surplusage." *Roseville v. Norton*, 348 F.3d 1020, 1028 (D.C. 2003), *quoting Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 698, 115 S.Ct. 2407, 2413 (1995) (statutory terms should not be interpreted to be rendered meaningless), and contrary to the Indian canon. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985) (any ambiguities in interpretation of statutes intended for the benefit of Indian Tribes should be interpreted in favor of the Tribe). Additionally, the Restoration Act's specific reference to the IRA is an expression of Congressional intent that Coquille is entitled to take lands into trust within the five-county geographic restriction. In this case, the simplest and plainest meaning is the correct one.

Importantly, 25 C.F.R. § 292.11(a)(1), clearly indicates that, when a tribe's restoration act identifies a specific geographic area for lands to be transferred into trust , the DOI need not delve into the issues of historic nexus, modern nexus and temporal connection. As the DOI has stated:

> The Department has developed the definition of restored lands through several legal opinions. The question whether lands are restored lands under IGRA depends in a variety of factors. One clear definition of restored lands is when Congress provides for restoration of lands as part of the Restoration Act. Thus, we have concluded that, when Congress provides "concrete guidance

> regarding what lands are to be restored to the tribe pursuant to the restoration act, those lands qualify as 'restored lands' under § 20 ' regardless of dictionary definition (citing positive ILD for Paskenta). Therefore, lands made available to a restored tribe as part of its restoration legislation qualify as "restored lands."

See November 22, 2002 Memorandum from Deputy Associate Solicitor – Indian Affairs to Regional Director, Great Plains Regional Office, Bureau of Indian Affairs re the Ponca Tribe (copy attached as Exhibit D).

In reality, the adoption of 25 C.F.R. § 292.11(a)(1) was a deliberate decision by the DOI to not delve into the ethno-historical data, or search for evidence of modern and historic connections to the property, when Congress has expressly identified the limited geographic area wherein the restored tribe may have lands taken into trust[4]. 25 C.F.R. § 292.11(a)(1) is consistent with DOI's prior decisions involving the Auburn Rancheria:

> "Of course, the clearest indication of congressional intent to restore lands is . . . when Congress expressly provided for the restoration of lands to a tribe in its restoration act either through discretionary or mandatory authority to take land into trust."

Solicitor Opinion Philip N. Hogen, "Revisiting the United Auburn Indian Community Lands Opinion" January 3, 2002. 25 C.F.R. § 292.11(a)(1) is also consistent with DOI's prior decisions involving the Ponca Tribe (for lands not at issue in the *Nebraska* litigation):

> One clear definition of restored lands is when Congress provides for restoration of lands as part of the Restoration Act. Thus, we have concluded that, when Congress provides 'concrete guidance regarding what lands are to be restored to the tribe pursuant to the restoration act, those lands qualify as 'restored lands' under §20 'regardless of dictionary definition".

Solicitor Opinion, "Trust Acquisition for the Ponca Tribe of Nebraska – Applicability of the Restored Lands Exception to the General Gaming Prohibition Under § 20 of the Indian Gaming Regulatory Act."

At least one comment rewrites history when it asserts that Congress considered 1,000 acres to be "adequate" for restoration of the Tribe's land base. That statement is nothing but an insulting, self-serving assertion for political expediency, and is not based on any authority in the legislative history or otherwise. To the contrary, Congress' expressly authorized the Secretary to transfer additional acreage in the five county area into trust for the Tribe, and expressly provided that such lands would become part of the Tribe's Reservation[5]. Congress clearly would not have adopted these two provisions of law if it believed that an initial 1,000 acres was "adequate" for full restoration of all that the Tribe has lost. Moreover, in 1996, the Coquille Restoration Act was amended to add approximately 5,400 acres of forestland to the Tribe's Reservation. In doing so, Sen. Mark Hatfield, the bill's sponsor, noted:

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[4] Formal DOI Comments explaining Final Rule Federal Register, Vol. 72, No. 98 (May 20, 2008) at p. 29364.

[5] 25 U.S.C. § 715c(b)

> This provision is intended to provide a measure of restitution to the Coquille Tribe. This land was forcibly taken from its inhabitants, an act that I think anyone today would decry as unjust. . . . The restoration of 5,400 acres could never atone for the hardships imposed upon the Coquille people. It can, however, begin to help restore some semblance of culture and a tie to the land that our Federal Government attempted to destroy over 150 years ago.

Congressional Record, p. S9655 (August 2, 1996).

At least one comment asserts that the restored lands exception violates an "equal footing" policy and "would unfairly advantage tribes with restoration act(sic) over virtually all other tribes." The opposite is true. For decades of the failed termination policies of the federal government, Coquille was deprived of the opportunity to mature as a tribal government and exercise its governmental sovereign authority, including the ability to acquire lands and expand its land base. Tribes that avoided termination during those years were able to preserve and expand their land bases. The very purpose of the restored lands exception is to make up for the unequal footing restored tribes endured for decades:

> Given the plain meaning of the language, the term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.

Grand Traverse II, 198 F.Supp.2d at 935; See also, *City of Roseville*, 348 F.3d at 1030 (Congress added the exceptions in 25 U.S.C. § 2719(b)(l)(B) to ensure that tribes lacking reservations or other trust lands when IGRA was enacted would not be disadvantaged relative to more established tribes). 25 C.F.R. § 292.11(a) is not a "loophole." It does not open floodgates. It is a clear rule that observes the well-established principle that Congress possesses plenary power over Indian affairs. When Congress directly authorizes the BIA to take land into trust within a specific geographic area for a restored tribe, the status of those lands as IGRA-eligible is conclusive. 25 C.F.R. § 292.11(a) is, among other things, the BIA's statement that it will adhere to the will of Congress and the rule of law. [6]

It is also important to note that nothing in the proposed application or in the Coquille Restoration Act mandates any future fee-to-trust transfer. The Secretary retains discretion over these matters.

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[6] *Roseville, supra* at 1031. (The Cities' concern is misplaced in maintaining that only a narrow interpretation of IGRA's "restoration of lands" exception will prevent AIRA from granting the Auburn Tribe "an unlimited, unquestionable and unreviewable right to acquire any tract of land of any size anywhere in Placer County as 'restored' land and commence operation of a casino," Appellants' Br. at 27. To the extent that AIRA gives the Secretary discretion to accept lands into trust within a wide geographical range, it is not all that different from other statutes restoring Indian tribes to federal recognition. *See e.g.*, Ponca Restoration Act, Pub. L. No. 101–484 § 10(c)(1) (1990); Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100–89 § 105(g)(2) (1987); Coquille Restoration Act, Pub. L. No. 101–42 § 5(a) (1989); Klamath Indian Tribe Restoration Act, Pub. L. No. 99–398 § 6 (1986)).

b. Although Coquille is not required to establish the items identified in 25 C.F.R. § 292.12 or 25 C.F.R. § 292.13-25, such lack of a requirement should not be interpreted to mean that the Medford land would not qualify under those provisions.

The opposition comments are trying to divert the DOI's review of the Coquille application into a far more expensive, time-consuming and unnecessary process, knowing that projects sought under these alternative grounds for qualifying for gaming often die on the vine because of the expense and delay incurred by relatively poor tribes. Accordingly, Coquille will not engage the opposition comments on these points. But that does not stop Coquille from pointing to facts and circumstances that make it clear, if required to do so, Coquille would pursue those alternatives and would prevail.

25 C.F.R. § 292.12 requires the applicant tribe to establish an historic connection, a modern connection and a temporal nexus between the time of restoration and submitting the fee-to-trust application. Although Coquille need not establish any of the three requirements, Coquille meets all three.

Historic Connection: Some comments assert that Coquille does not have an historic connection to the Medford area. The notion that Coquille does not have an historic connection to the Rogue River Valley defies facts and logic.

At the outset it should be noted that the historic nexus requirement is not one that requires a showing of exclusive use and occupancy of the area. Several positive Indian Lands Determinations have been based on a showing of joint use, seasonal use, or trade routes[7]. Indeed, in consideration of the Karuk Tribes' application, the Shasta Tribe[8] submitted documents that it occupied the Yreka area. In response the Department noted:

> But IGRA's restored lands exception does not require the Karuk Tribe to demonstrate that it was the only tribe with historical connections to the area, or that the subject area was the only place where the Karuk Tribe has historical connections. Therefore, the documents submitted by the Shasta Nation do not change this opinion.

See, Exhibit E, April 9, 2012 letter from NIGC to Russell Attebery, Chairman Karuk Tribe at p. 12. The Tribe is not limited to lands on which it can establish a historic connection. See *City of Roseville,* 348 F.3d at 1023 (finding parcel forty (40) miles from tribe's original reservation

[7] See e.g., Cowlitz Tribe Restored Lands Opinion, NIGC, November 22, 2005, attached as Exhibit F. (Tribe was NOT the dominant tribe in the area where the land is taken into trust, and only established temporary, not permanent, camps)

[8] Coquille appreciates the heritage of the Shasta Tribe and is not contesting its ostensible connections to the area. Coquille does not oppose the presence of other tribes in the Medford area and supports the Cow Creek Tribe's exercise of its sovereignty consistent with its Restoration Act. This is not a referendum on who has the greatest connection to the area.

qualified as "restored lands"). The language of section 2719(b)(l)(B)(iii) "restoration of lands for an Indian tribe that is restored to Federal recognition" implies a process rather than a specific transaction, and most assuredly does not limit restoration to a single event." *Grand Traverse II*, 198 F.Supp.2d at 936; *Grand Traverse Band v. United States*, 46 F.Supp.2d. 689, 701 (W. Mich. 1999) (*Grand Traverse I*). Coquille's application would qualify within these legal parameters of historic connection if it were required to do so.

Villages and extended families along the Coquille River and south coast were linked to villages in the interior valley, such as the upper reaches of the Rogue, Umpqua and Klamath Rivers, which include the Medford area, by kinship and marriage, shared cultural practices including trade in material goods, visiting for communal hunting and gathering activities, and shared spiritual practices. See Exhibit G, July 23, 2013 Memorandum of Mark Tveskov, Ph.D. The Rogue River was a major trading route that promoted not only trade, but intermarriage and communal activities. The Coquilles hunted, fished, gathered and traded within the Rogue River watershed.

The historical marriage patterns for Coquille Indians show partnerships with Rogue River Indians including Chetco and Tututni Indians, providing lasting evidence of the potlatch, trading and other relationships that have tied the various Indian communities together, reaching from the coast and up through the Rogue River watershed. *Id*. Indeed, there are members of the Coquille Tribe who demonstrate that they are direct descendants from those tribes as well as Molallas resident in Jackson County, near Medford. Specifically, some in the Tribe's present day community in Jackson County descend from the Summers family, who are themselves direct descendants of Chief Washington Tom, a Headman of the upper Coquille valley and a signer of the treaty of 1855. While Chief Tom and much of his family were marched to the Siletz Reservation, at least one his wives, Abba, a Rogue Tootootoney Indian, remained behind in Port Orford. Her daughter married a homesteader, and many of her traceable descendants remain on the Coquille tribal roll, or married into the Klamath Tribes, further east in Jackson County. Over succeeding decades, some members of these families lived in coastal areas more traditionally associated with Coquille people, while others remained inland, in Jackson, Curry and Klamath Counties. Some moved between both places, and the disparate family branches remained associated with each other sufficiently to retain their history and connection. While Coquille may not have claimed Medford as its territory, the history of marriage and trade with those who did claim that territory demonstrate sufficient connection to the area to constitute a historical tie.

At least one comment notes that the exclusive use and occupancy of the Medford area was by the Rogue River Indians, and that the Umpqua Indians were to the north, and the Shasta Indians to the west. Significantly, the Rogue River Indians are not a federally-recognized tribe, and current members of Coquille are direct descendants of Rogue River Indians, including those from regions of the Upper Rogue. The historical record reflects that the Coquille women spoke a broad range of languages, in addition to the Miluk, Athapaskan and Hanis of the Coquille villages – reflecting the intermarriage of peoples, and trade relationships with inland tribes that included acorns, camas and other resources not readily available at the coast. *Id*. The ancestral Coquille communities, a series of villages spread over a large area of Southwestern Oregon, did not live in isolation. They had broader social, cultural and linguistic contacts with other communities, and a network of reciprocal political and economic relationships that brought people back and forth on the Rogue River and other natural highways and trails. *Id*. Coquille people did not exclusively occupy the Medford area, but they were an integral part of the Indian community and network in

the region.

Modern Connection: At least one comment suggests that Coquille does not have a modern nexus either. Jackson County was included in the Tribe's service area because that is "where Tribal members live today." Indeed 51 members currently live in or near the City of Medford, the largest concentration of Tribal members outside of Coos Bay. The failed federal policies of termination scattered[9] and disbursed much of the Tribe, with several families locating in the Medford area. During termination and continuing through to present day, the Tribe routinely convenes Council meetings, retreats and cultural events in the Medford area.[10] One of the very first Coquille government offices opened in Medford shortly after restoration. Indeed, one of the express purposes of having the land taken into trust, whether or not the land qualifies for gaming, is to relocate and improve the existing Coquille Tribal Government community center in Medford to better serve the Tribal members and others living in the area. It is not coincidental that Jackson County is included in the Restoration Act's five county area; Jackson County is included because the failed termination policies increased the number of tribal members living there. To put these facts in context, the NIGC found that 95 of Cowlitz' 3,500 members (less than 3%) lived in Clark County, and the fact that Clark County was part of Indian Health Service's designated service area for the Cowlitz, was sufficient to establish a modern nexus to the subject land.

c. Comments asserting that Coquille must meet the "Two Part Determination" requirements of 25 C.F.R. § 292.13-25 are irrelevant and incorrect.

Several comments assert that Coquille must meet the "two-part" determination provisions found at 25 USC § 2719(b)(1)(A) and 25 C.F.R. §§ 292.13 – 25 IGRA provides that tribes that do not fall under the express exemptions of 25 USC § 2719(b)(1)(B) may conduct gaming activities on lands taken into trust after 1988 if the DOI makes a determination that the applicant tribe's proposal is (1) in the best interest of the tribe and (2) not detrimental to the surrounding community, and the Governor of the state concurs in that determination. Congress determined that lands taken into trust as part of the restoration of a restored tribe's land base are exempted from that process. The suggestion that Coquille is trying to circumvent the two-part determination is simply misdirection. Coquille is incurring considerable expense with engineers, lawyers and consultants to comply with the statutes and regulations that squarely and properly govern the Tribe's application.

Several comments assert that Coquille should go through the two-part determination process because it "provides for the opportunity to mitigate those potential detriments through fee for service agreements." The two-part process does not compel or preclude such fee for service agreements any more or less than 25 USC § 2719(b)(1)(B)(iii). As stated above, Coquille stands ready, willing and able to negotiate such an agreement with Jackson County and/or the City of Medford.

[9] See Rep. DeFazio, co-sponsor of the Coquille Restoration Act, Congressional Record, May 23, 1989 at p. H2075-01 (as a consequence of the 1956 Termination Act "tribal members were scattered')

[10] See Summary of post-restoration Coquille Tribal meetings, events and services in Jackson County Exhibit H.

2. The Stated Concern for Future Casino Expansion at the Site and the Introduction of Class III Games is Unwarranted.

At least one comment expresses concern that the Tribe will convert the project into a destination Class III gaming facility once the land is taken into trust status. Another comment expresses concerns that the Tribe's lease on an adjacent 31.5 acre golf course is part of a hidden agenda to engage in Class III gaming. These theories of conspiracy defy common sense.

First, if the Tribe wanted to pursue a Class III gaming resort, why would it not simply do so now? The Tribe's modest proposal for a Class II facility on 2.42 acres, expanding an existing bowling alley with existing State Lottery VLTs, has drawn all the acrimony that a full-scale casino would draw. The Tribe could have pursued a large swath of sufficient acreage that would support a full-scale casino resort, with a four-star hotel and all the attendant amenities of restaurants, pools, shopping and entertainment. With such a proposal, the Tribe could claim thousands of new jobs, rather than 223, and use the "wow" factor to generate support. Indeed, the Tribe has been criticized publicly for not doing so.[11] The hard reality is that the economy, including the gaming market already served by expanding Seven Feathers Casino Resort and hundreds of State Lottery VLTs, and the inevitable Class III gaming facility to be operated by the Karuk Tribe in Yreka, California, does not justify the capital investment for a full-scale casino resort in Medford.

Additionally, the Tribe would need an amendment to its Tribal State Compact to operate Class III games on the Medford property, and it is clear that the State is unwilling to negotiate for such an amendment. The Tribe's application is only for the 2.42 acres, so any plans to expand the facility to include the 31.5 acreage of the golf course (and there are no such plans) would require the Tribe to go through this current process all over again. Additionally, any federal action related to a large full-scale casino resort, ranging from Army Corps of Engineer permits to approval of a management/development agreement with a major operator, would trigger NEPA and entail all of the analysis and process that it is currently taking place.

The bottom line is that these conspiratorial theories have no basis in a fact-based reality. But even if it were true, such an argument would not be a legitimate basis for opposition. Oregon is already a major gambling state with several first-class destination casino resorts, including one 76 miles to the north and another being developed in California 70 miles to the south.

Coquille has deliberately requested to place only 2.42 acres of land into trust. The Tribe, through its due diligence, analyzed the market prior to embarking on the project. Balancing community needs and tribal needs, the decision to pursue a modest class II facility was made, leveraging existing local lodging facilities, restaurants and local services.

[11] See Exhibit I, May 12, 2013 commentary criticizing the Tribe's proposal as being too modest.

3. The Tribe's Proposed Project is Not a Referendum on Whether There Should Be Gambling in Oregon. Oregon is Already a Major Gambling Jurisdiction.

More than one comment expresses concern that Coquille's application, if granted, will encourage other Oregon tribes to do the same and lead to a major expansion of gambling. Coquille notes that the Klamath Tribes, Confederated Tribes of Siletz Indians, Confederated Tribes of Grand Ronde and Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians already game on lands qualified under the "restored lands" exception. Coquille also notes that Warm Springs already operates a second, "Class II-only" gaming facility, at its Ke-Nee-Tah resort. Significantly, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians will in the immediate future open a second "Class II-only" gaming facility in Coos Bay, a mere three miles from Coquille's existing Class III gaming facility. Coquille notes that Warm Springs and Burns have pending applications to qualify lands for gaming pursuant to 25 USC 2719(b)(1)(A), the "two-part determination" provision. Finally, Coquille notes that 25 USC 2719(b)(1)(B)(iii) has been in place for twenty-five years, and the 25 C.F.R. Part 292 regulations have been in place for five years. With all due respect, any "precedent" has already been created and the Oregon gaming market is already being served. If other tribes decide to pursue the modest expansion of Class II gaming on newly acquired lands, it will be based on existing law, their needs, and economic development opportunity, and not on whether Coquille is successful in taking 2.42 acres into trust.

Coquille takes exception to the assertion in more than one comment that there exists an alleged State of Oregon "one casino per tribe policy." The Coquilles urge you to consider these statements as pure fiction. First, the project is for a Class II gaming facility, which is not subject to the Tribal State compact. Indeed, federal policy has long been to disapprove compacts that attempt to govern Class II gaming activities. See Exhibit J, October 12, 2012 Letter from DOI to State of Massachusetts disapproving proposed compact with Mashpee Tribe. Indeed, for that very reason, in 2000, DOI informed both the State of Oregon and Coquille that provisions in a proposed compact amendment that would have extended state regulatory jurisdiction over portions of the facility that co-mingled Class II and Class III facilities need to be removed before DOI would approve the compact. Second, Coquille agreed in 1995 in its Tribal/State Compact that it would not seek a compact amendment for a second Class III gaming facility for a period of five years. That Compact provision itself is not only an express repudiation of the assertion of a "one casino per tribe policy," it is an express reservation of the Tribe's right to seek a second Class III gaming facility if it chose to pursue one. The fact is that the State did seek Coquille's agreement to limit itself to one Class III facility and as a matter of principle, tribal self-governance and federal law including its rights under IGRA, Coquille refused and made clear that it would pursue its remedies under IGRA rather than sign a compact if the State did not withdraw its demand, which it ultimately did.[12] The Coquille urge you to dismiss these "one casino per tribe" fictions unless a party produces valid evidence of such a duly adopted Oregon state policy applicable to the Coquille.

Recently, in litigation over the Tohono O'odahm's proposal for a gaming facility in Glendale, Arizona, the State of Arizona asserted that its policy of no new casinos in the greater Phoenix area trumped the tribe's compact with the state. In analyzing the issue, the federal

[12] See also, Exhibit K, May 13, 2013 news article debunking assertion of "one-casino" policy.

District Court opined:

> Written agreements matter. Parties who reach an accord, particularly on a matter as important and complicated as tribal gaming, carefully document their agreement in writing. They do so to fix the precise terms of their contract, identify their respective obligations, and avoid later controversy about the nature and scope of their bargain.

Arizona v. Tohono O'odahm Nation, 944 F.Supp.2d_748 , 753 (D. Ariz. 2013). In this case the words of the Coquille's Class III compact with the State of Oregon matter, and those precise terms clearly do not impose any one casino rule.

Additionally, assertions of concern over expanded gaming are inconsistent with at least two recent actions during the Kitzhaber Administration. First, On June 4, 2013, Governor Kitzhaber signed into law a bill, HB 2613, attached as Exhibit L, authorizing "instant racing" slot machines. These machines provide the player with the experience of a traditional slot machine, based on a large database of past horse races at multiple race tracks. This measure basically converts the State's race track, Portland Meadows, which is located within a few miles of downtown Portland, into a full-fledged "racino."

Second, on July 2, 2013, prominent gaming manufacturer IGT announced that it had reached agreement with the Oregon Lottery to provide brand new Lottery VLTs. See IGT Press Release, attached as Exhibit M.

The Oregon Lottery currently operates more than 12,000 VLTs and has nearly 4,000 retail outlets throughout the State. Bars, taverns and other businesses can operate up to six VLTs as well as offer keno and more traditional paper games. The Lottery's statutory mandate requires it to produce the maximum amount of net revenues for the people of Oregon commensurate with the public good. Since 2006, the State Lottery has generated sales in excess of $ 1 billion/ year. See Oregon Lottery, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2012, attached as Exhibit N. Portland Meadows transmits its signals to 11 OTB parlors throughout the State. Dozens of cities and towns throughout Oregon allow for commercial card clubs, where black jack is the primary game offering, and non-profit organizations may conduct casino nights that allow for black jack, roulette and craps for non-cash prizes. See Oregon Department of Justice FAQs attached as Exhibit O. All of this is an addition to the nine compacted Class III tribal casino resorts, the Warm Springs Class II casino resort, and the nearly-completed Confederated Tribes of Coos, Lower Umpqua and Siuslaw's Class II casino, all sanctioned by the State. Although Coquille respects personal views against gaming, such views are not a legitimate reason for opposing the Tribe's modest Class II facility to be located on 2.42 acres.

C. CONCLUSION

Coquille was one of many Oregon tribes that were formally terminated in 1954. This meant that the Tribe's status as a sovereign government was erased. Western Oregon was one of the few places in the country where this failed governmental policy was attempted. But even after formal termination, the Coquille people continued to meet, and to address the needs of their elders, their children and their community. A generation later, Congress formally restored the Tribe's federal recognition in 1989.

That federal restoration law, called the Coquille Restoration Act, provides the Tribe with the tools to help rebuild what was lost during the termination period. It defines things like the Tribe's connection to lands in what is called a five county service area, including Jackson County. In the law, Congress also promised the Tribe a process to put land into trust in those five counties for economic development.

Our main priorities, historically and today, have been to ensure the health of our people, educate our children, and create opportunities for our tribal members and their families. Opportunities like good paying jobs, with solid benefits and the ability to grow and prosper within those jobs. Our Tribe does not rely exclusively on gaming for its income, but has determined that this Class II casino, without table games, will be the best way of meeting the needs of our members going forward.

Federal law recognizes the ability of tribes to conduct commercial gaming as a means to address the needs of their people. With the Tribe's fee-to-trust application, we are asking the federal government to uphold its promise to the Coquille people, and to consider our trust land application on its merits. To assist in the consideration of our application, we will listen to any concerns that may be raised during this NEPA process. Those concerns will be addressed by the BIA in its assessment. Because we are a part of this community, we look forward to this process, and ultimately to making this project a success for all.

Typically, in the BIA's review of projects such as this one, it develops a plan designed to mitigate actual impacts. The Tribe intends to embrace those recommendations and put them into place.

We are taught to take only what we need and to always leave some for the others. As such, the Tribe intends to fully pay for what it needs. The local governments that may provide our needed services will be fully compensated. We have no intention of taking from this community we live in, but rather, to give back to it.

As a result of this project coming to fruition, the Tribe will be able to enhance and give back to the community. The jobs generated by this project, both during construction and permanent jobs, will be filled by local residents. They will be good paying jobs with excellent benefits. The goods and services provided at the facility will be purchased from local vendors. The Tribe's culture is to support and participate in the community, including charities and civic projects and capital investments. This project, by helping fill ours needs, enables us to help fill the community's needs.

There is a lot of misinformation about our project. This is unfortunate. The Tribe is seeking to have this land taken into trust as part of the establishment of its restored land base as provided for in its Restoration Act. This is no different than the process that other Western Oregon tribes completed to have their lands qualify for gaming, including the Coos, Siletz, and Grand Ronde. We have been asked repeatedly about a "two-part determination," which is the label used for tribes seeking to game on lands that are not part of the restoration of their land base. Warm Springs, for example, sought a two-part determination for a project in Cascade Locks. That is a different process under federal law, with different rules that simply do not apply to Coquille's application or to these lands.

Our application does not require that the Tribe must somehow prove that it has a greater entitlement to have lands here than any other tribe. The fact is that several tribes have ancestors with historic ties to this valley, including Coquille. The fact is that only for the Coquille does its Restoration Act identify Jackson County explicitly as one of the five counties for lands to restore the Tribe's land base. The question of which tribe has a greater entitlement to lands in this valley need not be answered for purposes of our application. Our Tribe has not opposed the gaming interests of other tribes in the state, even we suffer as a result, and we would hope for the same respect.

These issues regarding a two-part determination, or which tribe has the greatest entitlement to have lands in the valley, are not relevant to the purpose of the NEPA process. We address these issues now only because such arguments have been made and submitted as part of the record, and we want to set the record straight.

We look forward to beginning this NEPA process of interaction and understanding with the community, and to having an opportunity to address any and all concerns that are presented.

Respectfully submitted,

_____

Hon. Brenda Meade, Chairperson
Coquille Indian Tribe

LIST OF EXHIBITS REFERENCED IN TEXT

Exhibit A	May 2, 2013 Letter From City of North Bend
Exhibit B	White Paper on Executive Community Involvement
Exhibit C	January 2006 agreement between the City of Roseburg and the Cow Creek
Exhibit D	November 22, 2002 Memorandum from Deputy Associate Solicitor – Indian Affairs to Regional Director, Great Plains Regional Office, Bureau of Indian Affairs regarding the Ponca Tribe.
Exhibit E	April 9, 2013 letter from NIGC to Russell Atteberry, Chairman of the Karuk Tribe
Exhibit F	Cowlitz Tribe Restored Lands Opinion, NIGC, November 22, 2005
Exhibit G	July 23, 2013 Memorandum of Mark Tveskov, Ph.D.
Exhibit H	Summary of post-restoration Coquille Tribal meetings, events and services in Jackson County
Exhibit I	May 12, 2013 Article - Commentary Criticizing The Tribe's Proposal Is Too Modest.
Exhibit J	October 12, 2012 Letter From DOI To State Of Massachusetts Disapproving Proposed Compact With Mashpee Tribe
Exhibit K	News article debunking assertion of "one-casino" policy.
Exhibit L	HB 2613
Exhibit M	IGT Press Release

Exhibit N Oregon Lottery, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2012

Exhibit O Oregon Department of Justice FAQs

EXHIBIT

A

City of North Bend

Post Office Box B • North Bend, OR 97459-0014 • Phone: (541) 756-8500 • FAX: (541) 756-8527

May 2, 2013

Jackson County Commissioners
Jackson County Courthouse
10 South Oakdale, Room 214
Medford, OR, 97501

City Council
City of Medford
411 W. 8th Street
Medford, OR 97501

Dear Commissioners and City Councilors:

As Mayor of the City of North Bend I have been following with interest the news about the proposed casino and other business entities being contemplated by the Coquille Tribe for your Medford area community. I thought you and your council members might like to hear about the positive impact the partnership between the City of North Bend and Coquille Tribe has had on our community as you consider the Coquille Tribe's potential impacts upon Medford and the surrounding area.

Since before their restoration to federal tribal recognition, the Coquille Tribe always acted as good stewards of the land and waters of their ancestral homelands. Being restored to federal recognition brought with it the ability of the Coquille Tribe to impact the economics of not only the tribe and its people but also of the greater community. It is North Bend's experience with the Coquille Tribe's economic impact I wish to share with you.

- Since 2002 the Tribe has made grants of over $3.6 million to Coos County-based non-profits and charities.
- Through additional grant funding, the Tribe has assisted the Coos County Sheriff's office and South Coast Interagency Narcotics Team to acquire over $333,000 in equipment.
- The Tribe is the second largest employer in Coos County, offering family wage jobs with benefits and multiple opportunities for advancement.
- Tribal leadership is always accessible and very active in local charitable initiatives, nonprofit boards and committees, and they care deeply about the issues confronting our area in general and North Bend particularly.
- The Tribe generously pledged over $1million to the soon to be constructed Coos Historical & Maritime Center.
- The Tribe co-authored the Coquille Watershed Restoration Plan and is continually carrying out that plan, making real and substantial improvements to our salmon runs and fish habitat.
- They sponsor countless public and community improvement events and activities.

- Their innovative, FSC certified forest creates jobs and serves as an international model of forest stewardship.
- The Tribe partnered with the City by providing the City with an easement to develop a waterfront walkway which offers residents and visitors one of the very few pedestrian access points to Coos Bay in our area.
- And there are also many other non-economic endeavors which the Coquille Tribes undertake in our community which improve the health, social and educational aspects of our communities, both tribal and non-tribal.

The City of North Bend has been neighbors and partners with the Coquille Tribes for the 110 years of the City's existence. And as with any long term partnerships differences do on occasion arise. The City and Tribe both have continually sought ways to pro-actively work together on the difficulties as they occur, resolve them and move forward to our common future.

I can without hesitation tell you that the Coquille Tribe is a beneficial partner for my city and area. And I would expect that should their plans come to pass for your area, you too will come to know their values, their responsiveness and their generosity.

Sincerely,

Rick Wetherell, Mayor
City of North Bend

Cc: Danny Jordan, County Administrator
P. Eric Swanson, Medford City Manager
Terence E. O'Connor, North Bend City Administrator

EXHIBIT

B

Writer: Judy Metcalf
July 1, 2013

Topic:

The Tribe's Community Involvement extends beyond funding as many executives are leaders in the community

Detail:

In the spirit of giving back, key executives within the Tribe continue their time and skills to community involvement and making the community a better place to live. Current examples are:

- CEO of Economic Development
  - Oregon State Parks and Rec's Commission (currently)
  - Served as Chair of the State Board of Forestry (2010-2013)
- CFO of Economic Development
  - Advisory group to the Board of Directors of Bay Area Hospital
  - Finance Committee
- Executive Director of Development:
  - South Coast Development Council Chair & Executive Committee from 2005-2010
  - South Coast Development Council 2010-2013
  - Volunteer at Shore Acres, 2010-2012
  - Light Speed Networks Board of Directors (for profit organization) 2003-2013
  - Classroom volunteer– North Bend Middle school
  - Coos Historical Society & Museum Ad Hoc Construction & Design Sub-Committee 2010-11
- CFO for the Coquille Tribe
  - Southwestern Oregon Community College Budget Committee (SOCC)
- Project Manager Economic Development
  - Sports Advisory Board - Boys & Girls Club of Southwestern Oregon
  - Coach – girls softball & girls volleyball

EXHIBIT

C

CI-16A 1/9/06

ORIGINAL

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ROSEBURG AND THE COW CREEK BAND OF THE UMPQUA TRIBE OF INDIANS REGARDING CITY SERVICES TO TRIBAL TRUST PROPERTIES

This Agreement is entered into between the City of Roseburg ("City") and the Cow Creek Band of Umpqua Tribe of Indians ("Tribe").

RECITALS

1. **Tribal Trust Lands.** From time to time the Tribe places real property into trust with the United States. Some Tribal trust properties are located within the boundaries of the City, and this Agreement is applicable to such Tribal trust properties (the "Properties", each a "Property").

2. **General Purposes of Agreement.** The Tribe wishes to purchase from the City certain services for the Properties on the terms described below, and City is willing to provide those services on those terms, which generally are the same terms on which the City provides services to other properties and property owners in the City.

3. **City's authority.** ORS 190.110 and the Roseburg City Charter grant authority to the City to enter into this Agreement.

4. **Past Agreements.** The Tribe and the City have entered into other agreements in the past, which include:

A. **Water and Storm Drainage Services.** The Tribe and the City entered into an intergovernmental agreement in 1997 for the provision of water service and storm drainage utility service for the Tribe's administration building at 2371 NW Stephens Street, Roseburg.

B. **Building Plan Review and Inspection Services.** The Tribe and the City entered into an intergovernmental agreement in 2001 to provide building plan review and inspection services in connection with any construction or remodeling activity conducted on tribal properties located within the municipal boundaries of the City that would be subject to permitting requirements if the properties were not owned by the Tribe.

These agreements are incorporated herein and ratified to the extent not inconsistent with the provisions hereof, and are superseded hereby to the extent they are inconsistent with this Agreement.

AGREEMENTS

1. **Intergovernmental Relationship.** Federal, Tribal and Oregon laws establish or authorize

intergovernmental relationships between the federal government, the federally recognized Tribes and the state of Oregon and its political subdivisions. Nothing in this Agreement alters or diminishes the sovereignty of the Tribe or the jurisdiction and authority of the Tribe over its properties or authorizes the City to regulate in any manner the government or activities of the Tribe.

2. Contractual Services. Neither the City nor the Tribe claims governmental responsibility over properties within the jurisdiction of the other. Services performed pursuant to this Agreement are rendered on a strictly contractual basis.

3. Future Development or Change in Use of the Properties. If the Tribe decides to materially change the land use of a Property within the City, the Tribe will, prior to major construction, consult with the City Manager about the project and any effect therefrom on City services and the consistency of the Tribe's proposed plans with City regulations. Any proposed land use plan related to any Property will not be subject to City regulations other than as expressly set forth herein, and final authority with regard to any proposed land use plan will rest solely with the Tribe.

4. Site Preparation. With respect to grading and erosion control, Tribal development, redevelopment or change in land use of any of the Property will be consistent with substantive provisions of the City's Land Use and Development Ordinance.

5. Street Lighting. Street lights for any Tribal development, redevelopment or material change in land use of the Properties will be consistent in style and spacing with other street light poles and luminaries in the City. Unless otherwise agreed by City, the Tribe will be responsible for the installation cost of street lighting on City lands in the same manner and to the same extent as private developers pay for street lighting. City will be responsible for the monthly utility costs associated with the street lights located within a public right-of-way. The Tribe will be responsible for the installation and monthly utility cost of street lights on the Properties.

6. Utility Lines, Licenses and Fire Hydrants. The Tribe, where practicable, will place any new utilities on the Properties underground. When necessary, the Tribe will provide written licenses to the City and to other appropriate utility agencies providing rights to maintain and service any such new utilities, in conformance with generally applicable utility industry standards.

7. Construction of Infrastructure Facilities.

A. Applicability. This Section applies to water and storm sewer/drainage facilities ("Infrastructure Facilities") that the Tribe constructs on any Property after the date of this Agreement where interconnection with or service from the City will be necessary.

B. Plans and Specifications, Construction, and Inspection. The Tribe will provide to the City a copy of its plans and specifications for any new Infrastructure Facilities for review and comment. The City's review and return of the plans and specifications will constitute the City's

agreement that the Infrastructure Facilities, if constructed materially in accord with the plans and specifications and the City's comments (hereinafter, "reviewed plans and specifications"), will be satisfactory to the City. The City shall not unreasonably withhold comment to the Tribe's submitted plans, and in any event the period for such review and comment by the City shall not exceed 20 days from the date of submission of reasonably complete plans to the City. The Tribe will construct the Infrastructure Facilities in material conformance with the reviewed plans and specifications. The City may inspect the Infrastructure Facilities as construction progresses to assure itself that the Infrastructure Facilities are being constructed in conformance with the reviewed plans and specifications, provided that the City will not disrupt construction and prior reasonable notice of each such inspection is given to the Tribe in advance. If the City finds the construction not in accord with the reviewed plans and specifications, the City will so advise the Tribe immediately.

(1) Reimbursement for Services. The Tribe will reimburse the City for the reasonable costs of its review of the plans and specifications and of its inspections of work in progress on receipt of properly documented billings from the City therefore. Such billing shall include the salary, fringe benefits, and indirect costs associated with providing the service. Notwithstanding the foregoing, the City shall not charge or impose upon the Tribe a higher cost for billed services than the actual cost of such services in any event.

C. Protection of City Facilities. The Tribe will construct Infrastructure Facilities in a manner such that no material damage is done during construction to City infrastructure facilities or those belonging to other units of government, including but not limited to City streets and sidewalks, sanitary sewer lines, storm sewer lines, and water lines. If the Tribe causes such damage, the Tribe will reasonably repair the damage in a timely manner and in consultation with the City and the owner of the affected utility.

D. Turn Over of Infrastructure Facilities to City. Subject to the provisions of this Section, on completion of construction of Infrastructure Facilities, the Tribe will, upon notice of initial acceptance by the City, turn the following portions of the Infrastructure Facilities over to the City, for ownership, operation, and maintenance as part of the City's Infrastructure Facilities system:

(1) Water facilities, up to the water meter; and

(2) Storm sewer and drainage facilities, up to the point of connection of the Tribe's development to the City's storm sewer and drainage system.

E. Warranty Period on Infrastructure Facilities. If the City reasonably determines that repair or replacement of all or part of a reviewed Infrastructure Facility is necessary within a year of installation because it has not been constructed in a manner materially in accord with reviewed plans and specifications, the City will notify the Tribe and the Tribe will conduct reasonably necessary repair or replacement within a reasonable period of time.

F. Final Acceptance of Infrastructure Facilities. One year after initial installation and upon proper execution of all any necessary licenses, the City will accept ownership of, and final operation and maintenance responsibility for, a reviewed Infrastructure Facility within the limits set forth in 5(D) above. After final City acceptance, the Tribe will provide the City with as-built drawings in the same form and manner as would otherwise be required by the City from any developer.

G. System Development Charges. The Tribe will pay to the City such non-discriminatory system development charges applicable at the required time and in the required amount, provided that the Tribal Infrastructure Facility for which such charges are assessed materially connect with or use City facilities for which systems development charges are otherwise assessed.

H. Water Meter Charges. The City will provide to the Tribe and City will maintain all water meters needed to serve the development, redevelopment or material change in land use. The Tribe will pay the City its standard non-discriminatory charges for providing the meters.

8. General Provisions Regarding Water and Storm Sewer/Drainage Services. The City will provide water and storm sewer/drainage services to any Property on a comparable basis to the service the City provides to other properties within the area of the City that is in the vicinity of such Property. The Tribe will follow substantive provisions of the Roseburg Municipal Code, as amended from time to time, regarding use of City water and storm sewer services to the extent not inconsistent with the provisions of this Agreement. The Tribe will make payments for water and storm sewer/drainage services to or for any Property based on the regular rates and charges for water and storm sewer/drainage service as set and amended from time to time by the City Council for customers inside the City, provided that the Property for which such charges are assessed uses the City services for which such charge is assessed.

9. Building Plan Review and Building Inspection Services. Upon request by the Tribe, City agrees to perform plan review and building inspection services for construction projects within the boundaries of the City on Tribal properties:

A. Building Plan Review. Initial plan review for any discrete construction project will be initiated by specific request of the Tribe. The Tribe will provide the City with five complete sets of building plans. City will inspect the building plans for compliance with standards specified in the uniform fire, structural, plumbing, and mechanical codes ("Codes") in the forms currently adopted by the City for use in its own building inspection program. All plan reviews will be performed by, or under the supervision of, the City's building official. The building official will notify Tribe in writing of any deficiencies discovered during the plan review within 20 days of submission of the plans. The City shall not be required to review or comment on plans that are not reasonably complete when submitted, and the City will notify the Tribe within five (5) days of the City's receipt of any plan submission the City reasonably deems inadequate.

B. Site Inspections. City will perform site inspections upon request. Site inspections will be made not more than 48 hours after receipt of a request for inspection, and site re-inspections will be made not more than 24 hours after receipt of a request, provided that all requests and all work will be made and performed during City's normal working hours, Monday through Friday. The building official will advise the Tribe in writing of any deficiencies discovered during a site inspection.

C. Compensation of City. The fees for the City's services shall be identical to the fees that would be charged by the City for a building permit and certificate of occupancy for properties within its jurisdiction, but no permits or certificates of occupancy will be issued by the City. Payment will be made upon completion of the City's review of plans.

D. Limitation of City's Obligation. The city will perform plan review and building inspection services hereunder solely in an advisory capacity to advise the Tribe whether Code standards have been met. The City is not responsible for issuing building permits for work performed on Tribal property, nor will the City undertake any action to assure that any building, land improvement, or other work is performed in accordance with any Code other than through the review and inspection process set forth herein. Plan review and site inspections by the City under this Agreement does not assure that a particular building or improvement will be safe under any and all circumstances or appropriate for the Tribe's intended uses. Project plan review is not an assessment or confirmation of the soundness of any architectural or engineering work.

10. Police and Fire Services. The Tribe has full law enforcement and fire and emergency authority within the Properties, and the Tribe may choose to independently provide fire and other emergency services within the Properties.

A. City Provision of Police and Fire Services. Until and unless the Tribe provides the City with written notice otherwise, the City will provide law enforcement and fire and emergency services within the Properties. The Tribe grants City law enforcement and fire personnel authority to enter the Properties and to take action therein within the limits of applicable law. The City's police jurisdiction on Properties is limited by applicable law.

B. Tribe Provision of Police and Fire Services and Cooperation with City. If the Tribe chooses to hire its own police and fire personnel, then City and tribal law enforcement and fire personnel will cooperate with regard to provision of police law enforcement and fire services to the Properties and will enter into appropriate agreements as necessary to effectively carry out their duties and responsibilities.

C. Reimbursement for Police and Fire Services. The Tribe will reimburse the City for the reasonable costs of any police or fire department call for service to any of its Properties. Such billing shall include the salary, fringe benefits, and indirect costs associated with providing the service.

11. Hotel/Motel Occupancy Tax. If the Tribe has hotel/motel rooms on any Property, the Tribe

shall impose and collect for its own use a hotel/motel occupancy tax materially consistent with any such tax imposed pursuant to the Roseburg Municipal Code.

12. Remedies.

A. General Statement. The terms of this Agreement may be enforced against the Tribe in the Tribal Court. The terms of this Agreement may be enforced against the City in the Courts of the State of Oregon.

B. Notice. In the event the City or the Tribe believes the other has not complied with any provision of this Agreement, the City or the Tribe first will give the other written notice, identifying the specific provision of the Agreement that the other allegedly has not complied with and the factual basis for the allegation of non-compliance.

C. Opportunity to Cure. The party to whom notice has been given under subsection (B) of this Section will have 30 days to cure the non-compliance or, if compliance cannot reasonably be completed within 30 days, then if the party has commenced efforts to attain compliance within the 30 day period the party will have such reasonably practicable time while proceeding in good faith and with due diligence as is needed to cure the non-compliance. Notwithstanding the foregoing sentence, if the non-compliance creates an imminent and substantial hazard to persons or property, the party giving notice of non-compliance may require the other party to cure the noncompliance as quickly as is reasonable under the circumstances. If the party cures the non-compliance as authorized in this subsection, the cure will be the exclusive remedy of the other party, except in cases where a party fails to comply with the same provision three or more times within a two-year period. If the party to whom notice has been given disputes the allegation of non-compliance, the parties will meet and confer with regard to the issue of non-compliance within 30 days, and the time frame for compliance set out in this subsection will extended by the amount of time between the notice of dispute and the subsequent meeting to confer.

D. Arbitration. If a party has not cured an alleged non-compliance within the time periods set out in subsection (C) of this Section or if the parties cannot agree on whether non-compliance with this Agreement exists in the time period set out in subsection (C) of this Section, then a party may give the other party a written request for arbitration and, if the other party agrees in writing to arbitrate, then the matter will be submitted to arbitration as set out in this Section. If the parties cannot agree on an arbitrator, an arbitrator will be appointed, on petition by either party, by the presiding judge of the Douglas County Circuit Court and a Tribal Court judge. The City and the Tribe will share equally in the cost of the arbitrator.

Within 45 days after appointment of an arbitrator, the arbitrator will conduct and complete an arbitration hearing, if necessary, on the matter in dispute and will render his or her decision. The decision of the arbitrator will be final and binding on the Tribe and the City, to the extent authorized by law.

E. Enforcement of Arbitration Decision. The decision of the arbitrator may, if necessary, be enforced in the Tribal Court against the Tribe and in the courts of the State of Oregon against the City. Any assertion of non-compliance with an arbitration decision will be decided by the appropriate court, as set out herein. In the event either party fails to comply with an arbitration decision, the other party may choose (after court resolution, if appropriate, of whether non-compliance exists) to terminate performance of any or all of its agreements under this Agreement 30 days after giving written notice of the non-compliance to the other party.

F. Extent of Remedies. Remedies under this Section are limited to actual damages, specific performance, and termination, provided that actual damages includes interest as set out in Section 13 of this Agreement. Remedies will be limited to remedies for claims directly relating to compliance with the specific terms of this Agreement and will not include claims in tort or for punitive damages. The City and the Tribe will each be responsible for their own attorney costs associated with enforcement of this Agreement. Remedies as against either the City or the Tribe shall be subject to the limits of applicable law.

G. Alternative Dispute Resolution. The City and the Tribe may, by written agreement, agree to dispute resolution methods other than the remedies set out in this Section.

13. Interest and Late Fees. Amounts due to one party from the other under this Agreement will bear interest at the rate of nine percent (9%) per annum from the due date until paid, except as otherwise determined by arbitration or judicial decision under Section 12(D) of this Agreement. Notwithstanding the foregoing, late payment of the rates and charges for water and storm drainage services will be the same as the rate established by the City's Municipal Code for commercial users.

14. Effective Date. This Agreement will become effective as to the parties upon execution and, as to each Tribal property upon formal acceptance of title to such property in trust by the United States for the benefit of the Tribe.

15. Miscellaneous.

A. Imposition of Taxes, Fees, Charges, and Assessments. Except as this agreement may allow, nothing in this Agreement authorizes the City to impose any tax, fee, charge, or assessment on the Tribe or any tribal activity on any property once accepted by the United States in trust for the benefit of the Tribe.

B. Rights Limited to Parties. This Agreement is for the sole benefit of the Tribe and City. No provision or language of this Agreement confers standing or grants any substantive or procedural legal rights to any other person, government, or entity.

16. Notices. All notices provided for in this Agreement will be deemed given when deposited in the

United States mail, first class certified, return receipt requested, postage prepaid, addressed to the following addresses or such alternative addresses as are provided for in a written notice given in accord with the provisions of this Section:

City of Roseburg	Cow Creek Band of the Umpqua Tribe of Indians
City Manager	General Counsel
900 SE Douglas Avenue	2371 NE Stephens Street, Suite 100
Roseburg, OR 97470	Roseburg, Oregon 97470

17. Severability. In the event any section, provision, or language of this Agreement is held invalid, either party may initiate negotiations under Section 12(D) of this Agreement to amend or replace this Agreement to cure the invalidity. Otherwise, it is the intent of the parties that the remaining sections, provisions, and language of this Agreement will remain in full force and effect.

18. Authorization to Execute Agreement. The authorization of the City Manager of the City and the Tribal Chair to execute this Agreement is evidenced by the resolutions of the appropriate governing body appended hereto as Exhibit 1.

19. Entire Agreement. This Agreement is the complete and exclusive expression of the City and Tribe's intent as to the subject of the Agreement. The parties agree that there exist no other understandings or agreements, either expressed or implied, or written or oral, concerning the subject matter of this agreement.

20. Relationship of the Parties. City is agreeing to perform services hereunder as an independent contractor. In no event shall any officer, employee, or agent of one party be deemed to be an officer, employee, or agent of the other party.

21. Indemnification. , To the extent allowed under applicable law, the City will hold harmless, indemnify, and defend the Tribe and its officers, agents, and employees from any claims, actions, or suits arising from any claim for damages or injury to property or persons by reason of gross negligence or gross misconduct of the City, it officers, agents or employees in the performance of this Agreement. To the extent allowed under applicable law, the Tribe will hold harmless, indemnify, and defend the City and its officers, agents, and employees from any claims, actions, or suits arising from any claim for damages or injury to property or persons by reason of gross negligence or gross misconduct of the Tribe, it officers, agents or employees in the performance of this Agreement.

22. Non-Discrimination. The City will not use the establishment of classes as a basis to charge the Tribe for development on the Properties at unique or discriminatory rates and charges.

23. Review by Federal Authority. The Tribe's design and construction of Infrastructure Facilities also may be subject to review, approval and/or inspection by the United States Indian Health Service or other federal authorities. For projects subject to such federal review, approval and/or inspection,

the City will work in a cooperative and efficient manner so as to avoid duplication of efforts.

24. Inconsistency with Applicable Law. Any portion of this Agreement which is inconsistent with applicable law, including without limitation the doctrine of federal preemption in tribal affairs, is stricken in the particular factual context to the extent of any such inconsistency.

25. Amendment. Either the City or the Tribe at any time may give the other party written notice requesting negotiations to amend this Agreement. In such event, the parties will enter into good faith negotiations regarding the proposed amendment. This Agreement will remain unchanged until the City and Tribe have reached written agreement on a proposed amendment.

26 Termination.

A. Either party may terminate this Agreement upon ninety (90) days written notice, *provided that* City will continue to offer on nondiscriminatory terms any services already being provided by the City to any Property will continue at then-current levels, unless (a) the Tribe requests a diminished level of service or (b) City in good faith and for legitimate, nondiscriminatory governmental reasons stops providing the service or reduces the level of service to other parcels or property owners in the vicinity of the Property.

B. Either party may terminate this Agreement on sixty (60) days written notice with no further obligation if, and only after, both of the following occur: (a) a substantial and material provision of the Agreement is stricken or declared unenforceable by an arbitrator or a court, and (b) after negotiations pursuant to Section 25, the parties are unable to agree on a fair and equitable amendment to this Agreement to replace or substitute for the stricken or unenforceable provision(s) within ninety (90) days after the request for negotiations.

27. Annual Meeting. At least annually, the Tribe and the City, through the Tribal Board of Directors and the City Council or their delegates, shall formally meet to discuss the status of this Agreement as well as other issues of mutual support and assistance for the betterment of the overall community.

CITY OF ROSEBURG

Eric Swanson, City Manager
Date: 1/8/06

Larry Rich, Mayor
Date: 1/8/06

COW CREEK BAND OF THE UMPQUA TRIBE OF INDIANS

Sue Shaffer, Chair
Date:

Tim Freeman, Council President
Date: 1/9/06

Resolution No: 2005-36

RESOLUTION OF THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS BOARD OF DIRECTORS APPROVING GOV-TO-GOV AGREEMENT WITH CITY OF ROSEBURG

WHEREAS, the Cow Creek Band of Umpqua Tribe of Indians (the "Tribe") is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the provisions of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act of December 29, 1982 (P.L. 97-391), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987 (P.L. 100-139), and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally supervised constitutional ballot, on July 8, 1991; and,

WHEREAS, pursuant to Article III, Section 1 of the Tribe's Constitution, the Cow Creek Tribal Board of Directors (the "Board") is the governing body of the Tribe; and,

WHEREAS, pursuant to Article VII, Section 1 (a) of the Tribe's Constitution the Board has the power to "to negotiate with the Federal, state and local governments on behalf of the Tribe and advise and consult with representatives of the Department of the Interior or any other federal, state or local department, agency or office on all activities of those agencies or offices that may affect the Tribe"; and

WHEREAS, pursuant to Article VII, Section 1 (b) of the Tribe's Constitution the Board has the power to "represent the Tribe before Federal, state and local governments and their departments and agencies"; and

WHEREAS, pursuant to Article VII, Section 1 (d) of the Tribe's Constitution the Board has the power to "administer the affairs and assets of the Tribe, including Tribal lands"; and

WHEREAS, pursuant to Article VII, Section I (t) of the Tribe's Constitution the Board has the power to "have such other powers and authority necessary to meet its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe"; and,

WHEREAS, the Board believes that it is in the best interests of the Tribe and its members to approve the government-to-government agreement with the City of Roseburg in substantially the form attached hereto as Exhibit 1;

THEREFORE, BE IT RESOLVED that the Tribe, by and through the Board, hereby approves the government-to-government agreement between the Tribe and the City of Roseburg effective as of the latest signature date therein contained.

BE IT FURTHER RESOLVED, that any and all actions heretofore or hereafter taken by any Tribal officers, employees or agents regarding the foregoing resolution be, and hereby are, ratified and confirmed as the act and deed of the Tribe taken or made by them within the scope of their duties to the Tribe; and,

BE IT FURTHER RESOLVED, that neither this resolution nor any document or representation related herewith or therewith shall constitute a waiver of the sovereign immunity of the Tribe, or its officers acting in their official capacity within the scope of their authority; and,

BE IT FURTHER RESOLVED, that the actions authorized and taken by this Resolution are intended to advance the sovereign self governance of the Tribe, and to protect the political integrity, economic security and health and welfare of the Tribe and its members; and,

BE IT FURTHER RESOLVED, any prior Tribal regulations, resolutions, orders, motions, legislation, codes or other Tribal law which are materially inconsistent with this Resolution are hereby repealed, but only to the extent of any such inconsistency and as applied to the specific matter in which any such inconsistency arises.

CERTIFICATION

It is hereby certified that the Cow Creek Tribal Board of Directors, governing body of the Cow Creek Band of Umpqua Tribe of Indians, composed of eleven (11) members of whom 11, constituting a quorum, were present at a meeting duly held on the 11th day of December, 2005, adopted the foregoing **RESOLUTION OF THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS BOARD OF DIRECTORS ADOPTING TRIBAL INSIGNIA** by the affirmative vote of 11 for and Ø against.

Sue Shaffer
Tribal Chairperson

Attest: Tom W. Rondeau, Sr.
Tribal Secretary

EXHIBIT

D

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO

NOV 22 2002

Memorandum

To: Regional Director, Great Plains Regional Office, Bureau of Indian Affairs

From: Deputy Associate Solicitor, Division of Indian Affairs

Subject: Trust Acquisition for the Ponca Tribe of Nebraska - Applicability of the Restored Lands Exception to the General Gaming Prohibition under § 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*

You have requested a legal opinion regarding whether the proposed trust acquisition of the Ponca Tribe of Nebraska (Tribe) meets one of the exceptions to the general gaming prohibition on lands acquired in trust after October 17, 1988, as found in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.* We have reviewed the file you submitted for the Tribe's July 2001 application to place three acres of land located in the City of Crofton, Knox County, Nebraska into trust for gaming purposes. The Tribe intends to renovate the existing building on the land and operate a Class II gaming facility in accordance with the IGRA. Section 20 of IGRA must also be considered for any trust acquisitions for gaming purposes occurring after October 17, 1988. This provision generally prohibits gaming on the after-acquired trust land unless certain conditions or exceptions exist.

One of the exceptions is restored lands for restored tribes. 25 U.S.C. § 2719(b)(1)(B)(iii). For this exception to apply, we must find that the tribe has been restored to a Federal relationship and the lands are restored lands. For the reasons set forth below, we conclude that the Ponca Tribe is a restored tribe and the parcel qualifies as "restored lands" under the IGRA exception; thus, the land is not subject to the general gaming prohibition under Section 20 of IGRA. Prior to conducting any gaming on the land, the Tribe must however comply with all other applicable requirements of IGRA governing such gaming.

Section 20 of IGRA

The question you raised is whether any of the exceptions to the prohibition on gaming on lands acquired after October 17, 1988 apply to this trust application. Specifically, whether the restored lands for restored tribes exception applies.

The IGRA prohibits gaming on trust lands acquired after October 17, 1988, unless certain conditions or exceptions exist. 25 U.S.C. §§ 2719(a) and (b). Gaming would not be prohibited on the after-acquired trust land if:

(1) such lands are located within or contiguous to the boundaries of the reservation of the

Indian tribe on October 17, 1988; or if

(2) the Indian tribe has no reservation on October 17, 1988 and
(A) such lands are located in Oklahoma and –
(I) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or
(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or
(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

25 U.S.C. § 2719(a).

If the trust lands do not meet those conditions, the IGRA also provides exceptions to the prohibition which may enable the tribe to conduct gaming on after-acquired trust land. Gaming is not prohibited if the Secretary determines that "a gaming establishment would be in the best interests of the Indian tribe and its members" and "would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." 25 U.S.C. § 2719(b)(1)(A). Likewise, gaming is not prohibited if "lands are taken in trust as part of –

(I) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to federal recognition."

25 U.S.C. § 2719(b)(1)(B).

Although neither the IGRA nor its legislative history defines or explains the "restored lands" provision of Section 20, the Department has had numerous opportunities to examine it.[1/]

1/Pokagon Band of Potawatomi Indians, Sol. Op., M36991, September 19, 1997; Memorandum to Deputy Commissioner for Indian Affairs, dated November 12, 1997 (Little Traverse Bay Bands of Odawa Indians - Emmet County parcel); Memorandum to Acting Director, Indian Gaming Management Staff, dated March 16, 1998 (Little River Band of Ottawa Indians - Manistee County parcel); Memorandum to Deputy Commissioner for Indian Affairs, dated April 18, 2000 (Paskenta Band of Nomlaki Indians - Tehama County parcel); Letter to Judge Hillman, dated August 31, 2001, filed in *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney*, Case No. 1:96-CV-466 (W.D. Mich., April 22, 2002) (Grand Traverse Bay Band of Ottawa and Chippewa Indians - Turtle Creek site); Memorandum to Assistant Secretary for Indian Affairs, dated December 5, 2001, filed in *Oregon v. Norton*, Case No. 02-6104-TL (D. Or. 2002) (Confederated Tribes of Coos, Lower Umpqua and Suislaw Indians - Hatch Tract); Memorandum, dated January 18, 2000 (United Auburn Indian Community - Placer County

Since initially addressing this matter, we have consistently held that the inquiry requires a two-part analysis: 1) the tribe must be restored within the meaning of IGRA and 2) the proposed trust lands must also be restored within the meaning of IGRA.

Restored Tribe

In determining whether the tribe is restored, we have previously found that if a tribe existed, the relationship was terminated, and then restored, it meets the definition of a restored tribe. The Ponca Tribe meets this test. The House and Senate Reports for the Ponca Termination Act and the Ponca Restoration Act clearly shows that the Ponca Tribe is a restored tribe. H.R. Rep. No. 101-776 (1990). The report details the tribe's history from the 17th to the 20th centuries – including contact with Lewis and Clark in 1804. In addition, the Ponca were signatories to four treaties with the United States, in 1817, 1825, 1858 and 1865. Thus, the Ponca tribe existed. Then, in 1962, Congress terminated the relationship with the Ponca Tribe with the passage of Pub. L. 87-629, Act of Sept. 5, 1962, 76 Stat. 429, 25 U.S.C. §§ 971-980 (the Termination Act). Termination ended in 1990 when Congress enacted the Ponca Restoration Act restored the Ponca Tribe to federal recognition by Pub. L. 101-484, October 31, 1990, 25 U.S.C. §§ 983-983h.

The Restoration Act and accompanying House Report emphasize the fact that the Ponca Tribe should gain status and be treated as any other federally-recognized Indian tribe and that its members become eligible for all Federal services and benefits furnished to Indian tribes and their members. We have consistently held that such language clearly shows that the tribe is "restored." *See footnote 1,* Paskenta at 3, Pokagon at 5-7. Thus, the Ponca Tribe meets the IGRA test for a restored tribe – it existed, the relationship with it was terminated, and then the relationship was restored.

Restored Lands

The Department has developed the definition of restored lands through several legal opinions. The question whether lands are restored lands under IGRA depends on a variety of factors. One clear definition of restored lands is when Congress provides for restoration of lands as part of the Restoration Act. Thus, we have concluded that, when Congress provides "concrete guidance regarding what lands are to be restored to the tribe pursuant to the restoration act, those lands qualify as 'restored lands' under § 20 'regardless of dictionary definition.'" Paskenta at 2. Therefore, lands made available to a restored tribe as part of its restoration legislation qualify as

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parcel) (Auburn I). More recently, we have issued a supplemental opinion on the Auburn Indian Community acquisition (Auburn II) which affirmed the first Auburn opinion finding that lands made available under the Restoration Act are restored lands within IGRA. Memorandum to Director, Office of Indian Gaming Management, dated January 3, 2002.

"restored lands."[2/]

The Ponca Restoration Act authorizes the acquisition of land for the Tribe under 25 U.S.C. § 983b(c). Pursuant to the Ponca Restoration Act, the Secretary *shall* accept not more than 1,500 acres in Knox or Boyd Counties and *may* accept additional acreage in those counties.

The BIA Regional Office has indicated that no trust property had been acquired in Boyd County for the Tribe and that approximately 141 acres had been acquired in trust in Knox County for the Tribe. Thus, this proposed acquisition will increase the total trust acreage for the Tribe to 144 acres well within the statutory limits for the Tribe.

We can conclude that this three-acre parcel proposed to be taken into trust for the Ponca Tribe is "restored lands" within the meaning of IGRA because the lands at issue are being taken into trust as part of the lands Congress identified in the Restoration Act. Thus, consistent with prior opinions and with Congress's concrete guidance under the Restoration Act, these lands can be considered restored lands.

III. Conclusion

The Ponca Tribe of Nebraska, whose relationship was terminated by Congress in 1962 and restored by Congress in 1990, is a restored tribe within the meaning of the exception in IGRA. Lands within Knox and Boyd Counties in Nebraska are within the geographic area in which Congress has clearly provided for restoration and mandated the Secretary place into trust for the Ponca Tribe pursuant to the Ponca Restoration Act. The land at issue in this trust application is in Knox County and are part of the "restored lands" of a tribe restored to federal recognition within the meaning of IGRA. Therefore, we conclude that this trust acquisition falls within the exception to the prohibition on gaming on lands acquired in trust after the passage of IGRA pursuant to 25 U.S.C. §_ 2719(b)(1)(B)(iii).

2/ In the *Grand Traverse* and *Coos* litigation, the courts found that the interpretation of the restored lands provision which limited restored lands to only those made available in a tribe's Restoration Act to be "unduly narrow" and the courts actually broadened the possible interpretation to include other limited situations when the land is not clearly within Congress' express restoration. The court in *Coos* found that in analyzing the restored lands exception, the Department could look beyond the express terms of the Restoration Acts to determine whether such exception applied. We held in our Auburn II opinion that this broader interpretation was not inconsistent with our previous determinations on restored lands, contained for example in Auburn I, which adhered to the view that lands prescribed within a tribe's Restoration Act qualified as restored lands.

EXHIBIT

E

April 9, 2012

By First Class Mail

Russell Attebery, Chairman
Karuk Tribe of California
64236 Second Avenue
Post Office Box 1016
Happy Camp, CA 96039

Re: Approval of Karuk Tribe of California ordinance amendment

Dear Chairman Attebery:

This letter responds to your request for the National Indian Gaming Commission to review and approve an amendment to the Karuk Tribe of California (Tribe) tribal gaming ordinance. The Second Amendment to the Karuk Tribal Gaming Ordinance was approved by Resolution No. 11-R-121 on October 14, 2011.

The amendment authorizes gaming on four parcels of land totally 200.2 acres known as the "Yreka Property" acquired by the Tribe on April 28, 1997 and accepted into trust on March 27, 2001. This amendment required the NIGC to conduct a legal analysis of the applicability of IGRA's restored lands for a restored tribe provision, 25 U.S.C. § 2719(b)(1)(B)(iii), in order to determine whether the Tribe is allowed to conduct gaming activities on the site.

The NIGC's Office of General Counsel (OGC) has provided me with a legal opinion, dated April 3, 2012, modifying an OGC legal advisory opinion, dated October 12, 2004. The April 3 legal opinion concludes that the Tribe was restored to Federal Recognition and that the Yreka Property qualifies as restored land. The Department of the Interior Solicitor reviewed the opinion and concurs in the legal analysis and conclusion. The record supports the opinion, and I adopt the analysis and conclusion provided herein. Therefore, the tribal gaming ordinance amendment is hereby approved.

If you have any questions, please feel free to contact Senior Attorney John Hay at (202) 632-7003.

Sincerely,

Tracie L. Stevens
Chairwoman

Memorandum

To: Tracie Stevens, Chairwoman

Through: Jo-Ann M. Shyloski, Associate General Counsel JMS

From: John R. Hay, Senior Attorney JRH

Date: April 3, 2012

Re: Modification of 2004 Legal Opinion, Karuk Tribe of California; Yreka Trust Property

On January 11, 2012, the Karuk Tribe of California (Tribe) submitted an amendment to the Tribe's gaming ordinance for approval by the Chairwoman.[1] The amendment authorizes gaming on a parcel of trust land (the Yreka Trust Property) that was the subject of a negative lands opinion issued by the National Indian Gaming Commission (NIGC) Office of General Counsel (OGC), with the concurrence of the Solicitor's Office, in October 2004 (the 2004 Opinion). Along with the amendment submitted on January 11, 2012, the Tribe resubmitted historical information provided to NIGC on December 3, 2007. That historical information was not available to the NIGC at the time of the 2004 opinion.

This memorandum concludes a legal review of whether the Yreka Trust Property is Indian lands eligible for gaming under the Indian Gaming Regulatory Act (IGRA) based on information provided by the Tribe prior to 2008. As explained below, it is our opinion that the Yreka Property is restored lands and eligible for gaming under IGRA. Accordingly, this opinion modifies the 2004 Opinion. The Department of the Interior ("Interior"), Office of the Solicitor, concurs with this opinion.

I. Background

On June 12, 2003, the Tribe requested that the OGC issue an Indian lands opinion on whether the Yreka Trust Property is eligible for gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. The Tribe submitted both a discussion of the restored lands exception under section 2719 and materials in support of the Tribe's claim that the exception applied. On February 5, 2004, the Tribe submitted supplemental information at the request of OGC. Upon evaluation of the submitted materials, on October 12, 2004, the OGC opined that the materials submitted did not demonstrate that Karuk was a "restored" tribe with a sufficient "temporal relationship" and "historical nexus" to the Yreka Trust Property to qualify for the restored lands exception.

[1] On February 11, 2011, the Tribe submitted an amendment to the Tribe's gaming ordinance for approval by the Chairwoman. The amendment to the ordinance was subsequently withdrawn, revised and resubmitted on May 5, 2011. The revised amendment was withdrawn and resubmitted on July 28, 2011, October 18, 2011, and January 11, 2012.

The 2004 Opinion qualified that based upon the lack of information, the OGC could not conclude that Karuk was a restored tribe and that the Yreka Trust Property constituted restored lands. For example, the 2004 Opinion explained that no information was provided to demonstrate termination and that "without more, we are not prepared to find that the Tribe qualifies" as a restored tribe. Similarly, the 2004 Opinion explained that "the evidence provided by the Tribe that the parcel was once the location of aboriginal settlements is scant" and that "the Tribe has not provided evidence that the parcel remained important to the tribe throughout history."

The 2004 Opinion essentially provided a roadmap for the Tribe to submit additional information to demonstrate that it is a restored tribe and that the Yreka Trust Property is restored lands. Based on discussions with OGC staff, the Tribe subsequently provided additional information in December of 2007. The OGC did not complete its analysis of the 2007 information prior to Interior's publication of the Part 292 regulations in May 2008.

With its proposed ordinance amendment, the Tribe relies on the 2004 Opinion and the information submitted in 2007. The Tribe maintains that the Yreka Trust Property qualifies as restored land for a tribe restored to federal recognition. The ordinance amendment describes the Yreka Trust Property as follows:

> This land consists of four parcels acquired by the Tribe on April 28, 1997, and accepted into trust on March 27, 2001. The total acreage of these four parcels is 200.2 acres and the prior owner of each is identified as 'Holm' – the four parcels contain, respectively, 20 acres, 60.2 acres, 100 acres and 20 acres, and they are located within the 'Karuk Tribal Housing Authority Land' at Yreka, California.

See Karuk Tribe Resolution 11-R-121 (October 14, 2011). This description is consistent with the one submitted by the Tribe in 2003.

II. Applicability of Part 292 Regulations

In May 2008, Interior published regulations establishing criteria for the application of IGRA's exceptions to the general prohibition against gaming on newly acquired trust lands, including the restored lands exception. 73 Fed. Reg. 29,354 (May 20, 2008) (codified at 25 C.F.R. Part 292) ("the Part 292 regulations"). The Part 292 regulations became effective on August 25, 2008. 73 Fed. Reg. 35,579 (June 24, 2008).

Section 292.26 of the regulations expressly provides that the Part 292 regulations do not apply in certain circumstances. In the present matter, the Tribe argues that § 292.26(b) precludes the application of Part 292 to the Tribe's pending ordinance amendment because the NIGC issued a written opinion regarding the applicability of 25 U.S.C. § 2719 for this particular site before the effective date of the Part 292 regulations. That provision provides, in relevant part, as follows:

> [T]hese regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming

> Commission (NIGC) issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.

25 C.F.R. § 292.26(b).

The preamble to the final rule explains that under § 292.26(b),"the Federal Government may be able to follow through with its prior legal opinions and take final agency actions consistent with those opinions, even if these regulations now have created a conflict." The preamble further explains that the "regulations will not affect the Department's ability to qualify, modify or withdraw its prior legal opinions." 73 Fed. Reg. at 29,372.

We conclude that section 292.26(b) applies to the Tribe's pending ordinance amendment. NIGC hereby modifies its 2004 Opinion to consider the information provided by the Tribe in 2007 before the effective date of the Part 292 Regulations. The Tribe's 2007 information was provided at the request of NIGC in response to the 2004 Opinion. The applicable agency action is your approval of the Tribe's amended gaming ordinance. The 2004 Opinion is a written opinion regarding the applicability of 25 U.S.C. § 2719 for land to be used for a particular gaming establishment. Further, under the regulation, NIGC retains full discretion to modify the 2004 Opinion. As such, the Chairwoman can rely on a modification of the 2004 Opinion in taking a final agency action. Accordingly, we analyze the Tribe's 2007 information under the legal criteria set forth in the 2004 Opinion.

III. The Karuk Tribe lost its government-to-government relationship

As explained in the 2004 Opinion, the Tribe did not provide information to substantiate a claim that the United States terminated the relationship with the Tribe. In 2007, the Tribe supplied historical documentation concerning the administrative termination of the Tribe's government-to-government relationship. The information submitted in 2007 demonstrates that the Tribe was administratively terminated.

In this case, Interior's records from the late 1970s and 1980s demonstrate that for a period between the late 1940s through the 1970s, the federal government did not recognize a government-to-government relationship with this Tribe.[2] As discussed more

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[2] Part of the confusion surrounding the Tribe's history may be caused by the various identifications used by the United States for the Tribe. In a 1978 review of the Karuk situation, Interior noted:

> [T]he Karok Indians have been referred to as Karok, Klamath, Klamath River, Lower Klamath and Upper Klamath Indians. We have even seen the Karok Indians referred to as the Karouk Band of Klamath River Indians. However, the Klamath River Indians, i.e., Yurok, Hoopa and Karok, are not a single entity since each belong to a different linguistic group.

Memorandum to Deputy Assistant Secretary – Indian Affairs from John V. Meyers, Tribal Relations Specialist and Mitchell L. Bush, Tribal Enrollment Specialist, subject: Status Brief – Karok Tribe of

fully below, the record demonstrates that the Tribe's government-to-government relationship was administratively terminated during this period.

As set forth in the 2004 Opinion, the Karuk Tribe clearly was a federally recognized tribe as evidenced by a treaty with the United States in 1852 and subsequent government-to-government interactions. As late as 1944, the federal government still recognized the Karuk Tribe of California. In that year, the Hoopa Valley Agency of the Bureau of Indian Affairs ("BIA") included the Tribe in its Ten Year Program Report wherein it acknowledged service responsibility for the Tribe. It further acknowledged responsibility for Karuk allottees and referenced appeals for funds to be appropriated to acquire land for the Tribe. Meyers-Bush Memo at 3. However, as confirmed through Interior documents from the 1970s and 1980s, for the three decades spanning the late 1940s through January 15, 1979, Interior effectively did not recognize a government-to-government relationship with the Tribe.

Interior documents explain that during this time period, the BIA denied services to Karuk based on a determination that they were not federally recognized and therefore not eligible for services. Meyers-Bush Memo at 1; Letter from Superintendent Weller to Commissioner of Indian Affairs (Dec. 20, 1978) (recommending extension of "full Federal recognition."). The Meyers-Bush Memo explains that beginning in the termination era of federal Indian policy, the BIA stopped providing services to many tribes, including the Karuk Tribe. Meyers-Bush Memo at 3-4.

In the early 1970s, the Karuk Tribe approached the BIA in an attempt to organize under the Indian Reorganization Act ("IRA"), 25 U.S.C. § 476. Letter from John W. Fritz, Deputy Assistant Secretary – Indian Affairs (Operations), to Dan Swaney, Superintendent, Northern California Agency (July 30, 1984) ("Fritz Letter"). The BIA informed the Tribe that it was "not a Federally recognized Indian entity" and could not organize under the IRA. It could, however:

> organize as a corporation or non-profit association under California State law. The group was further advised that although the Bureau would recognize the organization for the purposes for which it organized i.e., to promote cultural, social, education and economic well-being of its members, such recognition would not constitute official Federal recognition of an Indian tribe. The Orleans group incorporated as a non-profit organization on March 24, 1971.[3]

Id.

California (Apr. 21, 1978) ("Meyers-Bush Memo"). Today, the Tribe is known as the Karuk Tribe of California. The Tribe is comprised of three communities located in Orleans, Happy Camp, and Yreka, California. *Id.*

[3] The "Orleans group" mentioned in the Fritz Letter as incorporating under state law was one of the three community groups of the Tribe. The entity that sought to organize under the IRA and was rejected by the BIA as unrecognized was the Klamath River Inter-tribal Council, which was then the governmental body of the Tribe as a whole.

In 1973, the BIA informed the Office of the Vice President of the United States that the "Orleans Karok Tribal Council of California is not a federally recognized tribe. The group has no land base and is merely a group of scattered descendants living in an urban setting." Letter from Ted B. White, Chief, Division of Tribal Government Services, BIA, to Robert Robertson, Executive Director, National Council on Indian Opportunity, Office of the Vice President (Nov. 15, 1973). The letter added: "[t]he Indians residing on the Hoopa Extension are federally recognized but have never organized." *Id.*

In 1976, the Orleans Karuk Council delivered a constitution to the BIA pursuant to the Tribal Government Development Program contract. Fritz Letter at 1. At this point, it was determined that "since Orleans had no land base, it was not eligible to organize under the IRA even if the group had federal recognition." *Id.* The Fritz Letter goes on to state: "[t]he Orleans group finally acquired some six acres of land which was subsequently taken into trust status by the Area Director for such Orleans Karoks of one-half degree Indian blood as the Secretary might designate. Since the Orleans group was not Federally recognized, the only way the Bureau could deal with the Orleans group was to recognize it as a half-blood Indian community pursuant to Section 19 of the IRA." *Id.*

In 1977, the Orleans group's application for a Public Law 93-638 grant was denied based on its lack of federal recognition. The result of this decision is detailed in the Fritz Letter:

> On November 18, 1977, Assistant Secretary Gerard advised the Sacramento Area Director that the Orleans Karok group was not a Federally recognized Indian entity but was recognized as a half-blood community only and therefore not eligible to participate in 638 grants and contracts. The Bureau advised the Orleans group that it might want to petition for acknowledgment through the Federal Acknowledgment Project [sic]. In the alternative, those Orleans Karoks who possessed one-half or more degree Indian blood were eligible for certain Bureau services afforded individual Indians under Section 19 of the IRA.

Fritz Letter at 1-2. Deputy Assistant Secretary Fritz explained that "[b]ecause of the confusion over the status of Orleans and subsequent overtures from Happy Camp and Siskiyou County Indian Association for Federal recognition, it was decided to make an in-depth review of Karok recognition." Fritz Letter at 2.

In April of 1978, the BIA issued the Meyers-Bush Memo to assist the Assistant Secretary's determination of the Tribe's status. The impetus of the Meyers-Bush Memo was several individual petitions by the Karuk sub-groups for recognition as separate entities and that "these petitions were a reaction to denials of Bureau services in that such denials were based on an internal Bureau determination that the various entities requesting services were not Federally recognized." Meyers-Bush Memo at 1. Interior closely examined the historical record and concluded that its determination that federal services to the Tribe should have been denied because it was not federally recognized "was not entirely accurate." Meyers-Bush Memo at 1. The Memo noted that no action

had been taken by the BIA towards the Tribe from 1944 until sometime after 1968 when Tribal members began receiving BIA health and education services. *Id.* at 3. In the late 1960s, Karuk members "were re-established into the service population." *Id.* at 4. Nearly a decade later, Interior officials concluded that "the Karok Tribe has had and continues to have a trust relationship with the Federal Government; the members of the tribe continue to have all rights and benefits accruing to members of a Federally recognized tribe, and that full services to the *tribe should be reinstated immediately.*"[4] *Id.* at 4. (emphasis added).

On June 9, 1978, the Acting Assistant Secretary – Indian Affairs responded to an inquiry on the status of the Orleans Karok Indians. Letter to LeRoy W. Wilder, Association on American Indian Affairs Inc., from Rick Lavis, Acting Assistant Secretary – Indian Affairs. The letter noted that Orleans was not a federally recognized tribe, but part of the Karuk Tribe of California, which "had a Federal relationship with the United States that has never been terminated by Congress. Conclusions that the relationship had been terminated or never existed may have been based on an insufficient review of a very complex situation." *Id.*

On June 15, 1978, the Assistant Secretary – Indian Affairs explained that the Department had made a "recent determination that the Karok Tribe of California had a continuing relationship with the United States[.]" Memorandum to Sacramento Area Director from George Bandman, Acting Assistant Secretary – Indian Affairs re: Orleans Karuk Council. The Memorandum explained that the Orleans Karok had submitted a constitution "prior to our determination that a Federal relationship did, in fact, exist between the United States Government and the Karok Tribe." *Id.* Underscoring that the Tribe had been administratively terminated, in October 25, 1978, the Director of the Office of Indian Services at the BIA, stated that "[o]nce we may be assured that a continuing relationship with the tribe is legally proper, we are prepared to provide such assistance as may be necessary to formally organize the tribe." Letter to Duane A. Ward, Chairman Siskiyou County Indian Association from Theodore C. Krenzke, Director Office of Indian Services (October 25, 1978).

In December of 1978, the Superintendent of BIA's Hoopa Agency opined:

> It is the belief of this Agency that the Karok Tribe has always had a continuing trust relationship with the Federal Government and that they should be extended full Federal recognition. We recommend that the Karok Tribe be granted this privilege in order that they may avail themselves of all Federal services granted Tribes with Federal recognition.

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[4]The Meyers-Bush Memo discounted any argument that the Tribe abandoned tribal relations, explaining: "We believe that due to the historical nature of the 'tribal governing system' and pressure from the Central Office to petition for recognition as separate entities, we have been instrumental in such abandonment if that argument is to be given weight." Meyers-Bush Memo at 4.

Letter to Commissioner of Indian Affairs from Joe G. Weller, Superintendent, Hoopa Agency (Dec. 20, 1978).[5]

On January 15, 1979, the Assistant Secretary – Indian Affairs found that "the continued existence of the Karoks as a federally recognized tribe of Indians has been substantiated." Memorandum to Sacramento Area Director from Assistant Secretary – Indian Affairs, re: Revitalization of the Government-to-Government Relationship Between the Karok Tribe of California and the Federal Government (Jan. 15, 1979). "In light of this finding, I am herby [sic] directing that the government-to-government relationship, with attendant Bureau services within available resources, be re-established." *Id.* Accordingly, the Assistant Secretary directed that the Tribe be added to the BIA list of federally recognized tribes. *Id.*[6]

As a whole, the history of the Karuk Tribe of California indicates that commencing in the 1890's Interior recognized the Karuk Tribe and provided numerous services such as education, health care and social services to the Tribe. Interior administratively terminated its government-to-government relationship with the Tribe beginning in approximately 1944. Tribal members did not receive BIA services again until at least 1968. In 1971, Interior informed the Tribe it was not and could not be a federally recognized tribe, but could form a corporation or non-profit association. In 1978, Interior undertook a comprehensive review of the Tribe's situation and concluded that its earlier internal determination that the Tribe and its members should not receive services because the Tribe or its sub-communities were not Federal recognized "was not entirely accurate." In 1979, Interior re-established a government-to-government relationship with the Tribe, and the Karuk Tribe was added to the list of federally recognized tribes.

IV. Restored tribe analysis of new information under NIGC 2004 analysis

We conclude that the Tribe's new information demonstrates that the Tribe constitutes a restored tribe. Under IGRA and the case law developed prior to Interior's promulgation of the Part 292 regulations, a tribe claiming to be restored was required to demonstrate a history of governmental recognition, a period of non-recognition, and then reinstatement of recognition. *See Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 369 F.3d 960, 967 (6th Cir. 2004).

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[5] In September of 1978, Interior published regulations for acknowledging American Indian tribes. 43 Fed. Reg. 39361 (Sept. 5, 1978). Neither the Karuk Tribe nor its sub-entities petitioned for recognition. Receipt of Petition for Federal Acknowledgment of Existence As Indian Tribes, 44 Fed. Reg. 116, 116 (Jan. 2, 1979).

[6] The BIA began publishing a list of federally recognized Indian tribes in 1979. The Karok Tribe of California appeared on this initial list. Notice, Indian Tribal Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 44 Fed. Reg. 7235, 7235 (Feb 6, 1979).

In 2004, we determined that the Karuk Tribe was first recognized by the federal government during the negotiations for the never-ratified 1852 California Treaty R. We have long recognized these treaty negotiations as indicative of a federal relationship despite Congress's failure to ratify the treaty. The 2004 Opinion concluded, however, that "there does not seem to be any evidence that this relationship was ever administratively terminated[.]"

The information supplied by the Tribe in 2007 demonstrates that it was administratively terminated. In 1971, Interior informed the Tribe that it was not federally recognized and could not organize under the IRA because it was landless. *See* Letter from John W. Fritz, Deputy Assistant Secretary-Indian Affairs, to Dan Swaney, Superintendent, Northern California Agency (July 30, 1984). On November 18, 1977, Interior instructed the Orleans Karuk that it needed to go through the Federal Acknowledgment Process to become federally recognized. Fritz Letter at 1-2. Shortly thereafter, Interior proceeded to conduct "an in depth review of Karok recognition." *Id.* at 2. Upon concluding that its prior determinations were "not entirely accurate," the Tribe's status was restored on January 15, 1979. After more than three decades of uncertainty and confusion, the Assistant Secretary – Indian Affairs firmly and finally re-established the government-to-government relationship and directed the Karuk Tribe of California be added to the list of federally recognized tribes. By February of 1979, the Tribe was included on the list of federally recognized tribes.

Although Congress never formally terminated the government-to-government relationship between the Karuk Tribe and the United States, the new information submitted by the Tribe supports the conclusion that Interior had administratively terminated its relationship with the Tribe, which thereafter was officially restored.

Restored lands analysis

In order to constitute restored lands eligible for gaming under IGRA, the Tribe must not only demonstrate that it is a restored tribe, it also must demonstrate that the proposed gaming site was "land taken into trust as part of . . . the restoration of lands for an Indian tribe" under 25 U.S.C. § 2719(b)(1)(B)(iii). The language of the statute does not require that a "restoration of lands" be accomplished through congressional action or in the very same transaction that restored the tribe to Federal recognition. Lands may be restored to a tribe through the administrative fee-to-trust process under 25 C.F.R. Part 151. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 198 F. Supp. 2d 920, 935-36 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004) ("*Grand Traverse Band II*"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 161-64 (D.D.C. 2000); *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 46 F. Supp. 2d 689, 699-700 (W.D. Mich. 1999) ("*Grand Traverse Band I*"). As stated by the United States District Court for the Western District of Michigan:

> [A]ccepting the State's position that some limitation is required, nothing in the record supports the requirement of Congressional action. Neither the statute nor

> the statutory history suggests such a limitation. Given the plain meaning of the language, the term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.

Grand Traverse Band II, at 935.

Land acquired after restoration may be limited by one or more factors: "For example, land that could be considered part of such restoration might appropriately be limited by the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration." *Id.* The NIGC adopted this three-factor analysis in the 2004 Opinion. In light of this analysis, we now re-examine the conclusions reached in the 2004 Opinion taking into consideration the Tribe's subsequently submitted information.

Factual circumstances

The factual circumstances of the Tribe's acquisition of the property are set forth in our 2004 Opinion. To briefly summarize, the Tribe acquired the Yreka parcel in 1997 using funding from the Department of Housing and Urban Development for the purpose of providing housing to tribal members. Interior accepted the land into trust in March 2001.

The Yreka parcel was not included among the Tribe's first trust acquisition requests, and it was not the Tribe's first trust acquisition. Nor was it the Tribe's first trust acquisition after Congress enacted IGRA in 1988. Specifically, between 1977 and 1999, Interior granted 10 trust acquisition requests submitted by the Tribe. These requests included 20 separate parcels totaling 398 acres accepted into trust for the benefit of the Tribe prior to trust acquisition of the Yreka parcel. The Tribe argues that upon restoration, its most pressing need was for housing. One cannot ignore the fact that the Tribe consists of three population centers, all of which were in need of housing and governmental services. The first parcels acquired by the Tribe were in Happy Camp, which is the tribal headquarters. These parcels were used for tribal housing and a community center. These acquisitions were followed by ones in Yreka that were used for housing.

In our opinion, these prior trust acquisitions, and the Tribe's particular use of the properties, support the conclusion that the Yreka Trust Property acquisition was part of a broad tribal restoration scheme. Therefore, we believe that the factual circumstances of the acquisition weigh in favor of concluding that the parcel constitutes restored lands.

Location of the parcel

Historical Connections

In our 2004 Opinion, we opined that the Tribe had failed to provide sufficient evidence to establish that the parcel remained important to the Tribe throughout history. Specifically, we noted that while the parcel was located within the cessation area of a treaty that was signed on November 4, 1851, that treaty did not specify which acreage belonged to the Karuk and which belonged to other signatories.

As part of its 2007 submission, the Tribe included a report (the "Beckham Report") prepared by Dr. Stephen Dow Beckham, a professor of history at Lewis & Clark College. The report documents a history of Karuk activity in the Yreka area from a period preceding federal record keeping for that area. According to the report, during the 1920s, the BIA made payments to schools throughout Siskiyou County for the enrollment of Karuk children. *See* Beckham Report at 25. These payments appeared to cease during World War II, although the BIA stopped collecting social statistics. *Id.* at 43. Dr. Beckham also compiled correspondence from the BIA which concludes that the Tribe had a long-standing presence in Yreka. For example, the BIA, as part of a review of the status of the Tribe, issued a report finding that "the aboriginal subentities of the Karok Tribe consisted of the communities at Happy Camp, Orleans and Siskiyou (Yreka)." *See* Fritz Letter at 2; 13 IBIA 76, 78 (1985). Further, in 1978 the BIA acknowledged that the Tribe's "aboriginal camp sites were in precisely the same locations as they are today." *See* Meyers-Bush Memo at 1. In addition, the record includes oral history from a tribal elder who recalled his grandmother's statements concerning her connection to all of Siskiyou County, thus corroborating the written historical record on this point. *See* Declaration of Charles Thom, Sr., 2007. Therefore, there is evidence of historical connections between the Tribe and the vicinity of the Yreka Trust Property sufficient to weigh in the Tribe's favor.

Modern Connections

The parcel is located 38 miles from the tribal headquarters at Happy Camp. The Yreka Trust Property was taken into trust to provide housing to the Tribe. Further, the Tribe has provided numerous declarations from tribal members, including the Tribal Chairman, describing modern connections to the Yreka area. For instance, one tribal member was born in Yreka in 1932, graduated from high school in Yreka in 1949, and then returned to Yreka in 1954 having served in the Korean War. *See* Declaration of Stanley Jerden, October 29, 2007. The tribal member, Mr. Jerden, also recounts tribal council meetings held in the 1960s that he and others from Yreka attended. *Id.* Tribal member Lorelai Ginette Super stated that she was born in Yreka in 1941 and during the late 1950s "attended tribal council meetings with my mother in Yreka, Happy Camp, Orleans, and Scotts Valley. The tribal council meetings were always a mixture of people from all four of these communities." *See* Declaration of Lorelai Ginnette Super, October 30, 2007. One tribal member, who served on the Happy Camp Tribal Council, stated that he moved to Yreka after World War II to work on a logging contract in 1953. He stated

that there "were always three tribal councils: Orleans, Happy Camp and Yreka." *See* Declaration of Charles Thom, Sr., 2007. Another tribal member, Franklin Raymond Thom, stated that he was born in Yreka in 1956, lived in Sommes Bar until he was six and then moved back to Yreka. He further stated that the majority of his family lived in Yreka. *See* Declaration of Franklin Raymond Thom, 2007. Yet another tribal member was born in Yreka in 1963 and graduated from high school in Yreka in 1983. *See* Declaration of Toni Ginette Jerry, October 27, 2007. Ms. Jerry also recalled attending tribal council meetings in the 1970s in Yreka with her mother and grandmother. *Id.* One tribal member born in Yreka in December of 1953 stated that "prior to recognition, there were three Karuk communities with strong family connections and allegiances between them." *See* Declaration of Bessie Munson, October 26, 2007. Finally, one tribal member was born in Yreka in 1935, graduated from high school in Yreka in 1954, moved away for a number of years and moved back to Yreka in 2007. *See* Declaration of Thelma May Slonan, October 29, 2007. According to Dr. Beckham, of 3,383 (as of June 14, 2005) enrolled Karuks, 685 were born in Yreka.

The new information supplied by the Tribe sufficiently establishes that the Tribe had a significant historical relationship to the vicinity of the Yreka Trust Property, which it has maintained to this day. Having established a historical connection to the vicinity of the Yreka Trust Property and a modern connection to the Trust Property, we thus find that the location factor weighs in the Tribe's favor.

Temporal relationship

In our 2004 Opinion, we found an insufficient temporal relationship between the purported restoration of the Tribe and the acquisition of the parcel. Specifically, the Tribe acquired the parcel 18 years after the 1979 inclusion of the Tribe on the list of federally recognized tribes. Another two years passed before the Tribe applied to have the property taken into trust. Ultimately, the parcel was taken into trust by Interior in 2001. As explained in the 2004 Opinion, a 22 year gap between restoration and the land being brought into trust was pushing "the outer limits of what has previously been considered an acceptable delay." Our opinion expressly concluded, however, that we might be willing to find a sufficient temporal relationship if the Tribe met the other factors – the factual circumstances of the acquisition and the location of the parcel and the Tribe's historic and modern connections to it. The Tribe's 2007 information demonstrates that the Tribe satisfies those factors. We now conclude that the Tribe has satisfied the temporal relationship test because the time period between the Tribe's restoration and acquisition of the parcel demonstrates a restoration scheme.[7] Therefore, upon re-examining the 2004 Opinion under the legal landscape that existed prior to the Part 292 regulations, the parcel in question qualifies as restored lands under IGRA.

Opposition by Shasta Nation of California

[7] We note that our conclusion regarding timing is consistent with the Part 292 regulations, which establishes a 25-year period between when a tribe was restored and the submittal of an application to take land into trust. *See* 25 C.F.R. § 292.12(c)(2).

A member of the Shasta Nation of California[8], a non-federally recognized tribe, has submitted information to NIGC and argues that the Karuk Tribe has no historical connections to Yreka and, therefore, the parcel at question does not qualify for gaming. But none of the documents contradict any of the information submitted by the Karuk Tribe. Rather, the submitted materials detail the Shasta Nation's historical presence in Yreka and Karuk's historical presence in other areas of Siskiyou County. But IGRA's restored lands exception does not require the Karuk Tribe to demonstrate that it was the only tribe with historical connections to the area, or that the subject area was the only place where the Karuk Tribe has historical connections. Therefore, the documents submitted by the Shasta Nation do not change this opinion.

Recommendation: Approve the ordinance on the grounds that the parcel qualifies as restored lands for a restored tribe within the meaning of IGRA. The Department of the Interior's Office of the Solicitor concurs in this opinion.

[8] The Shasta Nation has petitioned for Federal acknowledgement as an Indian tribe under 25 C.F.R. Part 83.

EXHIBIT

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MEMORANDUM

TO: Philip N. Hogen, Chairman

FROM: Penny J. Coleman, Acting General Counsel PJC

DATE November 22, 2005

RE: Cowlitz Tribe Restored Lands Opinion

On August 29, 2005, the Cowlitz Indian Tribe ("Cowlitz Tribe" or "Tribe") submitted a site-specific tribal gaming ordinance claiming that a certain parcel in the State of Washington near the Lewis River ("the Lewis River Property") would qualify as Indian lands on which the Tribe could conduct gaming if the lands are acquired into trust by the Department of the Interior.[1]

As detailed below, the Office of General Counsel's opinion is that the Cowlitz Tribe is a restored tribe and that if the United States Department of the Interior accepts the Lewis River Property into trust for the Tribe, such trust acquisition will qualify as the "restoration of lands" within the meaning of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(b)(1)(B)(iii). We note that the Department of the Interior, if it acquires the Lewis River Property into trust, may proclaim the parcel to be the Tribe's initial reservation. An "initial reservation" proclamation would provide a second basis by which the parcel would qualify as Indian lands on which the Tribe could conduct gaming. 25 U.S.C. § 2719(b)(1)(B)(ii).

PROCEDURAL BACKGROUND

On January 4, 2002, the Cowlitz Tribe submitted a fee-to-trust application to the Department of the Interior, requesting the Department of the Interior to accept title to the Lewis River Property in trust for the Cowlitz Tribe pursuant to 25 C.F.R. Part 151. The Tribe later withdrew this application, and on March 12, 2004, the Tribe submitted a revised fee-to-trust application that specifically identified the Tribe's intention to use the site for gaming purposes. The Tribe's fee-to-trust application is still pending at the

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[1] The NIGC's decision whether to approve or disapprove the tribal gaming ordinance is due on November 25, 2005. The scope of this legal opinion is limited to the issue of whether the Lewis River Property, if accepted into trust, will qualify for the restored lands for a restored tribe exception to IGRA's prohibition against gaming on Indian lands acquired into trust after October 17, 1988. 25 U.S.C. § 2719(b)(1)(B)(iii). All other legal issues associated with the Tribe's gaming ordinance have been addressed outside of this opinion. The decision whether to approve the Tribe's gaming ordinance will be based on the entire record, including but not limited to, the contents of this legal opinion.

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Department of the Interior. This legal opinion is not intended to affect the Secretary of the Interior's discretion under Part 151 or provide any recommendation regarding the merit of the Tribe's pending fee-to-trust application. Furthermore, this opinion does not authorize the Tribe to conduct gaming on the Lewis River Property. In order to conduct gaming on the Lewis River Property under IGRA, the Department of the Interior must accept the land into trust. This memorandum is simply a legal opinion expressing the Office of General Counsel's view that if the Department of the Interior accepts trust title to the Lewis River Property, the site will then qualify as restored lands for a restored tribe, enabling the Tribe to conduct gaming activities thereon.

The Cowlitz Tribe requested this legal opinion in March 2005 ("Request"), in association with a site-specific tribal gaming ordinance that the Tribe also submitted for the NIGC's review. On August 18, 2005, the Tribe withdrew its original tribal gaming ordinance from the NIGC's review in order to give the NIGC more time to consider the restored lands issue, and to incorporate some minor changes to the ordinance language. On August 29, 2005, the Tribe submitted a revised site-specific tribal gaming ordinance to the NIGC. Letter from V. Heather Sibbison, Counsel for the Cowlitz Tribe, to Jeff Nelson, NIGC Staff Attorney (Aug. 29, 2005) (transmitting Cowlitz Tribal Council Ordinance No. 05-2).

The tribal gaming ordinance at issue, if approved by the NIGC, would authorize Class II gaming on the "Tribe's Indian Lands." Cowlitz Tribal Council Ordinance No. 05-2, § 3. The tribal gaming ordinance's definition of the term "Tribe's Indian Lands" contains a site-specific legal land description of the Lewis River Property. *Id.* § 2(O). Specifically, the Tribe's gaming ordinance defines "Tribe's Indian Lands" as:

> (1) All lands within the limits of the Cowlitz Indian reservation;[2] or
>
> (2) Any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual member of the Tribe, or held by the Tribe or individual member of the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power, including but not limited to, certain land for which the Tribe has submitted a fee-to-trust application and which the Tribe intends to use for the development of a gaming facility as allowable under 25 U.S.C. 2719(b)(1)(B), provided that this certain land will not be deemed the 'Tribe's Indian Lands' until such time as the United States has acquired trust title to it and the Tribe exercises governmental power over it. Said land is specifically described as follows:
>
> [See Appendix A of this opinion for the detailed legal land description contained in the Tribe's gaming ordinance.]

[2] At the present time, the Cowlitz Tribe has no reservation.

Cowlitz Tribal Council Ordinance No. 05-2, § 2(O).

Based on the maps and other information provided to the NIGC by the Cowlitz Tribe, the legal land description in the tribal gaming ordinance refers to an irregularly-shaped, contiguous tract of land approximately 151.87 acres in size. The site is referred to by the Tribe as "the Cowlitz Parcel," but this opinion uses the term "Lewis River Property" to refer to the same tract of real estate. The Lewis River Property is in Clark County, Washington, just to the west of Interstate 5 at Exit 16, approximately one half mile away from Paradise Point State Park and approximately 16 miles north of Portland, Oregon.

In addition to the Tribe's Request and several supplemental submissions received from the Tribe, we also have received and considered opposition comments and analyses provided by the Confederated Tribes of the Grand Ronde Community of Oregon, two non-Indian card room operations in La Center, the City of La Center, State Representative Richard Curtis, the American Land Rights Association, and a number of other groups and private citizens.

APPLICABLE LAW

For tribes to conduct gaming under IGRA, such gaming must be conducted on "Indian lands," defined as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4). *See also* 25 C.F.R. § 502.12 (NIGC's implementing regulation further defining Indian lands).

A determination of whether a tribe is conducting gaming on Indian lands, however, is not necessarily the end of the inquiry. IGRA generally prohibits gaming on lands acquired in trust after October 17, 1988 (IGRA's enactment date), unless one of the statute's exceptions apply. 25 U.S.C. § 2719. Accordingly, for lands taken into trust after October 17, 1988, it is necessary to review the prohibition and its exceptions to determine whether a tribe can conduct gaming on such lands.

In this case, the Tribe has requested a legal opinion regarding whether trust acquisition of the Lewis River Property would qualify for IGRA's restored lands exception. The restored lands exception allows gaming on Indian lands acquired in trust after October 17, 1988, if the lands are taken into trust as part of the "restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii).

ANALYSIS

Application of IGRA's restored lands exception requires a two-part analysis: 1) whether the tribe is an "Indian tribe that is restored to Federal recognition"; and 2) whether trust acquisition of the subject land is part of a "restoration of lands" for the tribe. These terms are not defined in IGRA or the NIGC's implementing regulations, but several judicial decisions and agency opinions offer legal guidance.

I. The Cowlitz Tribe Has Been Restored to Federal Recognition

To be considered an "Indian tribe that is restored to Federal recognition," as that term is used in IGRA, a tribe must demonstrate a history of: 1) governmental recognition; 2) a period of non-recognition; and 3) reinstatement of recognition. *See Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the W. Dist. of Mich.*, 369 F.3d 960, 967 (6th Cir. 2004). As set forth below, the Cowlitz Tribe meets all three of these necessary criteria.

A. The Cowlitz Tribe Was Recognized During the Nineteenth Century

The record in this case shows that during the mid-to-late 1800s, the United States Government recognized the Cowlitz Indian Tribe. The current Cowlitz Tribe evolved from an amalgamation of two treaty-time tribes, now referred to as the Lower Cowlitz Tribe and the Upper Cowlitz Tribe. Reconsidered Final Determination for Federal Acknowledgment of the Cowlitz Indian Tribe, 67 Fed. Reg. 607 (Jan. 4, 2002); Final Determination to Acknowledge the Cowlitz Tribe, 65 Fed. Reg. 8436 (Feb. 18, 2000). In this case, during the Federal Acknowledgment Process, the Bureau of Indian Affairs ("BIA") determined that the Lower Cowlitz Tribe and the Upper Cowlitz Tribe, from which the modern Tribe evolved, both were recognized by the Federal government during the mid-to-late 1800s. 67 Fed. Reg. at 608; 65 Fed. Reg. at 8436. The NIGC's Office of General Counsel accepts those findings as conclusive for the purposes of satisfying this element of the "restored tribe" test. Even so, this memorandum will explain why the Office of General Counsel agrees with the BIA's findings.

Before the modern era of federal Indian law, one method by which the United States Government recognized the governmental status of an Indian tribe was to conduct government-to-government negotiations with the intent to enter into a treaty with the tribe. *See Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675 (1979) ("A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations."); *see also Worcester v. Georgia*, 31 U.S. 515, 559 (1832) ("The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties."); *United States v. Washington*, 898 F. Supp. 1453, 1458 n.7 (W.D. Wash. 1995), *aff'd in part, rev'd in part on other grounds*, 157 F.3d 630 (9th Cir. 1998) (stating that treaty rights were "the result of the negotiation between two sovereigns, the United States and the Tribes."); Letter

from Penny J. Coleman, NIGC Acting General Counsel, to Bradley G. Bledsoe Downes, Esq., at 3 (Oct. 12, 2004) ("NIGC Karuk Opinion") ("Based on the fact that the Tribe negotiated treaties with the United States it can clearly be stated that there existed a government-to-government relationship at one time.").

In 1854, the Federal Government's Acting Commissioner of Indian Affairs instructed Washington's first territorial governor, Isaac Stevens, to commence treaty negotiations with the Washington tribes. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 21 Ind. Cl. Comm. 143, 166 (1969). In February of 1855, Governor Stevens convened treaty negotiations with the "Upper and Lower Chehalis, Cowlitz, Lower Chinook, Quinault and Queets Indians." *Id.* at 167; *see also* Historical Technical Report: Cowlitz Indian Tribe, U.S. Dep't of the Interior, Bureau of Indian Affairs—Branch of Acknowledgment and Research at 36-39 ("HTR"). The "Cowlitz Tribe" that attended this treaty council was the modern Tribe's predecessor now referred to as the "Lower Cowlitz Tribe." 67 Fed. Reg. at 607-608. During the treaty negotiations, the Lower Cowlitz Tribe expressed a willingness to give up its lands and settle on a reservation being requested by the Upper Chehalis. *Plamondon*, 21 Ind. Cl. Comm. at 168-69. Kishkok, the Cowlitz chief, said they were willing to move to the Satsop country. *Id.* at 169. But Governor Stevens would not accede to the requests of the Indians for the reservations they desired, and no treaty was consummated. *Id.*

Because treaty negotiations can only take place between sovereign entities, the Federal Government's effort to sign a land cession treaty with the Cowlitz Tribe is evidence of a government-to-government relationship with the Tribe and constitutes Federal recognition.[3]

Furthermore, the Federal government recognized both the Lower Cowlitz and the Upper Cowlitz during the latter half of the 1800s, as supported by substantial evidence, including several Federal Indian agent censuses. 67 Fed. Reg. at 608; HTR at 67-89. This evidence is more than sufficient to support the opinion that the modern Cowlitz Tribe, through its predecessor tribes, was recognized by the Federal government before it lost such Federal recognition, as described below.

B. The Cowlitz Tribe Lost Its Federal Recognition During the Twentieth Century

Under the second step of an IGRA restored-tribe analysis, a tribe must demonstrate that during some period in the tribe's history, the tribe lost its prior Federal recognition. *Grand Traverse Band,* 369 F.3d at 968-72; *TOMAC v. Norton,* 193 F. Supp. 2d 182, 193-94 (D.D.C. 2002); *Sault Ste. Marie Tribe of Lake Superior Chippewa Indians v. United States*, 78 F. Supp. 2d 699, 705-07 (W.D. Mich. 1999), *vacated on other grounds*, 288 F.3d 910 (6th Cir. 2002) (holding that plaintiff lacked standing). In this case, as detailed below, the historical evidence establishes that the United States did not recognize the Cowlitz Tribe as a governmental entity from at least the early 1900s until 2002.

[3] The BIA came to the same conclusion, determining that the 1855 treaty negotiations represented "unambiguous Federal acknowledgement." HTR at 11.

Although the Cowlitz Tribe never signed a land cession treaty, President Lincoln opened the Cowlitz lands in southwest Washington to non-Indian settlement through a proclamation signed on March 20, 1863. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 25 Ind. Cl. Comm. 442, 451 (1971). After the Cowlitz Tribe lost its land base, the Federal government stated in numerous records that the Tribe was not recognized as a governmental entity. For instance, during the early 1900s, the Cowlitz Tribe attempted to seek redress from the Federal Government for alienating its lands without payment to the Tribe. From 1915 through 1929, the Department of the Interior opposed a series of bills introduced in Congress that would have given the U.S. Court of Claims jurisdiction to hear the Tribe's claims, based in part on the Department's position that it no longer had a government-to-government relationship with the Tribe. HTR at 126. For example, in a letter to the Chairman of the Senate Committee on Indian Affairs, the Secretary of the Interior wrote:

> The records show that as early as 1893 these Indians [the Cowlitz Indians] were reported as being scattered through the southern part of the State of Washington, most of them living on small farms on their own; that they hardly formed a distinct class, having been so completely absorbed into the settlements; and that fully two-thirds of them were citizens and very generally exercised the right of suffrage. . . . In view of the foregoing it will be seen that the Cowlitz Indians are without any tribal organization, are generally self-supporting, and have been absorbed into the body politic.

Letter from Secretary Hubert Work, Department of the Interior, to the Honorable J.W. Harreld, Chairman, Senate Committee on Indian Affairs (March 28, 1924), *quoted in* HTR at 126.

In 1933, the Bureau of Indian Affairs responded to a person apparently seeking enrollment in the Cowlitz Tribe:

> The receipt is acknowledged of your letter of October 5, making application for enrolment [sic] with the Cowlitz tribe of Indians; and stating that several of your relatives would like to be enrolled therewith.
>
> No enrolments [sic] are now being made with the remnants of the Cowlitz tribe which in fact, *is no longer in existence as a communal entity. There are, of course, a number of Indians of Cowlitz descent in that part of the country, but they live scattered about from place to place, and have no reservation under Governmental control.* Likewise, they have no tribal funds on deposit to their credit in the Treasury of the United States, in which you and your relatives might share if enrolled.
>
> Only Indians who have the status of Federal wards are entitled to free hospitalization at a Government Indian hospital.

Letter from John Collier, Commissioner, Bureau of Indian Affairs, to Lewis Layton (Oct. 25, 1933), *quoted in* HTR at 123-24 (emphasis added).

In 1968, a Bureau of Indian Affairs enrollment officer informed a Cowlitz tribal member that "the Cowlitz . . . are not a reservation group and . . . are not presently recognized as an organized tribe by the United States." Letter from Chester J. Higman, Bureau of Indian Affairs, to Isaac Kinswa (Sept. 27, 1968), *quoted in* HTR at 149.

In 1975, the Department of the Interior informed Congress that "[t]he Cowlitz Tribe of Indians is not a Federally-recognized tribe. Therefore, there is presently no Federally-recognized successor to the aboriginal entity aggrieved in 1863." Letter from Morris Thompson, Commissioner of Indian Affairs, to the Chairman of the Senate Subcommittee on Indian Affiars (Sept. 24, 1975), *reprinted in* Distribution of Funds to Cowlitz and Grand River Band of Ottawa Indians: Hearing Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 94th Cong. 6 (1975).

One month later, the Department of the Interior sent Senator James Abourezk a letter to respond to the Senator's request for information. Letter from Morris Thompson, Commissioner of Indian Affairs, to the Honorable James Abourezk, United States Senate (Oct. 29, 1975), *reprinted in* Distribution of Funds to Cowlitz and Grand River Band of Ottawa Indians: Hearing Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 94th Cong. 6 (1975). The first question to which the Department responded, as presented in the letter, inquired: "Why are neither the Cowlitz tribe nor the Grand River Band of Ottawa Indians 'federally recognized' tribes?" *Id.* With regard to the Cowlitz Tribe, the Department of the Interior responded:

> Throughout the 1850's and 60's the United States made a concerted effort to conclude a treaty with the Cowlitz Indians. Despite these efforts, no treaty was ever executed between the United States government and the Cowlitz Indians. From that time to the present, there has been no continuous official contact between the Federal Government and any tribal entity which it recognizes as the Cowlitz Tribe of Indians.

Id. at 49 (emphasis in original).

Furthermore, before the Cowlitz Tribe completed the Federal Acknowledgment Process in 2000, the Bureau of Indian Affairs did not include the Cowlitz Tribe in its list of Federally-recognized tribes. 63 Fed. Reg. 71941 (Dec. 30, 1998); 62 Fed. Reg. 55270 (Oct. 23, 1997); 61 Fed. Reg. 58211 (Nov. 13, 1996); 60 Fed. Reg. 9250 (Feb. 16, 1995); 58 Fed. Reg. 54364 (Oct. 21, 1993).

This tribal history is very different than the situation presented in the NIGC Karuk Opinion, where the record lacked any evidence that the United States ever considered the Karuk Tribe to be non-recognized or ineligible to maintain a government-to-government relationship. NIGC Karuk Opinion at 3-4. At most, the Karuk Tribe was able to demonstrate that from 1852 to 1979, the United States and the Karuk Tribe had no

official government-to-government dealings. *Id.* However, nothing in the historical record suggested that this period of non-dealing was concomitant with Federal non-recognition. Rather, the record supported the view that the period of non-dealing was the result of the Karuk Tribe's own decisions to refrain from exercising the government-to-government relationship with the Federal government to which the Karuk Tribe was consistently entitled. In contrast here, the United States Government made numerous statements on the record evidencing the Federal Government's position that the Cowlitz Tribe was no longer Federally-recognized.

C. The Cowlitz Tribe's Recognition was Reinstated During the Twenty-First Century

A tribe with a history of governmental recognition, a period of non-recognition, and then reinstatement of recognition has been "restored" under IGRA, whether the reinstatement of recognition was achieved through Congressional action or through the administrative Federal Acknowledgment Process. *Grand Traverse Band,* 369 F.3d at 967, 969-72, *aff'g* 198 F. Supp. 2d 920, 932 (W.D. Mich. 2002); Letter from Kevin Washburn, NIGC General Counsel, to the Honorable Douglas W. Hillman, Senior U.S. District Judge at 12-17 (Aug. 31, 2001) ("NIGC Grand Traverse Opinion").

In this case, the BIA issued a final determination in February 2000 acknowledging that the Tribe exists as an Indian tribe within the meaning of Federal law. 65 Fed. Reg. 8436 (Feb. 18, 2000). In 2002, pursuant to a request for reconsideration, the BIA affirmed its earlier decision to acknowledge the Tribe. 67 Fed. Reg. 607 (Jan. 4, 2002).

As set forth above, the Cowlitz Tribe was recognized, lost its Federal recognition, and finally was reinstated to Federal recognition. Therefore, the Cowlitz Tribe is an "Indian tribe that is restored to Federal recognition" as that term is used in IGRA.

II. Trust Acquisition of the Lewis River Property Would Be a Restoration of Lands

Having determined that the Cowlitz Tribe is "restored," the next issue is whether trust acquisition of the Lewis River Property would be "land taken into trust as part of . . . the restoration of lands for an Indian tribe" under 25 U.S.C. § 2719(b)(1)(B)(iii).

The language of the statute does not require that a "restoration of lands" be accomplished through congressional action or in the very same transaction that restored the tribe to Federal recognition; and therefore, lands may be restored to a tribe through the administrative fee-to-trust process under 25 C.F.R. Part 151. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney,* 198 F. Supp. 2d 920, 935-36 (W.D. Mich. 2002), *aff'd,* 369 F.3d 960 (6th Cir. 2004) ("*Grand Traverse Band II*"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt,* 116 F. Supp. 2d 155, 161-64 (D.D.C. 2000); *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney,* 46 F. Supp. 2d 689, 699-700 (W.D. Mich. 1999) ("*Grand Traverse Band I*"). As stated by the United States District Court for the Western District of Michigan:

> [A]ccepting the State's position that some limitation is required, nothing in the record supports the requirement of Congressional action. Neither the statute nor the statutory history suggests such a limitation. Given the plain meaning of the language, the term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.

Grand Traverse Band II, at 935. The court then proposed that land acquired after restoration could be limited by one or more factors: "For example, land that could be considered part of such restoration might appropriately be limited by the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration." *Id.*; *see also* NIGC Karuk Opinion, at 5 (adopting the court's suggested three-factor analysis).

Upon review of these three factors, as set forth below, we conclude that trust acquisition of the Lewis River Property would be considered restoration of lands to a restored tribe under 25 U.S.C. § 2719(b)(1)(B)(iii).

A. Factual Circumstances of the Acquisition

On balance, the factual circumstances of the acquisition weigh in the Tribe's favor. First, the Tribe currently has no reservation or other trust land. Congress added the exceptions in 25 U.S.C. § 2719(b)(1)(B) to ensure that tribes lacking reservations or other trust lands when IGRA was enacted would not be disadvantaged relative to more established tribes. *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003), *cert. denied sub nom. Citizens for Safer Cmtys. v. Norton*, 124 S. Ct. 1888 (2004). As a newly-restored tribe seeking to obtain its first trust acquisition, the Cowlitz Tribe is squarely among the class of tribes that Congress intended to assist with these statutory exceptions.

The second factual circumstance that weighs in the Tribe's favor is that the Cowlitz Tribe has a long history of attempts to reacquire land, a history which significantly pre-dates the enactment of IGRA in 1988. Cowlitz tribal members began to seek formal redress for illegal dispossession of lands in 1908, and expanded those claims in 1909. HTR at 106-108. From 1915 through 1929, the Cowlitz Tribe pursued federal legislation that would have allowed it to present its claims before the Federal Court of Claims. HTR at 126. Although this legislation was never enacted, the Tribe was later able to bring a claim before the Indian Claims Commission ("ICC"). HTR at 144. In 1973, the Tribe agreed to settle its litigation with the United States, but insisted that some of the settlement money be set aside for land acquisition. HTR at 152. In 1975, Congress considered legislation to give effect to the settlement agreement, and Cowlitz Tribal Council Chairman Joseph Cloquet testified in favor of including a $10,000 set-aside for tribal land acquisition, stating:

> I submit to you, gentlemen, that this section is the very heart of the legislation to save our tribal entity, tribal ties, our Indianness denied us in

> the past century, and what culture we have left. Many of us, and I for one, would gladly give up the per capita distribution entirely for this provision in S. 1334. I am not willing to give up my Indian heritage for dollars. I will not stand by and see my people disbursed [sic] and become a small footnote to history.

Distribution of Funds to Cowlitz and Grand River Band of Ottawa Indians: Hearing Before the Subcomm. On Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 94th Cong. 68-69 (1975).

The Department of the Interior objected to provisions in the proposed legislation that provided money for land acquisition by the Cowlitz Tribe because the Tribe was not recognized at that time. HRT at 156-57. The proposed legislation stalled until after the Cowlitz Tribe became recognized. In 2004, two years after the Cowlitz Tribe became Federally recognized, Congress enacted the Cowlitz Indian Tribe Distribution of Judgment Funds Act. Pub. L. 108-222 (Apr. 30, 2004). Section 4(f)(1) of this law sets aside 21.5% of the $1.5 million settlement in order to produce annual interest payments that the Tribe may use for "[p]roperty acquisition for business or other activities which are likely to benefit the tribe economically or provide employment for tribal members." *Id.* § 4(f). On March 6, 2005, the Tribal Council of the Cowlitz Indian Tribe adopted a resolution stating that the Cowlitz Tribe shall use the settlement funds made available to the Tribe pursuant to Public Law 108-222 Section 4(f) towards the purchase of the Lewis River Property. Cowlitz Indian Tribe Tribal Council Resolution No. 05-19 (March 6, 2005).

The record shows that the Cowlitz Tribe has spent nearly 100 years attempting to re-establish a land base, and that the trust acquisition of the Lewis River Property would be the first trust acquisition of this protracted effort. Therefore, the factual circumstances of this acquisition weigh in favor of a restored-lands determination.

B. Location of the Acquisition

The physical location of a trust acquisition is an important factor in determining whether the parcel constitutes restored lands. *In re: Wyandotte Nation Amended Gaming Ordinance*, NIGC Final Decision and Order at 10 (Sept. 10, 2004) ("NIGC Wyandotte Opinion"); NIGC Grand Traverse Opinion at 17-18. In this context, we evaluate the Tribe's historical and modern connections to the land. *Id.*

1. Historical Connections to the Land

In this case, the record supports the opinion that throughout the Tribe's history, the Cowlitz people maintained connections to the area surrounding the Lewis River Property sufficient to weigh in the Tribe's favor in this restored lands analysis. The Cowlitz Tribe acknowledges that it was not the only tribe that used and occupied this area. In fact, the record shows that it probably was not the dominant tribe in the lower Lewis River watershed during treaty times. Commenters expressed significant disagreement with

some of the Tribe's assertions and interpretations of the historical record regarding the level of the Cowlitz Tribe's use, control and settlement of the Lewis River area. We have determined, however, that we need not resolve all of the disputes regarding the historical record in this case, because the unquestionable parts of the historical record establish that the Cowlitz Tribe, throughout its history, used the Lewis River Property area for hunting, fishing, frequent trading expeditions, occasional warfare, and if not permanent settlement, then at least seasonal villages and temporary camps. These historical connections are sufficient to weigh in favor of the Tribe in this restored lands analysis. Additionally, while the documentation does not specifically identify the Lewis River Property as a historically important parcel, this lack of a specific nexus is not determinative in light of the other factors weighing in favor of the Tribe's assertion that these lands are restored lands.

In arriving at this conclusion, we relied on the entire record, as provided by the Tribe and its opposition groups. We relied most heavily on facts appearing in the Tribe's acknowledgement proceeding record, as developed and published by the BIA, and the facts adjudicated by the Indian Claims Commission. The following quotations and notes from the record are select examples that are meant only to be illustrative.

The Tribe's federal acknowledgment proceeding record includes the following description:

> From the earliest descriptions of explorers, the historical Cowlitz Indians lived mainly along the length of the Cowlitz River, from slightly above its mouth, or juncture with the Columbia River, as far upriver as the area of Randle, Washington. This was a distance of some 80 miles. There were also villages and/or hunting camp sites along other rivers such as the Toutle and the Lewis.

Genealogical Technical Report: Cowlitz Indian Tribe, U.S. Dep't of the Interior, Bureau of Indian Affairs—Branch of Acknowledgment and Research at 4-5 (footnote omitted) ("GTR").

> In approximately 1813-1814, Alexander Henry of the North West Company wrote that Cowlitz, to the number of 100 men, had a battle with Casino (a Multnomah Chinookan chief) at the lower entrance of the Willamette.

HTR at 19. The "lower entrance" of the Willamette River refers to what is now known as the Multnomah Channel, which enters the Columbia River at present-day St. Helens,[4] across the Columbia River from the mouth of the Lewis River, only about three (3) miles from the Lewis River Property.

[4] Response to the Request of the Cowlitz Indian Tribe for a Restored Lands Determination, Prepared by Perkins Coie LLP at 23 (Nov. 15, 2005).

In the early 1800s, Governor George Simpson (of the Northern Department of the Hudson's Bay Company) explained that "nearly the whole" of the fur trade:

> pass[es] through the hands of three Chiefs or principal Indians viz. Concomely King or Chief of the Chinooks at Point George, Casseno Chief of a Tribe or band settled nearly opposite to Belle vue Point and *Schannaway the Cowlitch Chief whose track from the borders of Pugets Sound strikes on the Columbia near to Belle vue Point*[.]

Fur Trade and Empire, George Simpson's Journal at 86 (emphasis added). Because Bellevue Point is located at the confluence of the Columbia and Willamette rivers, approximately ten (10) miles south of the Lewis River Property, the Cowlitz "track," as described in this narrative, encompasses that portion of the Columbia River that passes within about three (3) miles from the Lewis River Property.

On May 13, 1836, John K. Townsend observed several large lodges of "Kowalitsk" Indians, "in all probably one hundred persons", near his camp "on a plain below Warrior's point." John Kirk Townsend, *Across the Rockies to the Columbia* 232 (University of Nebraska Press 1978) (1839), *cited in Simon Plamondon*, 21 Ind. Cl. Comm. at 155; HTR at 25 n.14. Warrior's Point is on the Columbia River across from the mouth of the Lewis River, about three (3) miles northwest of the Lewis River Property. Whether this group of "several large lodges" housing approximately 100 Cowlitz Indians is characterized as a "village" or a "summer encampment," it is evidence of a historical Cowlitz presence near the Lewis River Property. Although Townsend did not specifically state how far "below Warrior's Point" these Cowlitz lodges were located, it should be assumed that Townsend would have chosen some other landmark to describe the location if the lodges were more than a short distance from Warrior's Point.

During the 1855-1856 Indian war, a Cowlitz Indian named Zack was hunting near Chelatchie Prairie on the Lewis River when he saw 200 armed Indian warriors. HTR at 99 n.86. Zack hurried downstream to warn the American settlers. *Id.* The Chelatchie Prairie is six (6) miles east of the Lewis River Property, and the Lewis River runs less than one (1) mile north of the Lewis River Property.

At Governor Stevens' 1855 treaty negotiations, Cowlitz tribal delegate Ow-hye stated:

> Formerly the King Georges (English) came. They only paid them [the Cowlitz] a shirt to go from Cowlitz [River] to Vancouver. The Indians were very much ashamed at their treatment. They just now find out what the land was worth by seeing the French sell to the Whites. Several hundred dollars for a small piece with a house on it. It was not their land, but the Indians after all.

HTR at 40. The Cowlitz River is located approximately eighteen (18) miles north of the Lewis River Property, and Vancouver is located approximately twelve (12) miles south of the Lewis River Property, putting the Lewis River Property near the center of this narrative. Ow-hye may have been describing Cowlitz territory that the Tribe purportedly

sold to the English, as Ow-hye describes the French selling real estate in the same narrative, or he may have been describing a type of river toll paid to travel this stretch of the Columbia. Under either interpretation, the narrative is evidence of a historical connection to the area.

A map created under the direction of Governor Stevens in 1857 generally supports the position that Cowlitz territory extended south to the Lewis River. *See* "Map of the Indian nations and tribes of the territory of Washington and of the territory of Nebraska west of the mouth of the Yellowstone. Made under the direction of Isaac I. Stevens, gov. of Wash. terr. & sup't of Ind. affairs, March 1857, drawn by William H. Carlton, surveyor and top eng. (1857)."[5] On this map, the "Howalitsk" Indian territory is marked as extending from the Cowlitz River at least as far south as the Lewis River, which is within one (1) mile of the Lewis River Property. *Id.* "Howalitsk" is an alternative spelling of "Cowlitz."[6] Other maps created during this time period depict Cowlitz territory to the north of the Lewis River watershed, but not by a great distance.

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[5] Image of map available at <http://content.wsulibs.wsu.edu/cgi-bin/pview.exe?CISOROOT=/maps&CISOPTR=153&CISORESTMP=/qbuild/buildplate11.html&CISOVIEWTMP=/qbuild/buildplate12.html&CISOROWS=2&CISOCOLS=5&CISOCLICK=title:subjec:creato:date:type:cover>.

[6] Other parts of Governor Stevens' map indicate that "Howalitsk" refers to the Cowlitz Tribe. The upper left portion of the map contains a "Tabular Statement of the Indians west of the Cascade Mountains, showing tribes, population, parties to the several treaties, reservations provided for in the treaties, and temporary encampments." Within that table, "Howalitsk" is not found, but "Cowlitz" and "Tiatinapan" are listed together as located "near Cowlitz landing" and "with whom treaties have not been made." On the map, the closest notation of tribes near Cowlitz Landing is "Tiatinapan" and "Howalitsk." Those notations are perpendicular to each other, with "Tiatinapan" running along the Cowlitz River and "Howalitsk" running from the Cowlitz River south to the Lewis River. Given that Tiatinapan and Cowlitz are listed together in the table, that "Howalitsk" is not listed in the table, that Howalitsk and Tiatinapan are the tribes shown closest to Cowlitz Landing, and that "Cowlitz" is not otherwise depicted near Cowlitz landing (nor anywhere else on the map), the most reasonable explanation is that "Howalitsk" refers to the Cowlitz Tribe.

In addition to the Cowlitz/Howalitsk alternative spellings, the map appears to contain similar alternative spellings for other tribes. For example, the map's table of tribes includes the "Clallams" as party to the 1855 Treaty of Point No Point, yet the map depicts the "Sclallams." Both spellings ignore the spelling of the Tribe's name in the Treaty of Point No Point as "S'Klallams." Similarly, the table of tribes lists the "Lummi" but the map depicts the "Lummie." One possible explanation for the alternative spellings is that the map may have been prepared by a number of different people and/or over a course of time. Given the inability to easily make changes, the alternative spelling of tribal names may not have been viewed as warranting a revision of the map.

Finally, other documents of the era support the conclusion that "Howalitsk" refers to the Cowlitz Tribe. As noted by the ICC, in 1834 John K. Townsend spelled the Tribe's name as "Kowalitsk." *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States*, 21 Ind. Cl. Comm. 143, 155 (1969). Townsend's spelling is almost identical to the spelling on Governor Stevens' 1857 map (compare "Howalitsk" to "Kowalitsk"). The ICC's decision further demonstrates that there was not a standardized spelling of the word "Cowlitz" during this time period. For example, in 1920 Jedidiah Morse reported on the "Cowlitsick." *Id.* at 154. In 1925, Dr. Scouler referred to the Tribe as "Kowlitch" and in 1834 D. Lee and J.H. Frost spelled the Tribe as "Cawalitz." *Id.* at 155. This lack of uniformity in spelling, combined with the textual support in the map itself of the Cowlitz being "near Cowlitz Landing," leads to the conclusion that "Howalitsk" is a reference to the Cowlitz Tribe.

An historical native American village site called Cathlapotle is located on the Carty Unit of the Ridgefield National Wildlife Refuge, about two (2) miles west of the Lewis River Property. In 1999, the U.S. Department of the Interior, Fish and Wildlife Service, published a preliminary report regarding an archaeological investigation conducted by Portland State University's Department of Anthropology. *Archaeological Investigations at 45CL1 Cathlapotle (1991-1996), Ridgefield National Wildlife Refuge, Clark County, Washington, A Preliminary Report,* Prepared by Department of Anthropology, Portland State University (May 1999). The report indicates that Cathlapotle was a very large town site with an occupation spanning about 1000 years (c. AD 1000 to 1840). *Id.* at i. During first contact with Europeans, the village was occupied primarily by the Middle Chinookan Tribe. *Id.* "The Cathlapotle town (also spelled Quathlapotle, Cathlapoodle, etc.) was one of nineteen Chinookan towns recorded by Lewis and Clark (Thwaites 1908) in the Wapato Valley." *Id.* at 12. Citing the work of two prominent academics, the report states that "the [Wapato] Valley's permanent winter population more than doubled every spring by people moving into the area to exploit its abundant seasonal food resources." *Id.* at 13, *citing* Boyd and Hajda (1987). "Towns were linguistically polygot, given the area's marriage practices, so while a town such as Cathlapotle was within Chinookan territory, its occupants would very likely include Cowlitz and people of other regional language families." *Id.* at 14. The report states that beginning in 1830, the Middle Chinookan populations were devastated by disease—likely malaria—and that Cathlapotle was abandoned by 1833. *Id.* at 17. Citing to a historical report of Indian inhabitants in 1835, the authors state: "It is possible that in 1835, the people at or near Cathlapotle were no longer Chinookans." *Id.* As support for this statement, the report discusses John K. Townsend's 1836 journal account, *supra*, of several large lodges of Cowlitz Indians on a plain below Warrior's Point. *Id.* at 18. The authors state: "The area had clearly been reoccupied, but by Cowlitz people." *Id.*

Not only does the historical record demonstrate the Cowlitz Tribe's presence in the Lewis River Property area throughout treaty times, but the Cowlitz Tribe's exclusive use and occupancy area, as adjudicated by the ICC, extended south to the mouth of the Kalama River, approximately fourteen (14) miles away from the Lewis River Property. *Simon Plamondon, on Relation of the Cowlitz Tribe of Indians v. United States,* 21 Ind. Cl. Comm. 143, 170 (1969). Given that the Tribe never had a reservation, this fourteen (14) mile distance between the Lewis River Property and the Tribe's adjudicated exclusive use and occupancy area also supports a "restored lands" decision. *Cf. City of Roseville,* 348 F.3d at 1023 (finding parcel forty (40) miles from tribe's original reservation qualified as "restored lands"). In this case, it is not necessary to decide whether a 14-mile-away adjudicated exclusive use and occupancy area is sufficient, standing alone, to support the conclusion that trust acquisition would be a "restoration of lands." Here, the Tribe has demonstrated not only that the trust acquisition would be located near its historic exclusive use and occupancy area, but also that the Tribe historically used the local region in which the subject land is located, even though such use was not exclusive, and even though the area was not within the core of the Tribe's historical territory.

2. Modern Connections to the Land

The Tribe also has modern-era and present connections to the land at issue. Modern connections to the land can be established through a variety of factors, such as a geographical nexus between the parcel and the seat of tribal government, the tribe's population center, tribal member service facilities, tribal businesses, tribal housing developments, or the tribe's service area as defined by Federal agencies. NIGC Wyandotte Opinion at 10; NIGC Grand Traverse Opinion at 20-21.

In this case, the Cowlitz Tribe maintains governmental offices in Longview, approximately 24 miles away from the Lewis River Property. Request at 32. Standing alone, this distance does not establish a modern connection to the parcel, but unlike the 175-mile distance in our Wyandotte Opinion, 24 miles at least does not militate against a conclusion that there is a modern connection. *Cf.* NIGC Wyandotte Opinion at 10. Furthermore, the Cowlitz Tribe plans to relocate its tribal headquarters to the Lewis River Property after trust acquisition, along with its casino, tribal elder housing, and a tribal cultural center. Preliminary Draft Environmental Impact Statement, Cowlitz Indian Tribe Trust Acquisition and Casino Project at 1-2, 2-14 (Oct. 2005).

The Tribe's enrollment officer reported that 86 tribal members lived in Clark County as of January 2005. Letter from Nancy Osborne, Cowlitz Indian Tribe Enrollment Officer, to Philip Hogen, NIGC Chairman (March 9, 2005), *cited in, and appended to,* Request at 33. The Tribe's Clark County population figure does not amount to a large percentage of the Tribe's total enrollment of nearly 3,500 members. But the Tribe is widely dispersed across the State and the nation. Cowlitz County, for instance, which includes the Cowlitz River and is within the Tribe's historical exclusive use and occupancy area, is home to only 219 Cowlitz members. *Id.* In cases of high tribal dispersion, a relatively low percentage of tribal members who live in the subject county should not weigh against a tribe if, as in this case, the actual number of tribal members living in the county is not insignificant.

Importantly, although the Tribe does not have a high percentage of tribal members living there, Clark County has been included within the Tribe's "service delivery area" as defined by the Indian Health Service ("IHS") and the Tribe's Indian Housing Block Grant "formula area" as defined by the United States Department of Housing and Urban Development ("HUD"). Memorandum from Charles W. Grim, IHS Assistant Surgeon General, to IHS Director, Portland Area (Aug. 27, 2002); Letter from Deborah Lalancette, Director, HUD Office of Grants Management, to Larry Coyle, Executive Director, Cowlitz Indian Tribal Housing (Nov. 1, 2003), *cited in, and appended to,* Request at 33. Furthermore, the Tribe is in the process of submitting a formal request to the BIA to designate a BIA service area that will include Clark County. Request at 34. These designations are important evidence of a tribe's modern connection to the area.

In total, the historical and modern connections in the record lend some weight in favor of a finding that trust acquisition of the Lewis River Property would be a restoration of lands for the Cowlitz Tribe.

C. Temporal Relationship of the Acquisition to Tribal Restoration

Another factor to be considered is whether there is a reasonable temporal connection between the restoration of Federal recognition and the trust acquisition of the land at issue. *Grand Traverse Band II*, 198 F. Supp. 2d at 936 ("the land may be considered part of a restoration of lands on the basis of timing alone."); Memorandum from NIGC Acting General Counsel to NIGC Chairman at 11 (March 14, 2003) ("NIGC Mechoopda Opinion") ("the heart of this inquiry is the question of whether the timing of the acquisition supports a conclusion that the land is restored").

In this case, the Tribe has submitted a fee-to-trust application to the Department of the Interior, but the subject land has not yet been taken into trust. Therefore, even assuming that the Department of the Interior will place the land into trust status, it is not possible to determine the length of time that will elapse between the Tribe's restoration of Federal recognition and trust acquisition of the land.

The Tribe points out that by the time it received Federal recognition in 2002, it had already identified the Lewis River Property as its first desired trust acquisition. Request at 35-36. In fact, the Tribe submitted its original fee-to-trust application to the Department of the Interior on the very same day that the Department of the Interior published its reconsidered final determination for Federal acknowledgement. 67 Fed. Reg. 607 (Jan. 4, 2002); Request at 36. By these actions, the Tribe has attempted to minimize the time period between its Federal recognition and trust acquisition of the Lewis River Property. Therefore, in this case, it is not necessary to know exactly how long the applicable time period between Federal recognition and trust acquisition will be. Even if the Department of the Interior does not act on the fee-to-trust application for several more years, the temporal circumstances in this case would still weigh in favor of the Tribe. *See* Memorandum from Penny Coleman, NIGC Acting General Counsel, to NIGC Chairman Deer at 13-14 (Aug. 5, 2002) ("NIGC Rohnerville Opinion") (accepting 10 years between tribal recognition and trust acquisition as reasonable under particular circumstances); Memorandum from Phil Hogen, Associate Solicitor, Dep't of the Interior Division of Indian Affairs, to Assistant Secretary – Indian Affairs at 13-14 (Dec. 5, 2001) ("Interior Coos Opinion") (accepting 14 years between tribal recognition and trust acquisition as reasonable under particular circumstances).

Because this acquisition would be the first trust acquisition made for the Cowlitz Tribe, and because the Tribe has attempted to minimize the time period between recognition and trust acquisition, the temporal relationship factor weighs strongly in the Tribe's favor.

In this case, all three factors in the restored lands analysis weigh in the Tribe's favor. We note that the temporal relationship factor is particularly strong. In other cases where the temporal relationship factor did not support a finding of restored lands, we would require a stronger showing of historical and modern connections to the area. In consideration of all of the factors discussed above, however, a trust acquisition of the Lewis River Property will be part of the "restoration of lands" for the Tribe as that term is used in IGRA.

CONCLUSION

We conclude that the Cowlitz Tribe was "restored to Federal recognition" and that if the Department of the Interior accepts trust title to the Lewis River Property, such trust acquisition will be part of the "restoration of lands" for the Tribe as those terms are used in 25 U.S.C. § 2719(b)(1)(B)(iii). This opinion is not intended to affect the Secretary of the Interior's discretion in deciding whether to accept the Lewis River Property into trust under 25 C.F.R. Part 151, or provide any recommendation regarding the merit of the Tribe's fee-to-trust application. However, if the Secretary of the Interior decides to accept the Lewis River Property into trust, then it is the opinion of the Office of General Counsel that the Lewis River Property would qualify for IGRA's restored lands exception.

If you have any questions, Staff Attorney Jeffrey Nelson is assigned to this matter.

Penny J. Coleman
Acting General Counsel

Appendix A: Legal Land Description of the Lewis River Property
Source: Cowlitz Tribal Council Ordinance No. 05-02, § 2(O)

PARCEL I

BEGINNING at the intersection of the West line of Primary State Highway No. 1 and the East line of the Southeast quarter of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence Northerly along said West line of Primary State Highway No. 1 a distance of 1307.5 feet to the Point of Beginning of this description; thence West 108.5 feet to an angle point thereon; thence Northerly along the fence 880.5 feet to the center line of a creek; thence Northerly along said creek 443 feet to the West line of Primary State Highway No. 1; thence Southerly along said West line of Highway to the Point of Beginning.

EXCEPT that portion conveyed to the State of Washington by Auditor's File Nos. G 450664 and G 147358.

PARCEL II

That portion of the following described land lying West of the Westerly line of Interstate 5, formerly known as Pacific Highway, in Section 9, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

The North half of the Southwest quarter of the Northwest quarter and the South half of the Northwest quarter of the Northwest quarter of Section 9, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT any portion lying within NW 31st Avenue.

ALSO EXCEPT that portion thereof acquired by the State of Washington by deed recorded under Auditor's File Nos. G 140380 and D 95767.

PARCEL III

BEGINNING at the Northwest corner of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; and running thence East 390 feet to the Point of Beginning; thence East 206 feet; thence South 206 feet; thence West 206 feet; and thence North to the Point of Beginning.

EXCEPT that portion lying within the right of way of NW 319th Street.

PARCEL IV

All that part of the Southeast quarter of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, lying West of Primary State Road No. 1 (Pacific Highway).

EXCEPT the Henry Ungemach tract recorded in Volume 76 of Deeds, page 33, records of Clark County, Washington, described as follows:

BEGINNING at a point 19.91 chains North of the Southwest corner of said Southeast quarter; thence East 13.48 chains to creek; thence Northerly along creek to North line of said Southeast quarter at a point 6.66 chains West of the Northeast corner thereof; thence West to Northwest corner of said Southeast quarter; thence South 19.91 chains to the Point of Beginning.

ALSO EXCEPT the John F. Anderson tract as conveyed by deed recorded under Auditor's File No. F 38759, records of Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Southwest quarter of the Southeast quarter of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; and running thence East 514 feet; thence Southerly 340 feet; thence Northwesterly 487 feet to a point 196 feet due South of the Point of Beginning; thence North to the Point of Beginning.

ALSO EXCEPT that tract described as follows:

BEGINNING at a point 26 rods and 9 feet West of the Southeast corner of Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; and running thence West 20 rods to County Road; thence North 182 feet; thence East 20 rods; thence South 182 feet to the Point of Beginning.

ALSO EXCEPT a certain reserved tract described as follows:

BEGINNING at the intersection of the West line of Primary State Highway No. 1 (Pacific Highway) and the East line of the Southeast quarter of said Section 5, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence Northerly along said West line of Primary State Highway No. 1, a distance of 1307.5 feet to the True Point of Beginning of this description; thence West 108.5 feet to an angle point therein; thence Northerly along fence 880.5 feet to center line of creek; thence Northeasterly along said creek 443 feet, more or less, to the West line of Primary State Highway No. 1; thence Southerly along said West line of highway to the True Point of Beginning.

ALSO EXCEPT that portion thereof lying within Primary State Highway No. 1 (SR-5) as conveyed to the State of Washington by deed recorded under Auditor's File Nos. G 458085, G 143553 and D 94522.

ALSO EXCEPT any portion lying within NW 319th Street and Primary State Highway No. 1.

PARCEL V

A portion of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Northeast quarter of Section 8; thence South along the West line of the Northeast quarter of said Section 8, 1320 feet, more or less, to the Southwest corner of the Northwest quarter of said Northeast quarter; thence East along the South line to a point 830 feet West of the Southeast corner of the Northwest quarter of said Northeast quarter; thence North parallel with the East line of said Northeast quarter to a point 600 feet South of the North line of said Northeast quarter; thence East parallel with the North line of said Northeast quarter 370 feet; thence North parallel with the East line of said Northeast quarter 600 feet to the North line of said Section 8; thence West along the North line of said Section 8 to the Point of Beginning.

EXCEPT that portion lying within NW 319th Street.

ALSO EXCEPT the following described tract:

A portion of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Northeast quarter of said Section 8; thence South along the West line of the Northeast quarter of said Section 8, 1320 feet, more or less, to the Southwest corner of the Northwest quarter of said Northeast quarter; thence East along the South line to a point 830 feet West of the Southeast corner of the Northwest quarter of said Northeast quarter; thence North, parallel with the East line of said Northeast quarter to a point 600 feet South of the North line of said Northeast quarter; thence East, parallel with the North line of said Northeast quarter, 370 feet, said point being the True Point of Beginning of the tract herein described; thence West parallel with the North line of said Northeast quarter, a distance of 457 feet; thence North parallel with the West line of said Northeast quarter, a distance of 240 feet; thence East parallel with the North line of said Northeast quarter, a distance of 157.0 feet; thence North, parallel with the West line of said Northeast quarter, a distance of 360 feet, more or less, to the North line of said Northeast quarter; thence East, along said North line, a distance of 300 feet; thence South, parallel with the West line of said Northeast quarter, a distance of 600 feet, more or less, to the True Point of Beginning.

PARCEL VI

A portion of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of the Northeast quarter of said Section 8; thence South along the West line of the Northeast quarter of said Section 8, 1320 feet, more or less, to the Southwest corner of the Northwest quarter of said Northeast quarter; thence East along the South line to a point 830 feet West of the Southeast corner of the Northwest quarter of said Northeast quarter; thence North, parallel with the East line of said Northeast quarter to a point 600 feet South of the North line of said Northeast quarter; thence East, parallel with the North line of said Northeast quarter 370 feet to a point, said point being the True Point of Beginning of the tract herein described; thence West, parallel with the North line of said Northeast quarter, a distance of 457 feet; thence North, parallel with the West line of said Northeast quarter, a distance of 240 feet; thence East, parallel with the North line of said Northeast quarter, a distance of 157.0 feet; thence North, parallel with the West line of said Northeast quarter, a distance of 360 feet, more or less, to the North line of said Northeast quarter; thence East, along said North line, a distance of 300 feet; thence South, parallel with the West line of said Northeast quarter, a distance of 600 feet, more or less, to the True Point of Beginning.

PARCEL VII

The East 830 feet of the Northwest quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT the West 370 feet to the North 600 feet thereof.

ALSO EXCEPT that portion of the remainder thereof, lying within NW 319th Street.

PARCEL VIII

The Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT that portion of said premises, described as follows:

BEGINNING at a point 612 feet East of the Northwest corner of said Northeast quarter of the Northeast quarter of said Section 8; thence South 191.0 feet; thence East 228.0 feet; thence North 191.0 feet; thence West 228.0 feet to the Point of Beginning.

EXCEPT that portion of said premises, described as follows:

BEGINNING at a point 390.0 feet East of the Northwest corner of said Northeast quarter of the Northeast quarter of said Section 8; thence East 206.00 feet; thence South 206.0 feet; thence West 206.0 feet; thence North 206.0 feet to the Point of Beginning.

EXCEPT that portion of said premises lying within Pekin Ferry County Road, and

EXCEPT that portion of said premises lying within County Road No. 25;

EXCEPT that portion conveyed to the State of Washington by deed recorded under Auditor's File Nos. G 143551 and G 499101.

EXCEPT that portion conveyed to the State of Washington for Interstate 5.

EXCEPT that portion conveyed to James Fisher and wife, by instrument recorded under Auditor's File No. G 699690, described as follows:

BEGINNING at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence North 200 feet; thence West 435 feet; thence South 200 feet to a point on the South line of the Northeast quarter of the Northeast quarter of said Section; thence East 435 feet to the Point of Beginning.

PARCEL IX

That portion of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at a point 612 feet East of the Northwest corner of the Northeast quarter of the Northeast quarter of Section 8, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington; thence South 191 feet; thence East 228 feet; thence North 191 feet; thence West 228 feet to the Point of Beginning.

EXCEPT County Roads.

ALSO EXCEPT that portion thereof conveyed to the State of Washington by deed recorded under Auditor's File Nos. G 500929 and G 143551.

EXHIBIT

G

To: Brett Kenney, Attorney
Coquille Indian Tribe
3050 Tremont
North Bend, Oregon

From: Mark Tveskov, Ph.D.
105 Elm Street
Phoenix, Oregon 97535
Mark.tveskov@gmail.com

Re: What was the traditional territory of the Coquille Indian Tribe?

July 23, 2013

The answer to the question, "What was the traditional territory of the Coquille Indian Tribe" is, in my opinion, a complicated one that does not have simple or straightforward answer. Many ambiguities have to be embraced: For example, *when* are we talking about? 500 years ago before there was any trace of the impact of European colonization on the Americas? Or in the year 1850 on the eve of Euro-American settlement of the Oregon coast? In the first instance, there is little, if any, direct 'scientific' evidence of what specifically was Coquille territory or ethnicity, nor any way to describe them with any assurance, as these do not preserve in the archaeological record. We do know that the villages occupied in the 1850s that left behind archaeological traces to the present day often date back archaeologically beyond the contact period, often by thousands of years. We also know that contemporary Coquille oral tradition posits deep roots in the region. But these pieces of information are, for me, different than drawing a polygon on a map that describes a 'territory.' Towards the second case, we have the detailed testimony of many Native American elders—from the Coquille Tribe and their southern Oregon and northern California neighbors—who were born in the 19th century that are recorded in the field notebooks and publications of many anthropologists as well as in the records of (for example) the U.S. Court of Claims from the 1930s. However, these accounts are often at the whims of the particular questions asked by those anthropologists and lawyers. At best, they reflect to some degree an abstracted and idealized pre-colonial reality that does not often account for two centuries of indirect and direct contact with European colonialism and its various effects, including the introduction of trade goods and exotic disease epidemics, or the displacement of local populations in varies ways up through the early and mid-20th century.

A second ambiguity is a certain degree of incompatibility between 'traditional' and modern notions of politics, geography, and territory. The Coquille Indian Tribe, as a federally recognized Indian Tribe of the modern day, is profoundly an example of the latter, while the representatives of the families that signed the Coast Treaty in the fall of 1855 (as well as those southwestern Oregon Native American people that did *not* sign that treaty) were an example of the former. Language, shared obligations of culture, kinship, spirituality, and economic practice indeed joined people together across multiple families, villages, and geographic areas to form a Coquille 'territory,' but perhaps not in a manner that implied a

cohesive *body politic* around which a geographer or a lawyer could draw a line to form a polygon on a map. Traditional Oregon coast social relations (for the Coquille and their neighbors) gave primacy to extended patrilineal families that exerted ownership of the particular land upon which their villages were situated, as well as the immediate environs of that village. These villages and extended families were in turn linked to others near and far by kinship and marriage, shared cultural practices including trade in material goods, visiting for communal hunting and gathering activities, or shared spiritual practices, but not necessarily in a way that might equate to a political entity unified by a shared (and coercive) decision making body such as practiced by the modern day Coquille Indian Tribe.

A third ambiguity lies in the linkages between any idealized or abstracted historical account of the 'traditional' or 'pre-colonial' cultural geography of the Coquille Indian Tribe and the actual membership of the Coquille Indian Tribe today. This too, is a complicated historical narrative. Contemporary Coquille Tribal families can trace their Native American roots to ancestors who were born in villages from across the Coquille River and Coos Bay drainages, and beyond. The details of these linkages are beyond my own professional expertise, and instead reside in the family histories of today's tribal members, many of which have been summarized in works by anthropologist Roberta Hall (1991, 1995), and anthropologists and Coquille Tribal members Jason Younker (1997, 2001, 2003) and George Wasson (1994, 2001).

My own research has considered the first two issues in some detail through the use of archaeological investigations, research into primary historical documents, and reading the publications and field notes of previous generations of anthropologists who interviewed the elders of the Indian tribes of southern Oregon (e.g. Tveskov 2000, 2002, 2007). Below, I provide a summary of my research as it pertains to the question "What was the traditional territory of the Coquille Indian Tribe." This summary is a modified version of text I helped prepare for the Coquille Tribe called the "Coquille Tribe Cultural Geography Project" in 2006, and summarizes more lengthy and detailed information presented in my doctoral dissertation in Anthropology from the University of Oregon (2000), from an article in the Coquille Tribe's own publication series *Changing Landscapes* in 2002, and for a peer-reviewed academic article published 2007 in the journal *American Anthropologist.* The *Changing Landscapes* and *American Anthropologist* articles are provided as appendices, as are three chapters from my dissertation that are germane to the question, "what was the traditional territory of the Coquille Indian Tribe." The journal articles and the dissertation chapters contain bibliographies that references the primary data upon which my arguments are built.

I should note that my approach is specifically "*etic*" in it's approach, i.e. that of an outsider reading and contrasting various lines of information for consistency, bias, and error. This is only one way to analyze anthropological information, and it differs from the "*emic*", or "insider's" voice that might be expressed by, for example, a contemporary Coquille Tribal member based on their families oral histories and traditions. In my opinion, both perspectives have strengths, opportunities, and pitfalls, and edification comes from a respectful dialogue that honors both and privileges neither.

II. The Traditional Territory of the Coquille Indian Tribe

Before pioneer settlement, the daily life of Native American people of southern Oregon was defined by kinship, shared cultural, spiritual, and economic practices, and a reciprocal relationship with the southwest Oregon landscape. Political and family life was centered on communities or villages comprised of cedar plank houses, sweat houses, other buildings, and communal grounds. These villages were generally inhabited by one or more extended families related through common patrilineal ancestry, and ranking men of the village families (generally referred to as a "chief" or "tyee" in historical and anthropological accounts) had political authority over the village, and asserted ownership of the land in the immediate environs of the village itself. Village affiliation was how the ancestors of the Coquille Indian Tribe and their neighbors would identify themselves. Frank Drew, a Hanis Coos elder who grew up on the North Fork of the Siuslaw River, summed this idea up in a statement to anthropologist John Peabody Harrington in 1942 [Reel 24, frame 19]:

> [t]he name of a village is the same as a tribe – you belong to a village just as you belong to a tribe, while all the time you are a Coos Indian all around generally.

Thus, it is relatively easy to make the argument that the traditional territory of the Coquille Tribe and their neighbors was the land upon which the individual villages of their ancestors lay, and the associated fishing, gathering, and hunting grounds. Members of the contemporary Coquille Indian Tribe trace their ancestry primarily to people who lived in such villages on the Coquille River, on South Slough and the lower reaches of Coos Bay, and on the coast immediately north and south of Bandon.

Drew's quote, however, also implies that there were also larger social, political, cultural, and spiritual linkages that integrated villages together into webs of social relations, kinship, economic and social activities, and the like. Perhaps the most powerful of these linkages were kinship ties forged through marriage, and the resulting movement of young women to new villages to live with their husband and his family, but trade in material items of utilitarian and social value, shared spiritual and social occasions, and other factors were also important. However, unlike a village—around which one can theoretically draw a 'territorial' boundary—these larger linkages did not often have easily delineated boundaries, and rarely constituted social arenas over which one group could wield political authority or exert territorial sovereignty. Rather, they were a complex and frequently shifting web of social relations acted out along signifiers of language, shared geography, marriage and kinship, trade, spiritual practices, communal hunting and gathering activities, and etc.

Language is one of these larger social and cultural arenas. The ancestors of today's Coquille Indian Tribe lived across the boundary of two languages: Penutian and Athapaskan. Penutian dialects or languages were spoken on the coast from Coos Bay northward, and as far south as the mouth of the Coquille River, while Athapaskan dialects—related to others spoken in Alaska and the American Southwest— were spoken from the Coquille River south into northern California. According to linguists, the Penutian language phylum is commonly considered to be one of the oldest on the Northwest Coast, while Athapaskan is thought to

have arrived with immigrants to southwest Oregon sometime within the last 2,000 years. Delineating specific geographic boundaries between these languages, however, is difficult, as individuals routinely married out of their home villages and across language areas. It is accepted by many Coquille Tribal elders and anthropologists that women in particular were called upon to be multi-linguists. In fact, contemporary Coquille Tribal family histories often recall grandmothers and great-grandmothers as being fluent in more than one language. Generally speaking, southern Oregon and Northern California Indian women moved out of their homes upon marriage, often across linguistic and cultural boundaries, to live in distant villages with their husbands.

Nevertheless, the memories of recent and earlier generations of southwest Oregon Indians describe fairly specific linguistic boundaries. Hanis, a Penutian dialect or language, was spoken in villages on Ten Mile Lake, on the Coos Bay estuary upstream from a point below present-day Empire, and up the north and south forks of the Coos River. Penutian Miluk was spoken in villages located around the mouth of Coos Bay, on the South Slough of Coos Bay, and on Cape Arago. Miluk was also spoken in villages on the lower Coquille River estuary and on the coast to just south of present day Bandon. Athapaskan dialects were spoken in villages located on the main stem of the Coquille River and its tributaries. These were closely related to dialects spoken on the upper Umpqua River, the lower and middle Rogue River, and the southern Oregon and northern California coasts.

There remains some debate about the languages spoken on the lower Coquille River. Most elders of the Coquille Indian Tribe recall that the principal language was Miluk, but there are references to Athapaskan being spoken as well. In fact, the signatures of the "headman" of the "Ke-ahmas-e-ton band" appear on the Coast Treaty of 1855. "Ke-ah-mas-e-ton" is likely *K'ama'c dun*, the Coquille village that was located just downstream from the Highway 101 Bridge in what is today's Bullards Beach State Park. *K'ama'c dun* means "opposite a cove of deep water" in Coquille Athapaskan. The majority of the ancestors of today's Coquille Indian Tribe lived in villages where Miluk or Athapaskan was the primary language, i.e. along the lower reaches of Coos Bay, included South Slough, and along the Coquille River itself. Throughout this area, while a single language might have dominated, there was likely more than one language spoken in any given village.

Local groups of villages were another social arena beyond the immediate village and household. The inhabitants of several villages in a given area were often affiliated by common patrilineal ancestry, spiritual places, and shared economic and political interests. For example, Grandmother Rock, the large blueschist monolith at the mouth of the Coquille River, was a sacred place among the people inhabiting several different villages around the Coquille River, and these villages collectively referred to themselves as the *Nasomah.*

Travel for economic, social, or spiritual occasions was another linkage between villages and local groups. Using a complex web of canoe/water routes and overland trails, Native American people of southern Oregon and northern California would often travel throughout region and beyond. Families reinforced kinship and social ties while visiting or hosting friends and neighbors in a wide range of seasonal and commemorative ceremonies that included feasting, trading, dancing, and storytelling. Shinny (a game played somewhat like field hockey), gambling, and other occasions also brought people from different places together. Fishing, plant and shellfish harvesting, and hunting were often a part of such

gatherings, particularly in the spring and fall when salmon, eel, sea mammals, and acorns and other nuts were most abundant. At other times of the year, families might visit and tend to upland prairies ideal for tasks such as harvesting berries and camas and collecting basketry materials.

Local and regional trade in subsistence goods and more exotic items was one of the main linkages between villages and groups of villages. The Coquille and their northern California and southern Oregon neighbors participated in elaborate trade networks that laced the region, and acorns, camas, finished canoes, ceremonial regalia, clothing, dried fish and shellfish, furs and skins, iris fibers to manufacture fishing nets, *Olivella* shell beads, pine nuts, and slaves were some of the goods that were exchanged between families and villages. Much of this trade was local, but these practices were also linked into larger networks that saw material goods exchanged with groups further north on the Northwest Coast, on the Columbia Plateau via the mouth of the Columbia River, the Great Basin via the Rogue or Klamath rivers, and south to California. Thus, exotic materials such as obsidian from eastern Oregon, *Dentalium* shells from Vancouver Island, or abalone shells from the California coast made their way to the ancestors of the Coquille Indian Tribe.

Complex and far flung trading networks were part of the social experience of Native American people living in southern Oregon and northern California. Anthropologist Reg Pullen (1996:58-62), for example, cites how Athapaskan speaking people of the southern Oregon and northern California coast traded sea weed, salt, canoes, and other items for acorns harvested by the Shasta people of the upper Klamath River, where oak trees were more plentiful. Dixon (1907:396), in turn, describes how the Shasta of the interior northern California obtained their *Dentalia* shells via the Rogue River valley, and abalone via the communities of the lower Klamath River. These trading practices served to link coastal groups such as the Coquille to the interior valleys of western Oregon. For example, Coquille elder Susan Ned told Beverly Ward (1986:21) that the *Nasomah* would travel to Camas Valley, where they traded "salt, shells, and other things from the coast for obsidian." Coquille elder Coquille Thompson, echoing Susan Ned's account, related to anthropologist Elizabeth Jacobs how the Coquille traded camas bulbs and two kinds of acorns with "inland people." Testimony by George B. Wasson during the 1931 land-claims hearings illustrates some of this trade:

> The annual extreme minus tide would appear in the spring in summer, and that is when they ventured out on the rocks and gathered their mussels and dried them and stored them for subsistence and trade with neighboring tribes. The Indians of the Calapooya Tribe [from the Willamette Valley] and the members of the Klickitat Tribe [from the Columbia Plateau] would come into the Coos River and carry large loads of dried berries and hazel nuts from the interior of the state [quoted in Harrington 1942, reel 22, frame 1110-1112].

In summary, members of the contemporary Coquille Indian Tribe trace their ancestry primarily to people who lived on the Coquille River, on South Slough and the lower reaches of Coos Bay, and on the coast north and south of Bandon in Coos County, Oregon. The social life of the Indian people of southern Oregon and northern California was fluid and complex; today's political boundaries of county, state, and nation would likely be

unfamiliar to those ancestors. Instead, they would have identified themselves as members of a family that was part of a community that lived in a particular village. At the same time, families maintained regular connections with relations, friends, and trading partners in other villages both near and far.

III) References Cited:

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1997 Revival of a Potlatch Tradition: Coquille Giveaway. M.S. Thesis in Anthropology, University of Oregon, Eugene.

IV) Appendices:

The following documents are attached that contain a more detailed analysis of the information presented above, with citations to primary data.

Tveskov, Mark A.

2007 Social Identity and Culture Change on the Southern Northwest Coast. American Anthropologist 109(3):431-441.

2002 The Cultural Geography of the Coos and Coquille. In *Changing Landscapes, Proceedings of the 5th and 6th Annual Coquille Culture Conference.* Pp. 25-46. Edited by Don Ivy and Scott Byram. Coquille Indian Tribe, North Bend.

2000 *The Coos and Coquille Indians: A Northwest Coast Historical Anthropology.* Ph.D. Dissertation in Anthropology, University of Oregon, Eugene. (Introductory pages and Chapter 3 and Chapter 4 only)

EXHIBIT

H

WHITE PAPER: POST-RESTORATION MEETINGS AND EVENTS OF THE COQUILLE TRIBE HELD IN JACKSON COUNTY

2012

- Out-of-Coos County Elder support services held every six weeks; this allows access to congregate meal program on a more regular basis and the ability to receive their frozen meals in a timely manner
- Twice annual contact with Elders within the five county service area living outside of Coos County; provided with health assessment, health education, tribal programs and social services information

2009

- **Jackson** County Christmas dinner held at the Rogue Regency Inn on December 9 Tribal Families Attended: 81
- Quarterly Lunches and Frozen Meal Shopping in **Jackson**, Lane, Curry and Douglas County
- Elder Coordinators visit every three months Lane, Douglas and **Jackson** County Elders for congregate meal, frozen meals and home visits as needed
- Community Center staff provided suicide prevention education, dinner and fun activities; Out-of-Coos County activities in **Jackson**, Douglas and Lane County.

2008

- **Jackson** County Christmas dinner was held at the Rogue Regency with 85 Tribal Members and Family
- Special Diabetes Program for Indians Diabetes Prevention Program: Grant awarded to the Southern Oregon Diabetes Prevention Program composed of the **Coquille Indian Tribe, Klamath Indian Tribe and Cow Creek Band of Umpqua Indians.**
- Women's Retreat held in Medford with 55 Tribal women participating in a 2-1/2 day event
- Three different outreach activities were held this year within the **five county service area,** reaching a total of 86 Tribal Members (Parents as Teachers Program; Baby Equipment Program; Drug & Alcohol and Mental Health Wellness Referrals)
- The Pink Shawl Project (promote Breast Cancer Prevention) was hosted by the Tribe's Community Health Representative and CHS Nurse Case Manager-events were held in Coos, **Jackson** and Douglas counties
- Adult Fitness: 10 participants from **Jackson** County

- Elders Coordinators visit every three months Lane , Douglas and **Jackson** county for congregate meal, frozen meals and home visits as needed
- Southern Oregon Diabetes Prevention Program Reunion Picnic with the Cow Creek Band of Umpqua Indians and the Klamath Indian Tribe.
- The Community Center staff provided suicide prevention education, dinner and fun activities; Out of County activities to **Jackson,** Douglas and Lane County.

2007

- **Jackson** County Christmas dinner was held at the Ashland Springs Hotel on December 13; 74 Tribal Members and Families attended
- Outreach activities held within the **five county service area** reaching a total of 52 Tribal Members (health topic presentation; lunch and a family fun activity)
- Diabetes Prevention Program reached out to all **counties within the CIT Service Area**
- Elders Coordinators visit every three months Lane, Douglas and **Jackson** county for congregate meal, frozen meals and home visits as needed
- September 22 Tribal Council Meeting @ Medford Courtyard Marriott-Culture Committee Meeting

2006

- Elders Program provide monthly meals, chore service, luncheons and supportive services to Coquille Tribal Elders in the **five county service area, including Jackson County**
- Elders program has been successful in hosting congregate meals to Lane, Douglas and **Jackson** counties, every three months to ensure that frozen meals are available to them, to be available for questions and possible concerns and to do home visits as needed
- **Jackson** county Christmas dinner was held on December 14th at the Rogue Regency with 60 Tribal Members attending
- Elders Luncheons and congregate meals are scheduled every three months in Lane, Douglas and **Jackson** counties
- Grant awarded to the Southern Oregon Diabetes Prevention Program composed of the Coquille Indian Tribe, Klamath Tribe and Cow Creek Band of Umpqua Indians, serving areas including Jackson County.
- Four different outreach activities were held this year within the **five county service area,** reaching a total of 50 Tribal Members (health topic presentation; lunch; family fun activity)
- October 28 Tribal Council Meeting-Rogue Valley Inn

2004

- **Jackson** County Christmas Dinner December 10, 2004
- Coats program purchased jackets for 112 Tribal children **in the service area**

- June 2004 entered into a consortium with the Cow Creek Band of Umpqua Indians and the Klamath Indian Tribe to apply for the Special Diabetes Program for Indians Competitive Grant Program covering Jackson County
- May 24 Tribal Council Meeting @ Hampton Inn in Jackson County

2003

- **Jackson** County Christmas Dinner
- 28 Families living **within the service area** were given necessary newborn to toddler equipment
- Assisted 16 Tribal Families with a total of 26 children to pay for quality child care
- Elders Program provides Luncheons, Chore Services, Respite Care, Frozen Meal Program and Elders activities to Elders **within the five county service area**

2002

- Elders Program served **five county service Area** Elders monthly luncheons, frozen meals, cultural activities, advocacy, referrals, respite care and chore services
- Community Health Representative (CHR) conducted 137 client home visits; 12 client hospital visits; 39 client transports; over-the-counter prescription drugs and medical equipment for Tribal Members within the **Five County Service Area**
- Contracted with 19 Health Club establishments throughout the **five county service area** with approx. 150 Tribal members utilizing the program
- **Jackson** County Christmas Dinner

2001:

- Women's Retreat to Ashland (**Jackson** County)
- **Jackson** County Christmas Dinner
- Community Center Adult Fitness Program utilized by approx. 152 Tribal Members with the **five county service area**
- Client Services provided referrals, advocacy, prescription, over the counter drugs and equipment for Tribal Members within the **five county service area**

2000

- Direct Care Services provided Diabetes treatment, detection and prevention at the Lane, Douglas, Jackson and Coos County Christmas Dinner; 174 Tribal Members and Families participated
- **Jackson** County Christmas Dinner
- Fitness program utilized by approx. 150 Tribal Adult within the **five county service area**
- Baby Basket Program provided baby equipment for 16 Tribal Families within the **five county service area**
- Approx. 50 Tribal Elders participated in Elders Program activities within the **five county service area**

- Elders Program served **five county service Area** Elders monthly luncheons, frozen meals, cultural activities, advocacy, referrals, respite care and chore services
- April 13 Chairman's Report to members @ Rogue Regency

1999

- **Jackson** County Christmas Dinner
- May-Visioning meet w/Tribal Members; Family Outing @ Box R Ranch; Finance Committee Meeting

1998

- December 20 Tribal Council @ Rogue Regency

1997

- November 22 Tribal Council Meeting @ Pear Tree Motel

1996

- July 27 Tribal Council Meeting @ Pear Tree Motel

1995

- February 25 Tribal Council Meeting @ Pear Tree Motel
- September 21 agreement between CIT and Sisters of Providence Medford Medical Center Rm. 1084

1994

- April 24 Tribal Council Meeting @ The Pear Tree Motel

1993

- March 27 Tribal Council Meeting @ Estate Building Office *CY9304-Tribal Office in Medford
- July 2 Billing Invoice for Medford Estate Building rent from December 1992-July 1993

1992

- March 14 Tribal Council Meeting @ Jackson County Ext. Office
- Aug Sports camp held at bowling alley

1991

- June 15 Tribal Council Meeting @ Nendells

1990

- February 11 Outreach Meeting with Members to discuss their concerns
- March 17 Tribal Council Meeting @ Jackson County Extension Building

1989

- April 16 Tribal Constitution workshop held @ Jackson County Extension Building

EXHIBIT

I

Development for whom?

An Indian casino in Medford wouldn't necessarily help the local economy

May 12, 2013 2:00 AM

The Coquille Indian Tribe's proposal to establish a gambling casino in Medford has drawn strong opposition from Gov. John Kitzhaber and from the Jackson County commissioners and concern — but not yet formal opposition — from the Medford City Council. Count us among the doubters that a Class II casino would benefit the local community in any substantial way.

The Coquilles, who operate The Mill Casino in North Bend, have purchased the Roxy Ann Lanes bowling alley and the former Kim's Restaurant and leased the adjacent Bear Creek Golf Course. The tribe has asked the U.S. Bureau of Indian Affairs to place 2.42 acres of the property into a government trust — the first step toward gaining reservation status for the land.

The Coquilles propose a Class II casino in the bowling alley building. Games would consist of 600 gambling machines, but not blackjack, craps or other table games found in full-service Class III casinos such as The Mill and Seven Feathers, operated by the Cow Creek tribe in Canyonville.

Tribal officials stress the economic development the project would bring to the area, creating what they say would be more than 200 family-wage jobs. But not all "economic development" is equally beneficial or desirable.

For starters, the "casino" would be little more than a glorified bingo hall. In fact, the technology used by the machines consists of a computer chip generating random numbers based on bingo to determine winners and losers.

If the tribe were proposing a full-blown Nevada-style casino such as Seven Feathers, with a luxury resort hotel, fine dining and entertainment and table games in addition to slot machines, it might add to the valley's already thriving tourism industry. A Class II operation, is likely to have little positive effect.

A study by Coopers and Lybrand of the potential economic impact of casino gambling in Ontario, Canada, concluded that attracting gamblers and their dollars from outside the area would be a benefit. Gamblers staying overnight in Atlantic City, for instance, spent more money on lodging, food and other expenses than they lost in the casino.

"The economic function of casinos becomes a more dubious proposition," the authors continued, "when the primary market is the local population. In such cases the transfer of income and assets benefits the local casino at the expense of local residents."

It seems likely that a Class II casino would attract primarily local residents, and many of the jobs it would create would replace jobs lost at other local gambling establishments — Oregon Lottery retailers — without a net benefit to the local employment rate. In addition, dollars spent gambling on Oregon Lottery machines support state services such as schools, economic development — there's that word again — and salmon habitat restoration. Dollars spent in a tribal casino would benefit the tribe.

The Coquilles may succeed in gaining reservation status for their casino venture despite local

opposition. That might be a good thing for the tribe, but it is unlikely to be a good thing for Medford and the Rogue Valley.

EXHIBIT

J

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 12 2012

Honorable Deval Patrick
Governor of the Commonwealth of Massachusetts
Boston, MA 02133

Dear Governor Patrick:

On August 31, 2012, the Department of the Interior (Department) received the tribal-state class III gaming compact (Compact) between the Mashpee Wampanoag Tribe (Tribe) and the Commonwealth of Massachusetts (Commonwealth).

Under the Indian Gaming Regulatory Act (IGRA), the Secretary may approve or disapprove a compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8). If the Secretary does not act to approve or disapprove a compact within the prescribed 45-day period, IGRA provides that it is considered to have been approved by the Secretary, "but only to the extent that the Compact is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(C). Under IGRA, the Department must determine whether the Compact violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians.

DECISION

We have completed our review of the Compact, along with the additional material submitted by the Tribe and the Commonwealth. For the following reasons discussed, the Compact is hereby disapproved under Section 2710(d)(8)(B) of IGRA.

First, the Compact provides a significant share of the Tribe's gaming revenue to the Commonwealth, undermining the central premise of IGRA that Indian gaming should primarily benefit tribes. While we have approved varying revenue sharing schemes in exchange for tangible benefits to tribes for over 20 years, the revenue sharing provisions in this Compact go beyond those permitted by the Department and IGRA.

Second, the parties have attempted to use the compact negotiation process to address a host of other issues, such as the Tribe's hunting and fishing rights and land claims, in clear contravention of IGRA's express limitation that gaming compacts may only address matters directly related to gaming. This is not only a legal violation; it poses significant practical problems. If tribal hunting and fishing rights, and land and water rights, are subject to negotiation in gaming compacts, then other rights central to tribal sovereignty will be at stake in gaming compacts.

Third, in the Compact, the Commonwealth has sought authority over several other activities not related to gaming, such as regulation of non-gaming suppliers, ancillary entertainment services,

and ancillary non-gaming amenities. Congress expressly sought to prevent states from using gaming compacts to leverage power over sovereign tribes about matters unrelated to gaming. This is especially important because a tribe may be strongly tempted to agree to such terms for political expediency to obtain the state's agreement. The Department must preserve the important balance between tribal and state interests, and the singular focus on gaming, that Congress envisioned when it enacted IGRA.

Finally, there are numerous additional issues mentioned below that create further problems and concerns. We must apply IGRA in Massachusetts in the same manner we apply it to all other states, and to all other tribes.

BACKGROUND

The Compact was entered into on July 12, 2012 between the Tribe and the Commonwealth to govern the Tribe's conduct of gaming on a proposed site within the Commonwealth (within or near the City of Taunton, Massachusetts). It authorizes the Tribe to operate certain games within a single facility on eligible lands, pursuant to IGRA. Compact at § 4.1.

1. **Problematic regulatory provisions**

The Compact contains a number of significant regulatory provisions that give us concern. Part 3 of the Compact sets forth the definitions of key terms used throughout the agreement. Section 3.15 defines "Enterprise" as, "any legal entity wholly-owned and controlled by the Tribe...which lawfully owns or operates the Gaming Operation on behalf of the Tribe."

The Compact's definitions note important distinctions between terms used to describe the physical locations in which gaming will and will not occur. For example, "Approved Gaming Site" means "a single site on Indian Lands, as defined in IGRA, that is legally eligible under IGRA for the conduct of Compact Games thereon, located within Region C[.]" Compact § 3.3.

The term "Facility" is defined as "a single building complex (including buildings not more than one hundred (100) yards apart and connected by an enclosed walkway), located on the Approved Gaming Site in which any Compact Game or other gambling games of any kind are offered, played, supported, served or operated." Compact § 3.17.

Meanwhile, the term "Gaming Enclosure" is defined as:

> [T]he Facility and any other buildings or enclosures located on the Approved Gaming Site in which the Records of the Gaming Operation are maintained or stored or from which any service related to the Gaming Operation is directed, supervised, observed, monitored, or located, and any parking lots or structures, including hotels and other ancillary buildings, walkways, sidewalks, roadways, improvements, and common areas on or in proximity to the Approved Gaming Site which serve the Gaming Operation.

Compact § 3.22.

Section 3.20 of the Compact defines "Gaming Area" as "any area in the Facility where any Gaming, other than the operation of an authorized Wireless Gaming System, is played or offered for play."

One other notable defined term in the Compact is "Non-Gaming Supplier," which means "any Person, other than a Management Contractor or employee of the Enterprise, who sells, leases or provides goods or services to the Enterprise for the operation of the Facility, which are not used by the Enterprise in the operation of Compact Games." Compact § 3.42.

Part 4 of the Compact is titled "Authorized Gaming," and purports to regulate the Tribe's conduct of class II gaming under IGRA.

Part 5 of the Compact includes provisions that regulate the "Construction, Maintenance and Operation of [the] Facility." Under Part 5, the Tribe is required to adopt an ordinance establishing standards "for building, fire, health and safety which are consistent with and no less stringent than the provisions of any and all such codes that would be otherwise applicable if the Facility were constructed on land subject to the civil jurisdiction of the Commonwealth in the same location." Compact § 5.4.1. Section 5.4.7 requires the Tribe to comply with the National Environmental Policy Act and applicable Commonwealth law for any expansion or modification of the Facility. Section 5.4.11 of the Compact provides:

> Not less than fifteen (15) days before the Facility is open for business, the Tribe shall certify to the MGC, and provide such documentation to support the certification as the MGC requests, that: (a) the Gaming Area and other ancillary entertainment services and such non-gaming ancillary amenities the Tribe and the MGC shall agree upon have been built in accordance with the plans and specifications previously submitted to the MGC pursuant to subpart 5.4.5; and (b) the infrastructure improvements and traffic mitigation projects onsite and in the vicinity of the Facility are complete in accordance with the plans previously submitted to the MGC pursuant to subpart 5.4.5. Under no circumstances shall the Tribe permit the Facility to open for business unless the requirements of this subpart have been met.

Part 7 of the Compact is titled, "Licensing and Registration," and requires employees and vendors to become licensed by the Tribe's regulatory authority. This Part provides:

> The Enterprise shall not conduct business with any Non-Gaming supplier unless the Non-Gaming Supplier is registered with the TGC and has provided such information as the TGC shall require to become registered. Non-Gaming Suppliers include, but are not limited to: construction companies, vending machine providers, linen suppliers, garbage handlers, facility maintenance companies...and such other persons or entities as may be identified by the TGC as Non-Gaming Suppliers."

Compact § 7.7.2.

Part 13 of the Compact is titled "Use of Net Revenues," and limits the manner in which the Tribe may use its Net Revenue for a prescribed list of activities.

Part 17 of the Compact allocates the exercise of criminal jurisdiction within the Gaming Enclosure, as that term is defined in Section 3.22. This Part provides:

> 17.3. The Tribe and the Commonwealth agree that, in the event of the violation of any Gaming law of the Commonwealth, or the commission of any criminal offense against the Enterprise or the Gaming Operation or against any Person or property at the Gaming Enclosure, whether by or against an Indian or non-Indian, the Commonwealth shall have and may exercise criminal jurisdiction to prosecute such Person under its laws and in its courts.
>
> 17.4. If the Tribe adopts a Law and Order Code no less stringent than that provided in 25 C.F.R. Part 11 and authorizes its Tribal Court to hear criminal cases arising from offenses committed by its members and occurring at the Gaming Enclosure, the Tribe shall have and may exercise criminal jurisdiction concurrent with the Commonwealth over offenses committed at the Gaming Enclosure by members of the Tribe. Notwithstanding the foregoing and subject to any applicable federal jurisdiction, the Commonwealth shall have the first right of prosecution as to any crime which, if committed in the Commonwealth outside of Indian country, would be classified under the Commonwealth's laws as a felony.

Compact §§ 17.3-4.

Finally, Part 18 of the Compact addresses "Miscellaneous Provisions." Section 18.5.1 of the Compact provides that the Tribe and the Commonwealth agree to negotiate an agreement in good faith that "addresses measures the Tribe will use for the [collection] of state taxes that, pursuant to federal law, are applicable to activities taking place upon, and to goods and services provided, received or consumed upon, the Approved Gaming Site."

2. Revenue sharing provisions

The Compact includes provisions requiring the Tribe to share a portion of its gaming revenues in exchange for several asserted concessions. See Compact at Part 9. Under the Compact, the Tribe is required a pay the Commonwealth 21.5 percent of its Gross Gaming Revenue. In the event that the Commonwealth violates the Tribe's exclusive right to operate a gaming facility in Region C, the Tribe's revenue sharing obligation is reduced to 15 percent of Gross Gaming Revenues. Compact at § 9.2. The Compact does not provide for any circumstances in which the Tribe's revenue sharing obligations are extinguished.

In exchange for the Tribe's revenue sharing obligations, both the Tribe and the Commonwealth have asserted that the Commonwealth has made several meaningful concessions. These include:

- The Tribe's exclusive right to conduct gaming in a defined geographic area (Region C) within the Commonwealth. Compact § 9.2;

- The Commonwealth's agreement to ensure that the Tribe is the operator of the first gaming facility "in a constrained finite gaming market," – what the Tribe has termed the "First Casino Advantage." Supplemental Response of Mashpee Wampanoag Tribe to the United States Department of the Interior at 2 (September 27, 2012) (First Compact Supplement);

- The Commonwealth's political support and cooperation in the Tribe's efforts to have land acquired in trust on its behalf. Compact § 9.1.6;

- The Commonwealth's agreement "to consider resolution of various important issues between the Tribe and the Commonwealth, such as those involving hunting, fishing, and land use matters." Compact § 9.2;

- The Commonwealth's agreement to "use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee, giving consideration to the conveyance to the Tribe of some such land and water now publicly held." Compact § 2.12.

- The ability of the Tribe to conduct gaming over the internet pursuant to Commonwealth law, as well as its ability to offer patrons wireless gaming throughout its facility. See Compact § 4.3.2; and § 4.7.

ANALYSIS

The Secretary may disapprove a proposed Compact under IGRA only where the Compact violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B).

The Department is committed to adhering to IGRA's statutory limitations on tribal-state gaming compacts. The IGRA prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's cost of regulating class III gaming activities. 25 U.S.C. § 2710(d)(4). The IGRA further prohibits using this restriction as a basis for states refusing to negotiate with tribes to conclude a compact. *Id.*

Moreover, IGRA also limits the subjects over which states and tribes may negotiate a tribal-state gaming compact. *See* 25 U.S.C. § 2710(d)(3)(C).

1. Permissible Subjects of Compact Negotiations

The IGRA established a statutory scheme that limited tribal gaming and sought to balance tribal, state, and Federal interests in regulating gaming activities on Indian lands.

To ensure an appropriate balance between tribal and state interests, Congress limited the subjects over which tribes and states could negotiate a class III gaming compact. Pursuant to IGRA, a tribal-state compact may include provisions relating to:

> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
>
> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
>
> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
>
> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
>
> (v) remedies for breach of contract;
>
> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
>
> (vii) any other subjects that are ***directly related to the operation of gaming activities***.

25 U.S.C. § 2710(d)(3)(C) (emphasis added).

Congress included the tribal-state compact provisions to account for states' interests in the regulation and conduct of class III gaming activities, as defined by IGRA.[1] Those provisions limited the subjects over which states and tribes could negotiate a tribal-state compact. 25 U.S.C. § 2710(d)(3)(C). In doing so, Congress also sought to establish "boundaries to restrain aggression by powerful states." *Rincon Band of Luiseno Indians of the Rincon Reservation, 602 F.3d 1019, 1027 (9th Cir. 2010), cert denied, 131 S. Ct. 3055 (2011)* (statement of Sen. John McCain)). The legislative history of IGRA indicates that "compacts [should not] be used as subterfuge for imposing state jurisdiction on tribal lands." *See* Committee Report for IGRA, S. Rep. 100-446 at 14.

In the Senate debate regarding S.555, which was enacted as the Indian Gaming Regulatory Act, Senator Evans submitted:

> It is my understanding that S.555 acknowledges that inherent rights are expressly reserved to the tribes. This bill allows tribes to relinquish some of those rights by way of compacts with the States, in accordance with the Federal Government's trust obligation to the tribes. *This bill should not be construed, however, to require*

[1] 25 U.S.C. § 2708.

> *tribes to unilaterally relinquish any other rights, powers, or authority.*

S.Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071 (emphasis added).

Congress clearly did not intend for class III gaming compacts to be used as leverage by states to resolve "various important issues between [tribes and states], such as those involving hunting, fishing and land use matters[.]" Compact § 9.2.

As with revenue sharing provisions, we will review tribal-state gaming compacts with great scrutiny to ensure that they regulate only those activities that are directly related to the operation of gaming activities. We cannot approve a tribal-state compact that purports to interfere with tribal regulation of community planning and land use, for example, or that regulates certain activities in a manner that only indirectly relates to tribal gaming operations.

Nothing in IGRA or its legislative history indicates that Congress intended to allow gaming compacts to be used to expand state regulatory authority over tribal activities that are not directly related to the conduct of class III gaming.

When we review a tribal-state compact or amendment submitted under IGRA, we look to whether the provisions fall within the scope of categories prescribed at 25 U.S.C. § 2710(d)(3)(C). One of the most challenging aspects of this review is determining whether a particular provision adheres to the "catch-all" category at § 2710(d)(3)(C)(vii): "...subjects that are directly related to the operation of gaming activities."

In the context of applying the "catch-all" category, we do not simply ask, "but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a compact provision exist?" Instead, we must look to whether the regulated activity has a direct connection to the Tribe's conduct of class III gaming activities.

A. Consideration of resolution of hunting, fishing, and land use disputes

The exercise of aboriginal and reserved hunting and fishing rights has been described as "not much less necessary to the existence of the Indians than the atmosphere they breathed." *United States v. Winans*, 198 U.S. 371 (1905). Federal law has ensured the protection of these rights:

> Aboriginal title, along with its component hunting, fishing, and gathering rights, remains in the tribe that possessed it unless it has been granted to the United States by treaty, abandoned, or extinguished by statute. See *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 347 (1941); *Sac & Fox Tribe v. Licklider*, 576 F.2d 145 (8th Cir. 1978). A claim based on aboriginal title is good against all but the United States. The power to extinguish aboriginal title or aboriginal use rests exclusively with the federal government. See, e.g., *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661, 667 (1974); *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 347 (1941)... Aboriginal rights will not be extinguished, however, absent 'plain and

> unambiguous' congressional intent. See *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247-248 (1985)(quoting *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 346, 354 (1941)(congressional intent to extinguish original title must be "plain and unambiguous," and "will not be lightly implied").

Cohen's Handbook of Federal Indian Law § 18.01 [2012 Ed.] (2012 Cohen's Handbook).

The Tribe has asserted to the Department that it requested this provision in an effort to resolve a longstanding point of contention between it and the Commonwealth. We appreciate the efforts of the Tribe and the Commonwealth to address these issues in a collaborative manner. However, the Tribe's hunting and fishing rights may not be placed upon the bargaining table when it negotiates a class III gaming compact with the Commonwealth.

We must review the Compact according to the statutory limitations placed upon the compact negotiation process. It is immaterial whether the Tribe or the Commonwealth requested that this provision be included in the Compact. Section 9.2 of the Compact is clearly unrelated to the operation of gaming activities, and is not permissible under IGRA. Moreover, Secretarial approval of such a provision may violate the United States' trust obligations to Indians, given that such aboriginal rights can be extinguished only by Congress.[2]

While the resolution of these issues is certainly important to both the Tribe and the Commonwealth, the Compact is neither the lawful nor the appropriate vehicle to do so. That such an important issue has been included in the Compact here implicates the efforts of Congress to limit the subjects of bargaining in IGRA.

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[2] We also note that the Commonwealth's Supreme Judicial Court, the highest appellate court in Massachusetts, has already recognized the hunting and fishing rights of Wampanoag Indians, including the Mashpee:

> Whether aboriginal rights exist is a factual matter. *United States v. Santa Fe Pac. R.R.*, 314 U.S. 339, 345 (1941). We note parenthetically that the Attorney General's amicus brief contends that the "District Court did not make a factual finding that the Defendants were descendants of the original Mashpee Wampanoag Native Americans or that the Wampanoag Native Americans had exercised exclusively and continuously their aboriginal fishing rights at the places in question since time immemorial." But the judge did expressly find that the defendants had tribal status and that "the Mashpee Indians have never given up their usufruct rights to fish and have continued to exercise those rights as did their forefathers, since time immemorial." Furthermore, he ruled that Indians are not subject to shellfishing license requirements, and that the Commonwealth has traditionally acknowledged and continues to acknowledge the usufruct rights of the American Indian.
>
> The Commonwealth conceded at trial that aboriginal rights have long been recognized in the Commonwealth, and at least until 1941, such rights were explicitly acknowledged by statute.

Commonwealth v. Maxim, 429 Mass. 287, 708 N.E.2nd 636 (Mass. 1999).

B. Negotiation of Ancillary Agreements

In Section 2.12, the Commonwealth agreed to "use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee[.]" Section 18.5.1 of the Compact provides that the Tribe and the Commonwealth agree to negotiate an agreement in good faith that "addresses measures the Tribe will use for the [collection] of state taxes that, pursuant to federal law, are applicable to activities taking place upon, and to goods and services provided, received or consumed upon, the Approved Gaming Site."

For the same reasons described above, these provisions (Section 2.12 and Section 18.5.1) are clearly unrelated to the Tribe's conduct of gaming, and exceed the scope of permissible subjects of negotiating under IGRA. While Section 18.5.1 expressly addresses the taxation of activities, goods, and services on the Approved Gaming Site, its broad reach extends to activities that are not directly related to the Tribe's operation of gaming activities.

Therefore, we conclude that these provisions of the Compact extend beyond the prescribed subjects of bargaining contained in 25 U.S.C. § 2710(d)(3)(C) in violation of IGRA.

C. Regulation of Non-Gaming Suppliers

One other notable defined term in the Compact is "Non-Gaming Supplier," which means "any Person, other than a Management Contractor or employee of the Enterprise, who sells, leases or provides goods or services to the Enterprise for the operation of the Facility, which are not used by the Enterprise in the operation of Compact Games." Compact § 3.42.

Part 7 of the Compact is titled, "Licensing and Registration," and requires employees and vendors to become licensed by the Tribe's regulatory authority. This Part provides:

> The Enterprise shall not conduct business with any Non-Gaming supplier unless the Non-Gaming Supplier is registered with the TGC and has provided such information as the TGC shall require to become registered. Non-Gaming Suppliers include, but are not limited to: construction companies, vending machine providers, linen suppliers, garbage handlers, facility maintenance companies...and such other persons or entities as may be identified by the TGC as Non-Gaming Suppliers."

Compact § 7.7.2.

Again, we must scrutinize this provision to ensure that it fits within the prescribed subjects of bargaining contained within IGRA. The most relevant provisions of IGRA, for purposes of this analysis, are found at 25 U.S.C. § 2710(d)(3)(C)(vi) (pertaining to operation, maintenance, and licensing of the facility) and § 2710(d)(3)(C)(vii) (pertaining to other subjects that are "directly related" to the operation of gaming).

It is clear that the types of activities contemplated by Part 7 of the Compact are at least tangentially related to the Tribe's operation of gaming. The question is whether they are

"directly related," or otherwise pertain to the operation, maintenance, and licensing of the facility.

As explained above, we must view the scope of prescribed state regulatory authority over tribal gaming activities narrowly. This includes our understanding of the term "facility," as used in 25 U.S.C. § 2710(d)(3)(C)(vi).

We cannot conclude that vending machine providers and linen suppliers, for example, implicate the integrity of the Tribe's gaming activities. Nor can we conclude that Part 7 of the Compact implicates the state interests Congress sought to protect through IGRA's compacting provisions.

If we were to approve this particular provision, it would extend the Commonwealth's regulatory authority beyond what Congress has allowed, potentially subjecting tribal citizens and businesses to state regulation. This would inhibit the Tribe's ability to promote economic development and employment within its own community by entering into vendor contracts.

The Compact's definition of a "Non-Gaming Supplier" expressly acknowledges that goods and services provided by such persons are not used in the operation of gaming. See Compact § 3.42. We conclude that these provisions of the Compact extend beyond the prescribed subjects of negotiating contained in 25 U.S.C. § 2710(d)(3)(C) and therefore violates IGRA.

D. Construction, Maintenance and Operation Standards

As noted above, Part 5 of the Compact includes provisions that regulate the "Construction, Maintenance and Operation of [the] Facility." Section 5.4.7 requires the Tribe to comply with the National Environmental Policy Act and applicable Commonwealth law for any expansion or modification of the Facility. Section 5.4.11 of the Compact provides:

> Not less than fifteen (15) days before the Facility is open for business, the Tribe shall certify to the MGC, and provide such documentation to support the certification as the MGC requests, that: (a) the Gaming Area and other ancillary entertainment services and such non-gaming ancillary amenities the Tribe and the MGC shall agree upon have been built in accordance with the plans and specifications previously submitted to the MGC pursuant to subpart 5.4.5; and (b) the infrastructure improvements and traffic mitigation projects onsite and ***in the vicinity of the Facility*** are complete in accordance with the plans previously submitted to the MGC pursuant to subpart 5.4.5. ***Under no circumstances shall the Tribe permit the Facility to open for business unless the requirements of the subpart have been met*** (emphasis added).

As tribal gaming has matured, many tribes have developed businesses or amenities that are ancillary to their gaming activities, such as hotels, conference centers, restaurants, spas, golf courses, recreational vehicle parks, water parks, and marinas. These businesses are often located near or adjacent to tribal gaming facilities. It does not necessarily follow, however, that such ancillary businesses are "directly related to the operation of gaming activities" and therefore subject to regulation through a tribal-state compact.

While each compact is reviewed according to its unique facts and circumstances, the Department often views such businesses and amenities as not "directly related to gaming activities" unless class III gaming is conducted within those businesses or the parties to the compact can demonstrate particular circumstances establishing a direct connection between the business and the class III gaming activities. Those particular circumstances must also implicate the state interests Congress sought to protect through IGRA's compacting provisions.

In this instance, the Compact purports to regulate "infrastructure improvements and traffic mitigation projects onsite and in the vicinity of the Facility." Compact § 5.4.11.

It is possible to read certain provisions of Part 5, such as Section 5.4.7, narrowly to avoid reaching a determination that it violates the prescribed subjects of negotiating contained in IGRA. See, e.g., Letter from Donald E. Laverdure, Acting Assistant Secretary – Indian Affairs to Greg Sarris, Chairman of the Federated Indians of the Graton Rancheria (July 13, 2012) (narrowly construing certain regulatory provisions in the compact to avoid a conflict with IGRA). The Tribe has asserted that Section 5.4.11 is "non-regulatory and simply requires the Tribe to provide information to the [Commonwealth]." First Compact Supplement at 6.

The language of Section 5.4.11 indicates otherwise, making it clear that "under no circumstances" can the Tribe open the Facility if it has not satisfied this requirement. In other words, the Compact precludes the Tribe from conducting class III gaming activities unless it satisfies regulatory requirements related to infrastructure improvements "in the vicinity" of the Facility – without regard as to whether those improvements are "directly related to the operation of gaming activities." 25 U.S.C. § 2710(d)(3)(C).

We have determined that Section 5.4.11, by its terms, extends beyond the prescribed subjects of bargaining contained in 25 U.S.C. § 2710(d)(3)(C) and therefore violates IGRA. We cannot give a narrow construction to this requirement to avoid reaching this conclusion.

2. Revenue Sharing Provisions

We review revenue sharing provisions in gaming compacts with great scrutiny, in accordance with the principle that Indian tribes, not states or other parties, should be the primary beneficiaries of Indian gaming revenues.

Our analysis as to whether such provisions comply with IGRA first requires us to determine whether the Commonwealth has offered meaningful concessions to the Tribe. We view this concept as one where the Commonwealth concedes something it was not otherwise required to negotiate, such as granting the exclusive right to operate Class III gaming or other benefits sharing a gaming-related nexus, to which the Tribe was not already entitled.[3] We then examine whether the value of the concessions provides substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the Compact.

We note that the Ninth Circuit's recent decision in *Rincon Band of Luiseno Mission Indians of the Rincon Reservation* v. *Schwarzenegger*[4] favorably cited the Department's long-standing

[3] See 25 U.S.C. § 2710(d)(3)(c). This particular section of IGRA is discussed further below.

[4] 602 F.3d 1019 (9th Cir. 2010), *cert denied*, 131 S. Ct. 3055 (2011).

policy regarding revenue sharing. While *Rincon* is not binding here because it arose under IGRA's remedial provisions and involved facts and circumstances unique to the litigants, aspects of the decision provide useful guidance.

A. Meaningful Concessions

The Tribe and the Commonwealth have asserted that the Commonwealth has made a number of meaningful concessions to the Tribe to justify the receipt of 21.5 percent of the Tribe's gaming revenues. We believe that the Commonwealth has offered the Tribe a single meaningful concession – the Tribe's exclusive right to conduct gaming in Region C – to support revenue sharing. We have addressed each purported concession below.

i. Geographic Exclusivity

First among the asserted meaningful concessions is the protection of the Tribe's exclusive right to operate a gaming facility in a defined geographic area within the Commonwealth. Compact § 9.2. The Department has previously determined that compact provisions securing a tribe's exclusive right to conduct gaming in a defined geographic area constitutes a "meaningful concession." See Amendment to the Tribal-State Compact Between the St. Regis Mohawk Tribe and the State of New York (2005).

In this instance, the Compact secures only the Tribe's right to exclusivity vis-à-vis a facility granted "a Category 1 License to operate a casino in Region C under the laws of the Commonwealth." Compact § 9.2.4. It does not secure the Tribe the ability to operate its facility exclusive of a competing facility operating under a Category 2 License issued by the Commonwealth. A Category 2 License "means a license issued by the [Commonwealth] that permits the licensee to operate a gaming establishment with no table games and not more than 1,250 slot machines."[5]

Thus, the Tribe could still be faced with the prospect of competing against another facility operating up to 1,250 slot machines in Region C, notwithstanding Section 9.2.4 of the Compact.

Under our test, we recognize that the Commonwealth was not required to concede any form of gaming exclusivity to the Tribe nor was the Tribe entitled to such exclusivity. Therefore, we have determined that the Commonwealth's concession of geographic exclusivity is "meaningful."

While we have determined that the Commonwealth's concession is meaningful, we note that the value to the Tribe of having the exclusive right to operate a full-scale gaming facility including table games within Region C (which is addressed below) may be substantially impaired by the Commonwealth's ability, not limited by the Compact, to issue a Category 2 License to a facility within Region C to operate up to 1,250 slot machines.[6]

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[5] Section 3.5 reflects the Commonwealth's definition of a Category 2 licensee. *See* Chapter 23K § 2 of the Massachusetts General Laws.

[6] We note that the Tribe's Gaming Market Study, submitted as part of its supplemental information, does not address the competitive impact on the Tribe's proposed casino if the Commonwealth awarded the Category 2 license to Plainridge Racecourse. Plainridge Racecourse, located in Plainville, MA, within the "Local Play" market identified

ii. First Casino Advantage

In the First Compact Supplement, the Tribe has asserted that the Commonwealth has conceded to the Tribe the right to:

> ...operate the first casino in a constrained finite gaming market..., and [has foregone], at great economic cost to the Commonwealth, its alternative right under [Commonwealth law] to award the First Casino Advantage to a commercial gaming company through issuance in the Tribe's region ("Region C" as defined in the Compact) of a Category 1 license described in [Commonwealth law].

First Compact Supplement at 2.

The Tribe has also asserted that the Commonwealth's agreement to negotiate the Compact prior to the Tribe possessing gaming-eligible land under IGRA secures the First Casino Advantage. See *Id.*

We believe that this asserted concession is illusory, and that it does not constitute a meaningful concession for purposes of this analysis.

The Compact does not contain any provisions that expressly secure the Tribe's asserted right to operate the first gaming facility in Region C Section 9.2 of the Compact secures the Tribe's exclusive right to operate a gaming facility in Region C, which we have explained does constitute a meaningful concession. By definition, this exclusive right ensures that the Tribe will enjoy the First Casino Advantage within Region C.

In an August 17, 2010 letter to the Governor of California, the Department disapproved a tribal-state gaming compact between the State of California and the Habemetolel Pomo of Upper Lake. Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs to Sherry Treppa, Chairwoman of the Habemetolel Pomo of Upper Lake (2010 Upper Lake Letter). In that letter, we explained that an additional concession of exclusivity in a limited geographic area, where the Tribe already enjoyed the right to conduct gaming activities exclusive of non-tribal operators throughout the entire State, was not meaningful.

In this instance, the Tribe's right to operate the first full-scale gaming facility in Region C is secured by Section 9.2 of the Compact, which we have already determined constitutes a distinct, meaningful concession. We cannot consider the First Casino Advantage to be a separate and distinct concession by the Commonwealth.

iii. Support for the Tribe's Trust Acquisition Application

Section 9.1.6 of the Compact provides that the Governor of the Commonwealth will "cooperate with and support" the Tribe's efforts to acquire land in trust for gaming purposes within Region

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by the Tribe's Gaming Market Study supplement, began the application process for the sole Category 2 license in August of 2012; *see* http://www.thesunchronicle.com/plainville/plainridge-racecourse-submits-check-to-apply-for-slots-license/article_29285302-cf9f-575b-8457-f3569a19adf5.html (last accessed October 11, 2012).

C. It further adds that this support is a concession in exchange for the Tribe's sharing of its gaming revenues with the Commonwealth.

In a letter dated March 7, 2002, to the Governor of Louisiana, then-Assistant Secretary Neal McCaleb explained that the State of Louisiana's political support for the Jena Band of Choctaw Indians' trust acquisition application could not be used to justify revenue sharing payments under the tribal-state compact between the State of Louisiana and the Jena Band of Choctaw Indians. Letter from Neal McCaleb, Assistant Secretary – Indian Affairs to Mike Foster, Governor of the State of Louisiana, March 7, 2002 (Jena Band Letter). In that letter, the Assistant Secretary noted, "the State does not have the authority to either have the land taken into trust, or to have the land declared part of the Band's initial reservation. Both decisions are vested with the Secretary of the Interior." Jena Band Letter at 2.

In both the Jena Band Letter and the 2010 Upper Lake Letter, we explained that the purported concessions were illusory – meaning that the State was not conceding anything at all to the Tribe. Here, the Commonwealth's offer of support to the Tribe's application to have the Department of the Interior acquire land in trust on its behalf is symbolic, and likely signals improved relations between the Tribe and the Commonwealth. Nevertheless, it is not a concession at all. The Commonwealth does not have the authority or ability to approve the Tribe's application, and is not giving anything tangible to the Tribe. Thus, this offer constitutes an illusory concession to the Tribe and is not meaningful for purposes of this analysis.

iv. Consideration of resolution of hunting, fishing, and land use disputes

In this instance, the Tribe has asserted that the Commonwealth has made a meaningful concession to justify revenue sharing under Section 9.2 of the Compact by agreeing to "use its best efforts to negotiate an agreement with the Tribe to facilitate the exercise by the Tribe and its members of aboriginal hunting and fishing rights on certain lands in the Commonwealth." First Compact Supplement at 3.

As discussed above, this provision is an impermissible subject of compact negotiations under IGRA. Therefore, it cannot constitute a meaningful concession by the Commonwealth to the Tribe to support revenue sharing.

v. Resolution of the Tribe's Land Claims

Section 2.12 of the Compact states that, as a concession by the Commonwealth to the Tribe, it will "use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee, giving consideration to the conveyance to the Tribe of some such land and water now publicly held."

Congress explicitly sought to protect land and water rights from being the subject of compact negotiations. States cannot use gaming as a lever to negotiate about rights such as these that are arguably more fundamental than gaming.

For the same reasons as those relating to the purported concession of "consideration of resolution of hunting, fishing, and land use disputes," we have determined that this does not constitute a meaningful concession by the Commonwealth, for purposes of revenue sharing.

vi. Internet gaming and gaming over wireless, handheld devices

Section 4.3.2 of the Compact prohibits the Tribe from offering any form of internet gaming, as defined in the Compact, unless it is authorized under both Federal and Commonwealth law. In the event that such types of gaming activities are permitted by the Commonwealth, the Compact authorizes the Tribe to conduct those activities on par with other entities under the laws of the Commonwealth. *Id.*

Section 4.7 of the Compact authorizes the Tribe to utilize a "Wireless Gaming System," as that term is defined in the Compact.

As of today, the legality of internet gaming is uncertain throughout the United States. Congress has been contemplating legislation to address internet gaming since at least 2008, but it is difficult to predict whether Congress will ever enact such legislation. It is equally difficult to predict whether such legislation may grant states regulatory authority over tribal internet gaming, or permit tribes to operate internet gaming free of state regulation altogether. For purposes of this analysis, the Commonwealth's asserted concession of internet gaming cannot be considered a meaningful concession.

The Tribe also asserts that the Commonwealth's agreement to allow the Tribe to operate wireless gaming is a meaningful concession. While wireless gaming technology is relatively new, insofar as implementation, standards governing wireless gaming were published in 2007 by Gaming Laboratory International.[7] On October 9, 2012, the New Jersey Attorney General's Division of Gaming Enforcement published temporary regulations to permit gaming on mobile devices.[8] Moreover, we are aware of at least three tribal gaming facilities offering wireless gaming today without specific authority to do so in their respective class III gaming compacts.

Therefore, we do not view authority to operate wireless gaming as a concession at all because it is simply an extension of the class III gaming already authorized by the Compact using a different interface.

B. Substantial Economic Benefit

We must now examine whether the Commonwealth's sole meaningful concession – the exclusive right of the Tribe to conduct gaming in Region C – justifies the revenue sharing provisions in the Compact. We determine that it does not.

The language of Section 9.2 of the Compact makes it clear that the Tribe and the Commonwealth believe that the Tribe's exclusive right to conduct gaming in Region C is worth 6.5 percent of the Tribe's Gross Gaming Revenue. The Compact does not contain any other concessions by the Commonwealth to the Tribe that would justify revenue sharing beyond that rate.

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[7] *See* http://www.gaminglabs.com/downloads/GLI%20Standards/updated%20Standards/GLI-26%20v1.1.pdf (last accessed on October 10, 2012). Gaming Laboratories International (GLI) is a gaming software and equipment test laboratory. GLI or other, similar, certification is required by Part 4.8 of the Compact before a particular gaming device model can be offered for play.

[8] *See* http://www.nj.gov/oag/newsreleases12/pr20121009a.html (last accessed on October 10, 2012).

Section 9.2.1 requires the Tribe to pay 21.5 percent of its Gross Gaming Revenue to the Commonwealth, in exchange for this meaningful concession. In the event that the Tribe's exclusive right to conduct gaming within Region C is abrogated, Section 9.2.4 provides the Tribe with the option of either ceasing operation of class III gaming within 60 days[9], or reducing its revenue sharing obligation to a rate of 15 percent of Gross Gaming Revenues.

If the Tribe loses this exclusive right, its obligation to share revenues with the Commonwealth is reduced by 6.5 percent.

Therefore, we must determine that the Commonwealth has made additional meaningful concessions, beyond securing the Tribe's exclusive right to conduct gaming in Region C, to justify revenue sharing above a rate of 6.5 percent.

As we have explained above, the other purported concessions made by the Commonwealth to the Tribe under the Compact do not constitute "meaningful concessions" that would justify revenue sharing. Without additional meaningful concessions, revenue sharing at a rate of 15 percent as required by the Compact would be unlawful.

In 1996, then-Assistant Secretary Ada Deer issued a letter to the Wampanoag Tribe of Gay Head (Aquinnah) regarding a tribal-state compact it had entered into with the Commonwealth. Letter from Ada Deer, Assistant Secretary – Indian Affairs to Beverly M. Wright, Chairperson of the Wampanoag of Gay Head (July 23, 1996) (Aquinnah Letter). In the Aquinnah Letter, the Assistant Secretary noted that the Aquinnah Wampanoag Tribe's tribal-state compact with the Commonwealth would have required that tribe to share revenues with the Commonwealth even if the tribe were to lose its exclusive right to conduct gaming:

> If the Tribe loses exclusivity after six years, it agrees to make a cash contribution equal to the greater amount of a) the State's actual costs of regulation, licensing, and Compact oversight of its gaming facility, plus 15 percent of the amount the Tribe would have paid to the State under this compact if the exclusivity had been maintained....This provision contemplates that if the Tribe loses exclusivity rights after the first six years, it will be required to continue to pay the State an amount in excess of actual costs to regulate gaming.

Aquinnah Letter at 2.

The Assistant Secretary then expressed the Department's concerns with this provision, which is similar to Section 9.2 of the Compact at issue here:

> We strongly advise that the provision be rewritten because we believe that a requirement that the Tribe make indefinite payments to the State beyond the cost of regulation even if the State removes all restriction on competitive gambling renders the Compact legally vulnerable. We believe that it is very likely that, if

[9] We are reserving analysis as to whether the "option" of ceasing gaming operations in event of the abrogation of the Tribe's exclusive gaming rights in Region C is permissible.

> litigated, a court would find that such payments are beyond the scope of the statute.

Id. at 3.

The 1996 Aquinnah Letter demonstrates that the Department has had longstanding concerns with the type of revenue sharing structure embodied in Section 9.2 of the Compact.

We have determined that the Commonwealth has not made meaningful concessions that would confer a substantial economic benefit to the Tribe in a manner that would justify a revenue sharing rate above and beyond 6.5 percent. Therefore, the revenue sharing provisions set forth in Section 9.2 of the Compact constitute an impermissible tax, fee, charge, or other assessment in violation of IGRA. See 25 U.S.C. § 2710(d)(4).

3. Other Concerns

The preceding discussion is sufficient for us to conclude that the Compact violates IGRA and cannot be approved. Nevertheless, it is important to note that there are additional provisions within the Compact that cause significant concern for the Department.

For example, Part 4 of the Compact purports to regulate the Tribe's conduct of class II gaming activities. We question whether the Commonwealth, through the negotiation of a class III gaming compact, can exercise regulatory authority reserved exclusively to tribes and the National Indian Gaming Commission under IGRA.

Likewise, Part 13 of the Compact appears to constrain the manner in which the Tribe can use net revenues generated by its gaming facility. Given the fact that the Commonwealth would have the ability to enforce the terms of the Compact, we question whether this would create an impermissible conflict with the Federal Government's and tribes' regulatory authority under IGRA.

Part 17 of the Compact addresses the allocation of criminal jurisdiction over the Tribe's Gaming Enclosure, which is permissible under IGRA to a limited extent. See 25 U.S.C. § 2710(d)(3)(C) (permitting the inclusion of provisions in a compact that allocate criminal and civil jurisdiction "directly related to and necessary for" the licensing and regulation of gaming). In this instance, the Compact purports to extend the Commonwealth's criminal jurisdiction to cover all criminal offenses, under the laws of the Commonwealth, to all persons within the Gaming Enclosure. Compact Part 17. We question whether this would violate the limited reach of criminal jurisdiction allowed under IGRA or other Federal laws pertaining to criminal jurisdiction in Indian Country.

It was not necessary for us to analyze these provisions to make the determination to disapprove the Compact. But, it is possible that these provisions – as written, or as potentially applied – could also violate IGRA and provide us with separate bases to disapprove the Compact. We would scrutinize these provisions carefully in any future submissions by the Tribe and the Commonwealth.

CONCLUSION

Based on this analysis I find that the Compact is in violation of IGRA. Therefore, we hereby disapprove the Compact.

We appreciate the efforts of the Commonwealth and the Tribe to attempt to reach an agreement on important matters affecting their relationship. We deeply regret that this decision is necessary, and understand that it constitutes a significant setback for the Tribe. Nevertheless, the Department is committed to upholding IGRA and cannot approve a compact that violates IGRA in the manner described above.

We strongly encourage the Commonwealth to negotiate a new class III gaming compact with the Tribe in good faith and in accordance with IGRA so that the Tribe may proceed with its efforts to develop its economy for the benefit of its citizens.

A similar letter has been sent to the Honorable Cedric Cromwell, Chairperson, Mashpee Wampanoag Tribe.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs

EXHIBIT

K

Coquille Doubles Down On Medford Casino

Medford Mail Tribune | May 12, 2013 7:56 p.m. | Updated: May 13, 2013 2:56 a.m.

CONTRIBUTED BY:

DAMIAN MANN

By DAMIAN MANN

Mail Tribune

A one-casino-per-tribe policy in Oregon faces a tough test as the Coquille Indian Tribe pursues a Medford gaming operation.

Gov. John Kitzhaber and the tribe have been at odds over a so-called gentleman's agreement limiting each of the nine tribes in the state to just one casino.

The tribe proposes a video-gaming operation at the Roxy Ann Lanes bowling alley and the former Kim's Restaurant along South Pacific Highway. The tribe also agreed to lease Bear Creek Golf Course, adjacent to the two buildings.

"We are deliberately avoiding using the word casino to describe this gaming facility," said Ray Doering, spokesman for the Coquille.

In the world of tribal gaming operations, the difference between a casino and a video-gaming operation could become a crucial part of a debate over increasing the level of gambling in the state. However, in previous Coquille discussions, tribal leaders have referred to the proposed operation as a casino.

Currently in Oregon there are nine federally recognized Class III casinos, which allow such games as craps, roulette, blackjack, other table games and video gaming.

The Coquille propose a more modest Class II gaming operation in Medford, which would feature video games that have some differences but resemble the type of machines found in casinos.

There are no Class II facilities in the state.

Over the years, federally required compacts between the state and the tribes have been signed, which in some cases included a five-year agreement not to establish any new Class III casinos.

The most recent compact between the state of Oregon and the Coquille, executed on Dec. 6, 2000, specifically recognizes the ability to operate the

kind of gaming operation proposed in Medford.

"Nothing in this compact shall be deemed to affect the operation by the tribe of any Class II gaming as defined in the Indian Gaming Regulatory Act," the compact reads.

The compact also makes it clear that the state doesn't have any regulatory authority over Class II gaming conducted by the tribe.

In the compact, the tribe agreed to not operate another Class III facility for a period of five years, ending in 2005.

For the most part, the one-tribe, one-casino idea was good only for five years with all tribes, though it was also part of a Kitzhaber policy statement in 1997 and an idea the governor still endorses.

"It was something this governor in his first administration wanted to pursue," said Doering. "He wanted the tribes to limit themselves to one casino."

The tribe, however, didn't sign any agreements to that policy, Doering said.

Even though the Coquille tribe doesn't believe the governor's one-casino policy applies to the Medford proposal, Doering said the tribe still is largely following the spirit of the 2000 compact, which makes provisions allowing Class II gaming operations.

Doering said the requirements for the establishment of a Class II gaming operation do not involve the same high level of federal regulatory hoops as a Class III facility and don't require a compact with the state.

"We just felt it worked better as Class II," he said. "It is less of an investment."

Kitzhaber sent a letter to the Bureau of Indian Affairs on May 6 opposing the Coquille's proposal to expand into Medford.

Opening a Class II gaming facility in Medford would open the doors to a possible conversion to a Class III casino, Kitzhaber wrote.

"It is important to note that the governor understands the distinction between Class III and Class II gaming, and that the state has no regulatory role in Class II gaming," Kitzhaber's letter states. "The state also understands that the restrictions in the compacts only apply to Class III gaming."

Susan Ferris, spokeswoman for the Cow Creek of Umpqua Tribe of Indians, said her tribe signed the first compact with the state to operate a Class III casino on Nov. 20, 1992. The Cow Creek operate Seven Feathers Casino Resort in Canyonville and oppose the Coquille's proposal in Medford.

Ferris said the Cow Creek was one of three tribes that signed compacts restricting them to one Class III facility without any time limit. The other

tribes are the Warm Springs and Grand Ronde.

The remaining tribes signed off on language in their compacts that were similar to the Coquille, with a five-year time limit on Class III casinos, she said.

Ferris said she felt that relying solely on the governor's policy statement to bolster the contention of a one-casino-per-tribe agreement might be legally difficult.

However, she said, it could be used to bolster the idea that the state has historically shown an unwillingness to expand casino gaming beyond what is now offered, though there is no federal limit on the number of casinos that could be operated by a tribe.

She said that the technology behind video gaming has improved markedly in recent years, blurring the distinction between different types of gaming facilities.

"The great difference between Class II and Class III gaming has been largely erased," she said. "How the regulatory agencies are going to cope with the advancement in technology -- that's something we're not sure about."

Reach reporter Damian Mann at 541-776-4476 or dmann@mailtribune.com.

This story originally appeared in Medford Mail Tribune.

COMMENTS

EXHIBIT

L

Enrolled
House Bill 2613

Sponsored by Representative CLEM (at the request of Portland Meadows, Oregon Thoroughbred Owners and Breeders Association, Oregon Horsemen's Benevolent Protective Association, Oregon Quarter Horse Racing Association) (Presession filed.)

CHAPTER .....

AN ACT

Relating to wagering on races.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 462.

SECTION 2. (1) The Oregon Racing Commission may allow a race meet operator that holds a Class A license to conduct mutuel wagering at the licensee's race course on horse races previously held if:

(a) The races were actual events held at race courses during race meets;

(b) The races were subject to mutuel wagering at the time the races were originally held; and

(c) The race meets at which the races were originally held were approved by the commission or by an equivalent regulatory body in another state.

(2) Subsection (1) of this section allows mutuel wagering on a horse race displayed as a video or audio recording, or another form of recording approved by the commission, but does not authorize wagering on any animation, computer simulation or other artificial representation of horse racing.

(3) Subsection (1) of this section does not apply to a race meet operator described in ORS 462.057 (2). Subsection (1) of this section does not authorize off-race course wagering or multi-jurisdictional simulcasting for horse races previously held.

Passed by House April 29, 2013

.....
Ramona J. Line, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate May 23, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

.....
Kate Brown, Secretary of State

Exhibit

M

IGT Wins Big in Oregon State Lottery VLT Market

The company will ship 1500 VLTs to the Oregon State Lottery

LAS VEGAS, July 2, 2013 /PRNewswire/ -- International Game Technology (NYSE: IGT), a global leader in casino gaming entertainment and systems technology , today announced that the Company will be providing 1500 video lottery terminals (VLT's) to the Oregon State Lottery in 2014.

(Logo: http://photos.prnewswire.com/prnh/20130130/LA50769LOGO)

"We are thrilled about IGT's win in the Oregon State Lottery market. This proves our company's commitment to deliver innovative and reliable technology combined with excellent customer service worldwide, and we couldn't be more proud of it," said Eric Tom, IGT executive vice president of global sales. "We appreciate Oregon State Lottery's confidence in IGT and we are looking forward to continuing our longstanding partnership and tremendous opportunities this market provides."

The IGT-manufactured VLT's will include latest generation platforms which feature the advanced video platform, or AVP®, which will enable the lottery with a full games to system (G2S) capability.

IGT is now able to offer the award winning AVP game theme library as they deploy into the Oregon Lottery market on the G2S protocol, so games such as Golden Goddess, Shadow of the Panther, and Siberian Storm are now a reality for the Lottery's customer base. Poker will also be on the roster, adding to player excitement over the lottery terminals.

Please visit IGT.com/games to find out more about IGT's industry leading systems that provide casino operators with cutting-edge ways to optimize ROI and enhance player experience.

IGT Resources:

- Like us on Facebook
- Play DoubleDown Casino Games
- Like DoubleDown Casino on Facebook
- Follow us on Twitter
- View IGT's YouTube Channel
- Check out our other Games and Gaming Systems

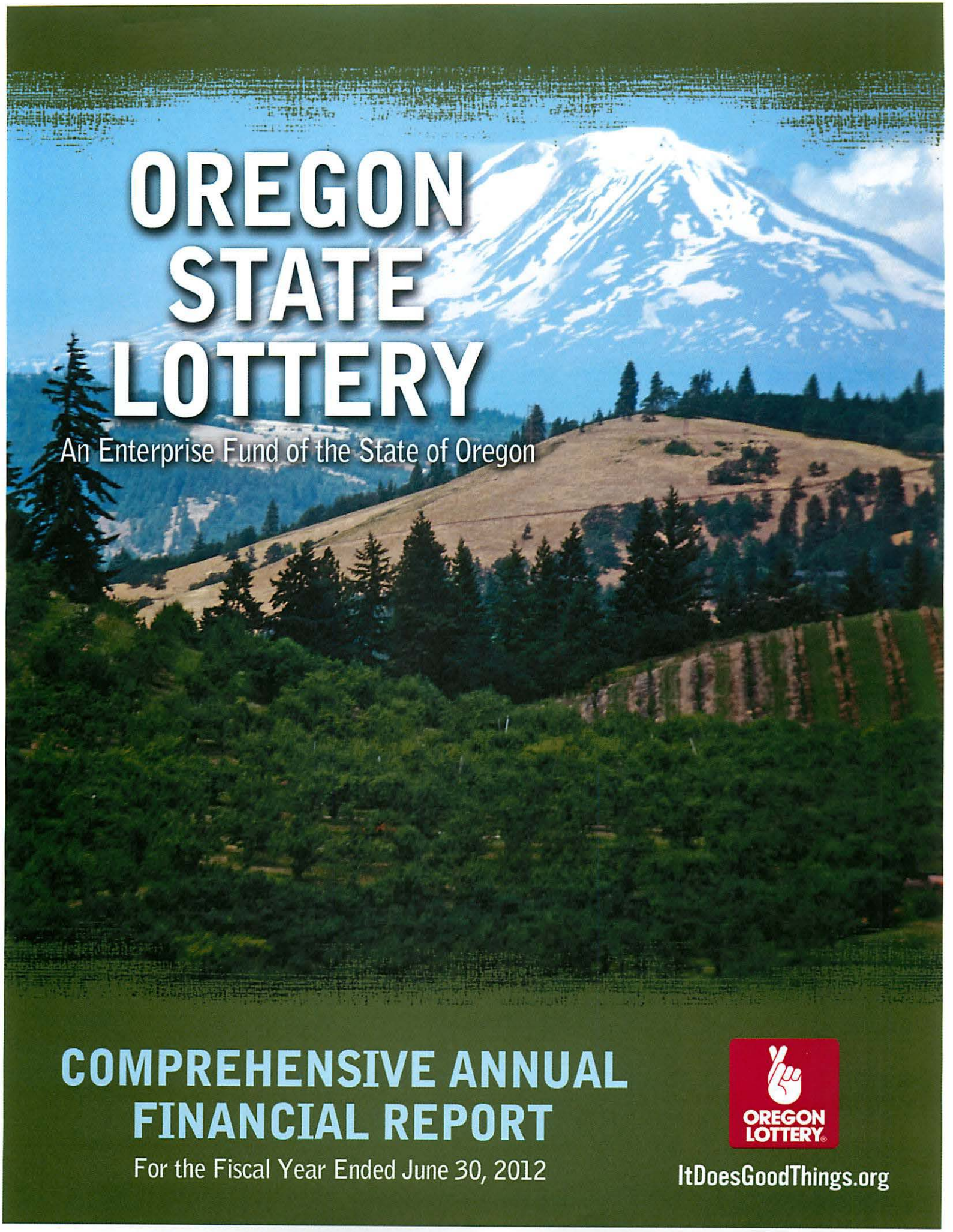
About IGT
International Game Technology (NYSE: IGT) is a global leader in casino gaming entertainment and continues to transform the industry by translating casino player experiences to social, mobile and interactive environments for regulated markets around the world. IGT's acquisition of DoubleDown Interactive provides engaging social casino style entertainment to more than 6 million players monthly. More information about IGT is available at IGT.com or connect with IGT at @IGTNews or facebook.com/IGT. Anyone can play at the DoubleDown Casino by visiting http://apps.facebook.com/doubledowncasino or doubledowncasino.com

SOURCE International Game Technology

Shanna Sabet, IGT Public Relations, 1-702-669-7537, Shanna.Sabet@IGT.com

EXHIBIT

N



OREGON STATE LOTTERY

An Enterprise Fund of the State of Oregon

COMPREHENSIVE ANNUAL FINANCIAL REPORT

For the Fiscal Year Ended June 30, 2012

OREGON LOTTERY®

ItDoesGoodThings.org

Introductory Section

It Does Good Things.

November 16, 2012

To the Honorable Governor John A. Kitzhaber and Citizens of the State of Oregon:

We are pleased to provide you with the Comprehensive Annual Financial Report of the Oregon State Lottery (Lottery) for fiscal year ended June 30, 2012. This report is published to meet the requirement in state law for an annual accounting of financial activities.

Lottery management assumes full responsibility for the completeness and reliability of the information contained in this report, based upon a comprehensive framework of internal controls established for this purpose. Because the cost of internal controls should not exceed anticipated benefits, the objective is to provide reasonable rather than absolute assurance that the financial statements are free of any material misstatements.

The Secretary of State Audits Division, the constitutional auditor of public accounts in Oregon, audited the Lottery's financial statements for the fiscal year ended June 30, 2012. The auditors used generally accepted auditing standards in conducting the engagement. Their unqualified opinion on the financial statements is the first component in the Financial Section of this report.

A narrative analysis of the Lottery's financial performance for the fiscal year can be found in the Management's Discussion and Analysis (MD&A) immediately following the independent auditor's report. This letter of transmittal complements the MD&A and should be read in conjunction with it.

Profile of Oregon State Lottery

The Oregon State Lottery was created through the initiative process in November 1984 when voters approved an amendment to the Oregon Constitution that required the establishment and operation of a State Lottery. Initially, Lottery profits were earmarked to create jobs and further economic development. In May 1995, voters approved a Constitutional amendment allowing Lottery profits to be used for the financing of public education. Similarly, voters added state parks and salmon restoration projects to the list of allowable uses of Lottery proceeds in November 1998. Oregonians have voted to use Lottery profits for things that make Oregon a great place to live.

The Lottery was established as a state agency to market and sell Lottery products to the public. Its statutory mandate requires it to operate the Lottery to produce the maximum amount of net revenues for the people of Oregon commensurate with the public good. Development of new products and game enhancements is a continual process in the effort to increase long-term revenues, while taking into consideration the potential impact of game decisions on problem gambling. The Lottery strives to promote responsible gambling by providing public information about problem gambling and the treatment available.

Through a network of 3,907 retailers, the Lottery offers players a broad mix of traditional games as well as Video Lottery℠. Traditional Lottery games include: Scratch-its℠ Instant Tickets, Keno, Powerball®, Megabucks℠, Raffle℠, Win for Life℠, Mega Millions®, Lucky Lines℠, and Pick 4℠. Video Lottery℠ is a product sold on stand-alone Video Lottery℠ terminals located in bar and tavern retail establishments. The Lottery has approximately 12,175 Video Lottery℠ terminals deployed throughout the state.

500 Airport Road SE Salem, Oregon 97301 PO Box 12649 Salem, OR 97309-0649
P 503 540-1000 F 503 540-1001 www.oregonlottery.org

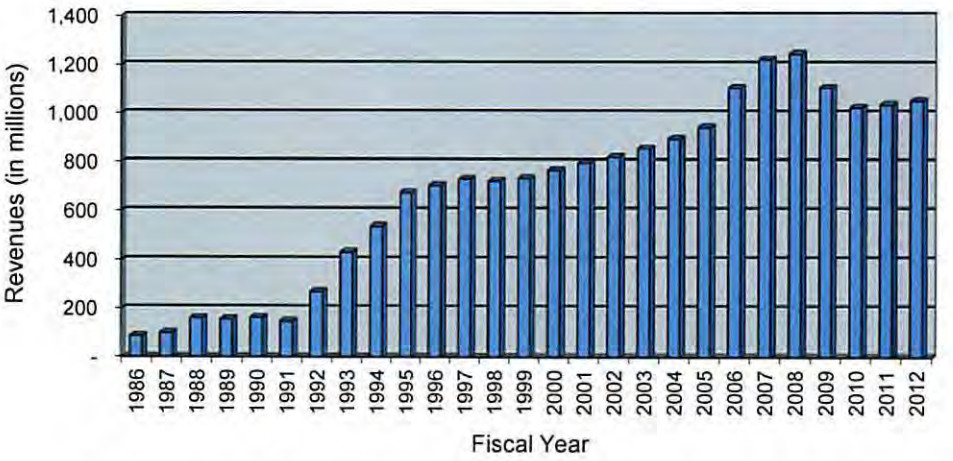
The Lottery, which is accounted for as a single enterprise fund, is entirely self-financed through its sales. Its operations are designed to fulfill its duty to develop, produce, and market Lottery games; pay winners and operating expenses; and remit the remaining net profits to the State. These net profits are transferred to the Oregon Economic Development Fund and are then distributed by the State to finance the various uses allowed by law. Through its business units, the Lottery provides services that are necessary to operate successfully including security, marketing, retailer support, finance, management and information services. Additional information about the Lottery is available on its web site at: http://www.oregonlottery.org.

The Lottery is operated under the direction of a five-member commission, with the commissioners appointed by the Governor and confirmed by the Senate. The Commission directs the activities of the Lottery, including the adoption of rules for the security and integrity of operations. The Governor also appoints a Director, who serves as the chief administrator of the Lottery. The Director is responsible for operating the Lottery in accordance with state law and administrative rules and under the guidance of the Commission.

For budgeting purposes, the Commission adopts an annual Financial Plan based on activities identified in Lottery's annual Business Plan. The Financial Plan uses revenue forecasts prepared by the Oregon Department of Administrative Services, Office of Economic Analysis. Budgeted revenues and direct expenses (prizes, commissions, game vendor charges, and tickets) are revised quarterly for changes in revenue forecasts. Revisions to other expense items in the adopted budget must be approved by the Commission. The budget is prepared on the accrual basis of accounting. Actual expenses are monitored throughout the year for compliance with the approved budget and appropriate adjustments are approved if necessary. By law, expenses to operate the Lottery are limited to no more than 16 percent of total annual revenues.

Since the Lottery's first full year of operation in 1986 through fiscal year 2008, Lottery revenues demonstrated strong and consistent growth. Lottery revenues declined in fiscal year 2009 and 2010 due to the impacts of Oregon's economic recession and the implementation of a statewide smoking ban in bars and taverns where Lottery products are sold. Revenues stabilized in 2011 with a slight improvement and further improved in 2012.

Total Oregon Lottery Revenues[1] by Fiscal Year (1986 - 2012)



[1]Revenues based on gross receipts for traditional games and net receipts (after prizes) for video games.

Economic Condition and Outlook

According to the Oregon Office of Economic Analysis (OEA), Oregon's job growth outpaced the national average during calendar years 2006 and 2007. During 2008, employment declined in Oregon by 0.7 percent, slightly more than the national decline of 0.6 percent. As the economic recession deepened, further job losses resulted in declines in 2009 and 2010 of 6.2 and 0.7 percent respectively. Job growth in 2011 for Oregon and the nation was 1.2 percent. For 2012, Oregon's employment growth is expected to continue to be slow, at 1.2 percent, with job gains coming from hiring in the private sector.

Oregon's personal income is projected to increase from calendar year 2011 to 2012 by 2.9 percent. For 2013, OEA estimates that personal income will increase by 3.7 percent while wage and salary income will increase by 4.1 percent. Personal income is projected to increase by 4.9 percent in 2014, which is higher than the projected 4.6 percent increase for the nation. Wage and salary income in Oregon is expected to grow at a faster rate than the nation in 2014, with a projected increase of 4.6 percent as compared to 4.0 percent. Several factors currently facing the Oregon economy are prolonged housing market instability, European debt concerns and financial market instability, commodity price inflation, and the effects of various global economic issues.

Long-term Financial Planning

On a quarterly basis, the Office of Economic Analysis (OEA) forecasts Lottery earnings and distributions. In the September 2012 Economic and Revenue Forecast, the OEA projected a decrease in Lottery earnings for the 2011-2013 biennium from the prior forecast in June of 2012. The $17.0 million decrease to the forecast is as a result of slightly weaker expectations for consumer spending on Lottery products.

The Lottery uses a five-year Strategic Plan in conjunction with an annual Business Plan and annual budget to plan and manage its operations. Lottery's main strategic objective is to generate optimal revenue for public use by offering a wide variety of market-responsive games that will appeal to diverse consumer markets and successfully manage a broad distribution network. Among other efforts in support of this objective, the Lottery is planning for the implementation of a new Video Lottery℠ central gaming system. This system is expected to provide new game content and functionality that will increase operational efficiency. The system will also lay a foundation for the long-term goal to upgrade or replace aging terminals with terminals that are designed on the open standards G2S protocol. The implementation efforts are expected to occur over the next two fiscal years.

Relevant Financial Policies

In order to provide resources for current operations and future investment, the Lottery Commission established a contingency reserve fund. As authorized by the Commission, the available cash portion of this reserve fund was increased from $55.0 million to $85.0 million during the year in an effort to provide resources for the planned replacement of Video Lottery℠ terminals. At fiscal year end, the balance of $84.4 million of this contingency reserve was uncommitted.

The Lottery's fiscal year 2013 budget is based on the June 2012 Economic and Revenue Forecast. In light of economic conditions, the budget was developed by balancing the need to responsibly manage expenses while taking proactive steps to maximize revenues for the State. The 2013 budget is conservative, but does make investments in new Video Lottery℠ games to keep players interested and help reduce the impact of the weak economic recovery on Lottery revenues.

Major Initiatives

The Lottery plans to update its game offerings on the IGT TrimLine, Spielo prodiGiVu™, and Bally CineVision™ Video Lottery℠ terminals during fiscal year 2013. Some of these new games will continue to offer players the potential to win prizes up to $10,000. This combination of refreshed games and games with higher prizes will help to maintain the vitality and continued success of Lottery products.

Lottery is planning several initiatives to reach out to existing and new players. It will conduct a variety of promotional activities such as on-premise and event-based promotions to create awareness, interest, and trial of Video Lottery℠ line games. The Lottery will focus marketing efforts on Powerball® and Mega Millions® games to increase jackpot visibility and expand playership. Two Raffle℠ games will be offered in fiscal year 2013. In addition, the Lottery will continue to work in collaboration with the Oregon Council on Problem Gambling and the Oregon Health Authority on problem gambling outreach.

Another initiative is a multi-phase project involving the planning, implementation, and deployment of a new gaming network. As part of this project, the supporting network transport technology will be upgraded from frame relay to newer ethernet technology. These infrastructure enhancements will work in conjunction with implementation of the new Video Lottery℠ central gaming system to enable the Lottery to meet its strategic business needs into the future. During fiscal year 2013, the Lottery will also implement an outsourced payroll and human resource information management system. The new system will include a web-based time entry solution along with many self service functions.

Awards and Acknowledgements

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the Oregon State Lottery for its comprehensive annual financial report for the fiscal year ended June 30, 2011. This was the fourth consecutive year that the Lottery has achieved this prestigious award. In order to be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized comprehensive annual financial report. This report must satisfy both generally accepted accounting principles and applicable legal requirements.

A Certificate of Achievement is valid for a period of one year only. We believe that our current comprehensive annual financial report continues to meet the Certificate of Achievement Program's requirements, and we are submitting it to the GFOA to determine its eligibility for another certificate.

The preparation of this report reflects the combined efforts of the Lottery's Finance and Accounting staff. We would like to express our gratitude to all Lottery staff for working cooperatively to ensure the integrity of Lottery's financial reporting. In addition, we appreciate the direction and support provided by the Lottery Commission.

Respectfully submitted,

Kathy Ortega, Chief Financial Officer
Oregon State Lottery

Certificate of Achievement for Excellence in Financial Reporting

Presented to

Oregon State Lottery

For its Comprehensive Annual
Financial Report
for the Fiscal Year Ended
June 30, 2011

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.

Linda C. Davidson

President

Jeffrey R. Esser

Executive Director

Principal Officials of Oregon State Lottery

Elisa Dozono
Commission Chair

Bill Ihle
Commission Vice Chair

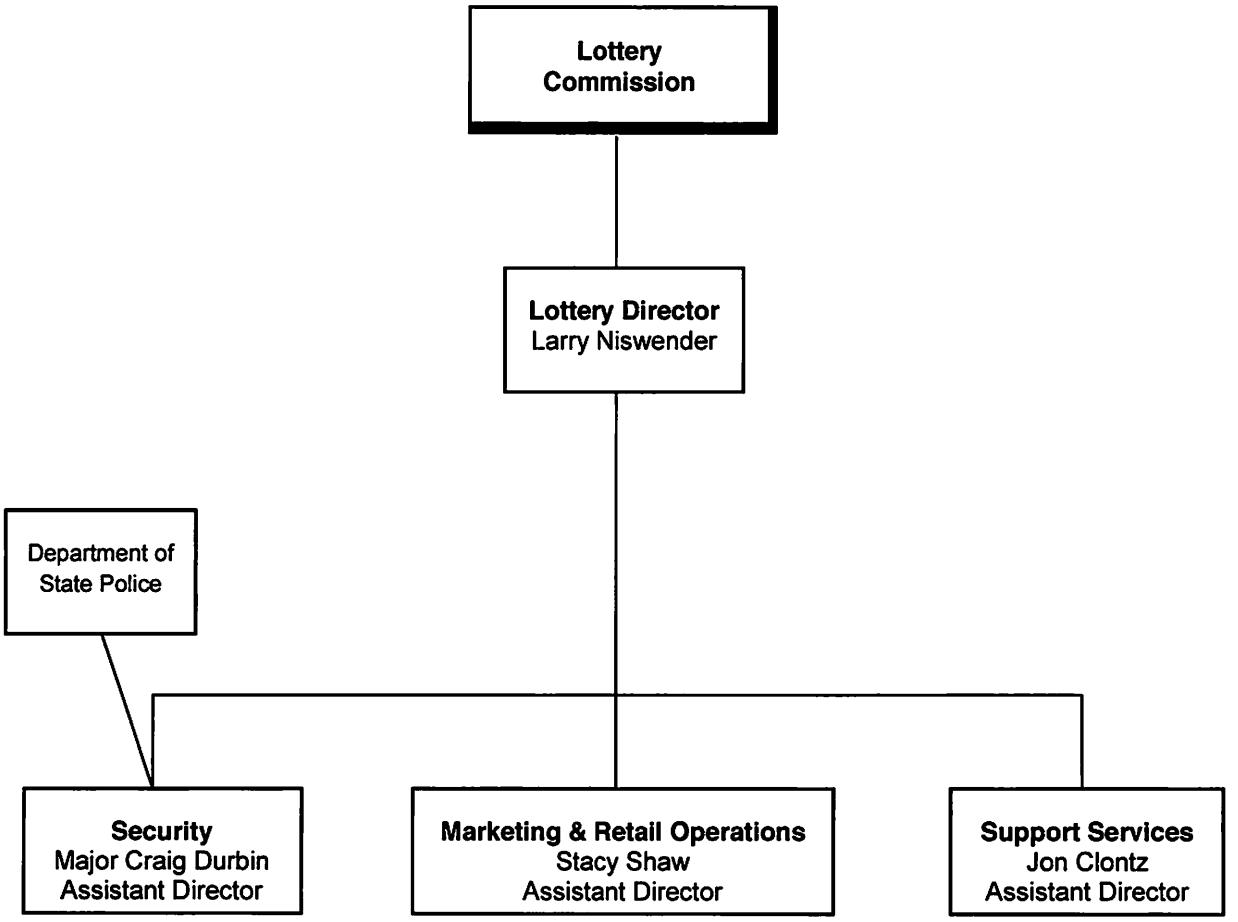
Raul Valdivia
Commissioner

Mary Wheat
Commissioner

Amy Lowery
Commissioner

Larry Niswender
Director

Organization Chart



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Financial Section

Office of the Secretary of State

Kate Brown
Secretary of State

Barry Pack
Deputy Secretary of State

Audits Division

Gary Blackmer
Director

255 Capitol St. NE, Suite 500
Salem, OR 97310

(503) 986-2255
fax (503) 378-6767

The Honorable John Kitzhaber
Governor of Oregon

Elisa Dozono, Chair
Oregon State Lottery Commission

INDEPENDENT AUDITOR'S REPORT

We have audited the accompanying financial statements of the Oregon State Lottery, as of and for the year ended June 30, 2012, as listed in the table of contents. These financial statements are the responsibility of the Oregon State Lottery's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Oregon State Lottery's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As discussed in Note 1, the financial statements of the Oregon State Lottery are intended to present the financial position, and the changes in financial position and cash flows that are attributable to the transactions of the Oregon State Lottery. They do not purport to, and do not, present fairly the financial position of the State of Oregon as of June 30, 2012, the changes in its financial position or its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In our opinion, the financial statements referred to previously present fairly, in all material respects, the financial position of the Oregon State Lottery as of June 30, 2012, and the changes in financial position and cash flows thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated November 16, 2012, on our consideration of the Oregon State Lottery's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations,

contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit. That report is presented separately in the Other Reports section as listed in the table of contents.

Accounting principles generally accepted in the United States of America require that management's discussion and analysis and the schedules of funding progress as listed on the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the Oregon State Lottery's financial statements. The budgetary comparison schedule, as listed in the table of contents, is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the budgetary comparison schedule is fairly stated in all material respects in relation to the financial statements taken as a whole.

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the Oregon State Lottery's basic financial statements. The introductory and statistical sections as listed in the table of contents are presented for the purposes of additional analysis and are not a required part of the basic financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

OREGON AUDITS DIVISION

Kate Brown
Secretary of State
November 16, 2012

Oregon State Lottery
Management's Discussion and Analysis

This section of the Oregon State Lottery's (Lottery) Comprehensive Annual Financial Report presents our discussion and analysis of the Lottery's financial performance for the fiscal year ended June 30, 2012. This analysis is to be considered in conjunction with information in the transmittal letter of this report.

Financial Highlights

- Sales of all Lottery products were $1.1 billion, an increase of 1.2 percent from fiscal year 2011.
- Video Lottery[SM] revenue increased by $6.6 million from the prior fiscal year, and revenue from traditional games increased by $5.7 million.
- Net assets (equity) increased by $3.0 million as a result of fiscal year operations.
- The Lottery transferred $523.7 million to Oregon's Economic Development Fund, which is $23.3 million less than the prior year.

Overview of the Financial Statements

In addition to this discussion and analysis, the Financial Section of this annual report contains the basic financial statements, which include the fund financial statements and notes to the financial statements; required supplementary information; and an optional budgetary comparison schedule, which is presented as other supplementary information.

The basic financial statements offer short-term and long-term financial information about the Oregon State Lottery, which is structured as a single enterprise fund. The required supplementary information contains a Schedule of Funding Progress and accompanying notes for two other postemployment benefit (OPEB) plans in which the Lottery participates: the Public Employees Benefit Board OPEB Plan and the Retiree Health Insurance Premium Account OPEB Plan. The budgetary comparison schedule presents budgeted and actual revenues and expenses for the fiscal year. In addition, a Statistical Section containing information regarding financial trends and revenue capacity as well as demographic, economic, and operating information is presented following the budgetary comparison schedule.

The Balance Sheet provides information about the nature and amounts of investments in resources (assets) and obligations (liabilities) at the end of the fiscal year, with the difference between assets and liabilities reported as net assets (equity).

All of the current year's revenues and expenses are accounted for in the Statement of Revenues, Expenses, and Changes in Fund Net Assets. This statement measures the results of the Lottery's operations over the past year.

The primary purpose of the Statement of Cash Flows is to provide information about the Lottery's cash receipts and cash payments during the reporting period. This statement reports cash receipts, cash payments, and net changes in cash resulting from operations, investing, and financing activities.

The financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America. Thus, expenses are recorded when liabilities are incurred and revenues are recognized when earned, not when received.

Analysis of Financial Position and Operations

Total assets at June 30, 2012 were $540.6 million, a decrease of $13.5 million from the prior year. The change in assets consists primarily of a decrease in securities lending cash collateral, a decrease in net capital assets, and an increase in investments. Securities lending activity fluctuates based on the extent this activity is used by the Office of the State Treasurer for cash management purposes. The effect of accumulated depreciation during the year contributed to the net decrease in capital assets. An increase in the fair value of investments contributed to a larger balance of investments reported at year end.

Total liabilities decreased by $16.5 million from the prior year. A decrease of $13.7 million in obligations under securities lending and a decrease of $19.5 million in the amount due to the Economic Development Fund (EDF) contributed to the net change. The amount owed to the EDF at year end represents the fourth quarter earnings not yet transferred plus administrative savings. The amount due to the EDF at the end of fiscal year 2012 was lower than the prior year as a result of several factors. There were no administrative savings accrued for transfer for the fourth quarter of 2012 because the Lottery increased the contingency reserve limit. Revenues from traditional products were slightly lower in the fourth quarter than the prior year and prizes for traditional products were higher than the fourth quarter of the prior year. This reduced the amount of earnings not yet transferred at year end. These decreases in total liabilities were offset primarily by an increase in prize liability. In June 2012, a Win For Life℠ prize of $7.1 million was claimed but not yet paid as of June 30, which contributed to the increase from the prior year.

Lottery's net assets for the current and prior fiscal year are summarized in Table 1 below:

Table 1: Oregon State Lottery's Net Assets

	2012	2011	Change
Current assets	$ 377,528,565	$ 385,764,314	$ (8,235,749)
Capital assets	43,161,242	62,805,601	(19,644,359)
Other noncurrent assets	119,864,999	105,525,111	14,339,888
Total assets	540,554,806	554,095,026	(13,540,220)
Current liabilities	274,365,810	313,474,875	(39,109,065)
Noncurrent liabilities	126,594,466	104,021,855	22,572,611
Total liabilities	400,960,276	417,496,730	(16,536,454)
Net assets:			
Invested in capital assets, net	43,161,242	62,805,601	(19,644,359)
Unrestricted	96,433,288	73,792,695	22,640,593
Total net assets	$ 139,594,530	$ 136,598,296	$ 2,996,234

A portion of the Lottery's net assets (30.9 percent) reflects its investment in capital assets, primarily Video Lottery℠ gaming terminals and ticket vending machines. The Lottery has no outstanding debt associated with its capital assets.

Of the $96.4 million in unrestricted net assets at year end, $5.3 million was committed for the deployment of new Video Lottery℠ games into the market. An additional $933,925 was committed for the purchase of other capital assets that will be used to support operations.

Table 2 below presents a summary of changes in net assets for the current and prior fiscal year:

Table 2: Oregon State Lottery's Changes in Net Assets

Operating revenues:	**2012**	**2011**	**Change**
Video Lottery℠ game sales, net	$ 727,124,878	$ 720,510,190	$ 6,614,688
Scratch-its℠ instant ticket sales	117,521,750	115,895,266	1,626,484
Keno sales	93,456,813	93,270,757	186,056
Powerball® sales	38,777,424	33,491,623	5,285,801
Megabucks℠ sales	37,539,720	40,780,752	(3,241,032)
All other game sales	35,865,121	34,014,231	1,850,890
Provision for bad debts	(71,327)	(128,164)	56,837
Other income	209,110	1,142,214	(933,104)
Total operating revenues	1,050,423,489	1,038,976,869	11,446,620
Operating expenses:			
Prizes	238,278,854	208,672,809	29,606,045
Retailer commissions	201,626,030	200,510,286	1,115,744
Salaries and wages	36,317,480	35,512,068	805,412
Depreciation and amortization	26,794,091	29,773,197	(2,979,106)
Services and supplies	10,159,107	10,644,690	(485,583)
Game vendor charges	8,620,924	8,552,689	68,235
Advertising and market research	6,444,771	8,446,004	(2,001,233)
Public information	3,882,869	4,420,673	(537,804)
Tickets	4,640,444	4,230,790	409,654
Game equipment parts and maintenance	1,925,220	2,115,134	(189,914)
Sales support	1,113,400	1,234,314	(120,914)
Total operating expenses	539,803,190	514,112,654	25,690,536
Nonoperating revenues (expenses):			
Interest and investment income	17,744,105	3,587,450	14,156,655
Insurance recoveries	30,676	65,081	(34,405)
Gain (loss) on disposition of assets	(147,802)	(2,919,876)	2,772,074
Investment expenses - securities lending	(138,855)	(237,391)	98,536
Total nonoperating revenues (expenses)	17,488,124	495,264	16,992,860
Income before transfers	528,108,423	525,359,479	2,748,944
Transfers to the economic development fund	(523,652,688)	(546,996,892)	23,344,204
Transfers to the general obligation bond fund	(1,459,501)	(1,444,213)	(15,288)
Change in net assets	2,996,234	(23,081,626)	26,077,860
Net assets - beginning	136,598,296	159,679,922	(23,081,626)
Net assets - ending	$ 139,594,530	$ 136,598,296	$ 2,996,234

The Lottery's net assets increased by $3.0 million as a result of fiscal year operations. Overall, net product sales were $12.4 million, or 1.2 percent, higher than the prior year. This is primarily attributable to an increase of $6.6 million in Video Lottery℠ revenue. During the year, new game sets were deployed on select Video Lottery℠ terminals to offer a wide variety of game choices that appeal to a diverse audience. Although economic conditions continued to impact consumer spending on entertainment such as Lottery games, this is the second consecutive year of slight gains in Video Lottery℠ revenue.

Sales for traditional games were up slightly (1.8 percent) from the prior year. The highest growth was $5.3 million in Powerball® sales, which were impacted by a large jackpot during the year. In addition, changes were made to the Powerball® game to increase the price to $2, offer higher starting jackpot amounts, and offer more favorable game odds. Revenue from Mega Millions® was $4.8 million higher than the prior year as a result of a world record jackpot of $656.0 million during the year. This contributed to an increase in all other game sales, which was offset by decreases in other games such as Win For Life℠ and Raffle℠.

Retailer commissions were 0.6 percent higher than the prior year generally as a result of increased sales. Commission rates paid by retailers vary based on the games offered (traditional or video) and the retailers' sales volume. Traditional prize expenses were $29.6 million higher than the prior year due to a combination of two main factors. The increase in fair value of investments being held to fund prizes with long-term payments was greater than the prior year, which resulted in an increase in prize expenses. In addition, a significant Win For Life℠ jackpot prize was won, resulting in a higher prize expense for that game this year. Since revenues for Video Lottery℠ are reported net of prizes awarded, the prize expenses in Table 2 include only traditional game prizes.

Depreciation expense was $3.0 million lower than last year mainly due to the business decision during the fiscal year to change the estimated useful life of Video Lottery℠ terminals from five to seven years. In an effort to delay outlays needed for replacement, the terminals are generally expected to be in service longer.

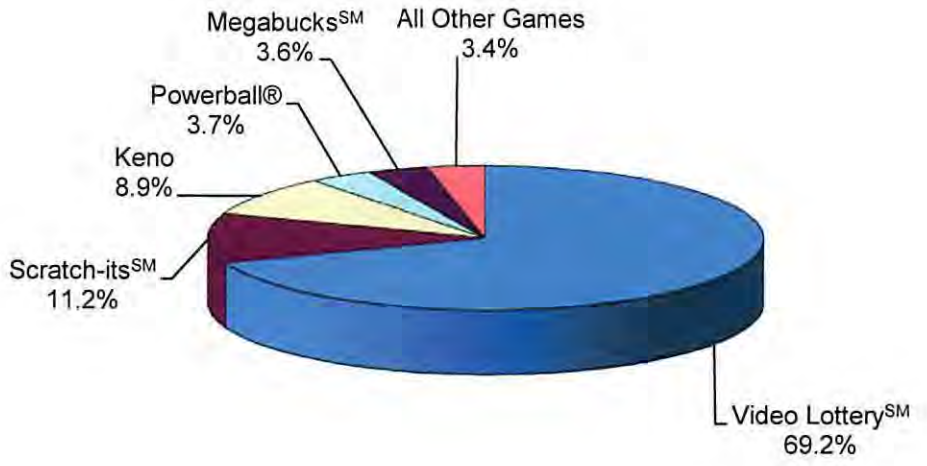
Advertising and market research expenses were $2.0 million less than last year as a result of decisions made to reduce administrative expenses in the current economic conditions. Interest and investment income increased by $14.2 million as a result of an increase in the market value of investments.

The increase in overall net sales and responsible management of administrative expenses enabled the Lottery to transfer $523.7 million to Oregon's Economic Development Fund. The amount transferred was $23.3 million less than the prior year because the Lottery is retaining working capital for future upgrade and replacement of Video Lottery℠ terminals.

Sales Revenue

Figure 1 below shows the major sources and percentages of sales revenue for fiscal year 2012:

Figure 1: Sales Revenue by Product



Video Lottery℠ remains the largest source of revenue and represents 69.2 percent of total sales revenue. In fiscal year 2012, the Lottery completed the deployment of new games on select Vidoe Lottery℠ terminals, including games that offer prizes up to $10,000. While Video Lottery℠ remains an excellent source of continuing revenue for the State, the Lottery actively seeks to promote responsible gambling behavior.

Sales of Scratch-its[SM] were the second largest source of revenue (11.2 percent) during fiscal year 2012. One of Lottery's marketing campaigns promoted the Holiday Sweater Scratch-it[SM] ticket, which contributed to successful holiday ticket sales. In addition, the Lottery continued to introduce a variety of new scratch ticket games at various price points in an effort to maximize revenues for the State. Keno represented 8.9 percent of total sales revenue for the fiscal year.

Capital Assets

The Lottery's investment in capital assets for the current and prior fiscal year is shown in Table 3 below. The majority of capital assets used in operations are equipment such as Video Lottery[SM] gaming terminals and ticket vending machines.

Table 3: Oregon State Lottery's Capital Assets, Net of Depreciation

	2012	2011	Change
Equipment	$ 24,801,137	$ 45,214,095	$ (20,412,958)
Computer software	9,727,885	8,450,878	1,277,007
Buildings and improvements	6,742,981	7,152,863	(409,882)
Vehicles	1,870,967	1,925,156	(54,189)
Leasehold improvements	18,272	62,609	(44,337)
Total	$ 43,161,242	$ 62,805,601	$ (19,644,359)

During fiscal year 2012, net capital assets decreased by $19.6 million, a 31.3 percent decline. The net change is primarily attributed to depreciation expense for the year. The overall reduction was offset by an increase in computer software, as new Video Lottery[SM] game sets were deployed to replace outdated games. As previously mentioned, the Lottery had committed $6.2 million for capital expenses at June 30, 2012. Additional information on Lottery's capital assets can be found in Note 6 of this report.

Factors Relevant to Future Operations

The slow economic recovery underway in Oregon is expected to continue having an impact on sales of Lottery products. Oregon's unemployment rate for August 2012 was 8.9 percent, slightly higher than the past seven months. Job growth for the second quarter of 2012 was 0.6 percent, which was slightly lower than the first quarter. To the extent that future economic conditions continue to impact discretionary consumer spending, net revenues generated through Lottery sales will likely be affected.

EXHIBIT

O

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FAQs

Definitions

Charitable Gaming
Charitable gaming regulated by the Oregon Department of Justice consists of bingo, raffle and Monte Carlo events in which the proceeds are used to fund the activities of charitable organizations. It **does not** include tribal casinos, which are federally regulated with local oversight provided by the Oregon State Police's Gaming Enforcement Division.

Bingo
Bingo is a game played on a purchased card printed with a grid of horizontal and vertical lines of numbers. Numbers are drawn from a receptacle holding no more than 90 numbers until there is a winner (or winners). Winners are determined by covering (or uncovering) the selected numbers in a designated combination, sequence or pattern as they appear on the player's card.

Raffle
A raffle is a form of lottery in which each participant buys a chance for a prize and the winner is determined by a random drawing. As with all lotteries, a raffle includes the elements of consideration, chance and a prize. Consideration is presumed to be present unless it is clearly and conspicuously disclosed to prospective participants that tickets may be acquired without contributing something of economic value.

For information about Alternate Raffle Format games, click here

Monte Carlo
At a Monte Carlo event, players compete against the house on contests of chance using purchased imitation money. The event encompasses casino-style gambling, using cards, dice and roulette wheels. Players wager and win imitation money, chips or tokens and no cash is wagered or won. Players may exchange imitation money for non-cash prizes or use it for a chance to "purchase" prizes at an auction.

Texas Hold'em
Texas Hold'em is a kind of poker game. In 2005, legislation was passed allowing for the use of Texas Hold'em or similar games at Monte Carlo fundraising events. With Texas Hold'em, players are limited to spending no more than $200. This limit includes the original buy-in, as well as all "add-ons" and "re-buys". Licensees are expected to have a system in place which will adequately track player spending to ensure that no one is allowed to violate the $200 limit. If a licensee charges guests a fee to attend their fundraising event in addition to the buy-in for Texas Hold'em, the licensee must describe what, in addition to the Texas Hold'em tournament, the player is receiving for the additional fee.

If Texas Hold'em is a game that will be offered at an organization's Monte Carlo event, please fill out the following worksheet and submit it to the Department for review:

Texas Hold'em Worksheet (pdf)

As with traditional Monte Carlo events, a license is required for any single Texas Hold'em event where the sale of scrip is expected to exceed $2,000, and/or for any organization which intends to raise more than $5,000 from its sale of scrip from multiple events within any calendar year. Monte Carlo license applications are available on our website at http://www.doj.state.or.us/charigroup/applygaming.shtml or can be mailed to you upon request.

Social Gaming
A "social game" is one in which **all** the money wagered is returned to the players in the form of prizes. The house cannot take a "cut" or percentage of the money or otherwise profit in any manner from the operation of a game. Social games in businesses, private clubs, or places of public accommodation can be conducted **only** if there is an enabling ordinance (usually a social gaming ordinance) by the local jurisdiction. Social games that are conducted in private residences are permissible.

Door Prize Drawings
A door prize drawing is defined as a drawing that is conducted at a regular meeting of the nonprofit organization where both the sale of tickets and the drawing occur, and the total value of all the prizes does not exceed $500.

Handle
The handle is the gross sales generated by a gaming event.

General Information

Who may conduct bingo, raffle and Monte Carlo event games in Oregon?
The only organizations that may qualify to conduct bingo, raffles, or Monte Carlo events in Oregon are those that are exempt from the payment of federal income taxes. This includes public agencies and public schools. Private organizations may also qualify if they are active, nonprofit organizations exempt from the payment of federal income taxes. In addition, an organization must have held tax exempt status for at least one year and been engaged in its charitable, fraternal, or religious purpose during that time.

Do all bingo, raffle, and Monte Carlo event gaming operations require licenses?
Generally, all nonprofit organizations wishing to operate bingo, raffle and Monte Carlo events are required to have licenses issued by the Oregon Department of Justice. Following are the only three exceptions:

1. Nonprofit organizations operating bingo games with a handle of no more than $2,000 per session and with a total handle of no more than $5,000 per calendar year.
2. Nonprofit organizations holding raffles with a cumulative handle of no more than $10,000 per calendar year.
3. Nonprofit organizations holding Monte Carlo events with a handle of no more than $2,000 per Monte Carlo event and a total handle of no more than $5,000 per calendar year.

Are there additional licensing or registration requirements?
Certain nonprofit organizations are required to register with the Oregon Department of Justice under Oregon's Charitable Trust and Corporations Act. Charitable gaming license applications are reviewed to see if the applicant organization is subject to registration, and if registration is current.

Assumed business names and corporations may be required to register through the Corporations Division of the Oregon Secretary of State. If required to do so, the registration must be current prior to the issuance of a charitable gaming license.

Local jurisdictions may also have licensing requirements or specific ordinances governing the operation of charitable gaming. Contact your local city hall or district attorney's office for information regarding these requirements.

Please note that if alcoholic beverages are included in any prize resulting from charitable gaming activities, the Oregon Liquor Control Commission must be notified prior to the event. Also, if firearms are to be awarded, licensees must comply with all applicable state and federal regulations, including background checks.

What proof of tax exempt status is required to obtain a gaming license?
The law requires all organizations receiving bingo, raffle, or Monte Carlo event licenses to have federal tax exempt status. Private organizations applying for gaming licenses must submit a determination letter from the IRS that establishes that the organization has been exempt from federal income tax for a period of at least one year.

Organizations which are tax exempt but do not qualify for exemption under the Internal Revenue Code 501(c), may submit an opinion letter from a certified public accountant or an attorney stating that the organization holds tax exempt status and citing the relevant portions of the IRS Code supporting it.

If an organization has been operating for one year or more but has only recently been recognized as tax exempt, other means may be used to demonstrate that it has been operating for charitable, fraternal, or religious purposes for at least a year.

In order to protect the organization's tax status, the purpose for which gaming proceeds are designated should fall within its mission statement, as reported to the IRS. Gaming licenses become invalid if an organization loses its tax exempt status.

May a subgroup of a nonprofit, tax exempt organization apply for and receive a license?
No. Separate nonprofit, tax exempt entities may apply for and receive gaming licenses; individual subgroups of such entities may not. A licensee may share the operation of the games and proceeds with a bona fide subgroup of the licensed organization. Specifically, the Department's policy with respect to separate organizations that qualify for licenses is as follows:

1. Public school districts and individual schools may qualify for licenses. However, most clubs and

subgroups of a school will not be regarded as separate organizations and must operate under the school's license.
2. In general, licenses for Catholic organization will only be granted to those entities listed in the Official Catholic Directory.
3. Some organizations, typically fraternal clubs, have a group tax exemption from the IRS. Those organizations that are listed as "subordinates" of the parent organization may qualify separately for a license. Fraternal and service organizations attempting to qualify under a national group exemption letter may be granted a license if they establish that they are a separate reporting entity. For instance, an auxiliary organization would qualify for a separate license only if it is filing a separate return with the IRS.

How does an organization apply for a gaming license?
To apply for a charitable gaming license, an application must be submitted to the Charitable Activities Section of the Oregon Department of Justice. Application forms are available on the Department's web site or may be obtained by contacting the Portland office:

Charitable Gaming Registrar
Oregon Department of Justice
Charitable Activities Section — Gaming Unit
1515 SW Fifth Ave., Suite 410
Portland, OR 97201
(971) 673-1880
www.doj.state.or.us

What does it cost to apply for a license?
License fees vary from $20 to $100 depending upon the type and anticipated handle of the activity. Application fees are not refundable.

How long does it take to obtain a license?
The Department has 60 days to formally approve or deny a license once a completed application is received. In most cases, action to approve or deny a license occurs sooner. Delays are most often caused by incomplete applications and lack of documentation supporting tax exempt status. The 60-day period does not begin until the application is accepted as complete. New applicants may not conduct gaming operations until they have received approval from the Department.

How long are licenses valid?
Licenses may be issued for a period not to exceed 12 months. Once issued, they are valid until they expire, are suspended, canceled, or revoked by the Department.

What if a license application is denied?
If an application is denied, a formal notice of denial and a statement of hearing rights will be sent. The Department is required by law to give applicants notice and opportunity for a hearing when administrative action is proposed.

Are there different kinds of licenses?
There are different classes of bingo, raffle, and Monte Carlo event licenses. The license class is based on the handle or gross sales of bingo cards, raffle tickets, or imitation money at Monte Carlo events. The higher class licenses are subject to stricter controls.

Are there other reporting requirements or fees involved?
Licensees are required to file annual reports and renewal applications and pay reporting fees based on gross sales and the class of license.

Does the Department of Justice monitor gaming events?
The Department routinely conducts various types of audits and inspections of the licensees' records and operations. Copies of all applications and reports should be retained for three years. Cash audits may be conducted without advance notice, during gaming operations or at other times, wherein all cash and cash items are counted and balanced to organization records. Record inspections are conducted periodically to ensure that all records are accurate and complete and that the organization is in compliance with the rules governing charitable gaming. Audits of the records of the entire nonprofit organization (or of specific areas) are also periodically conducted under the authority of the Attorney General.

Are minors allowed to participate in gaming events?
Bingo cards and raffle tickets may **not** be sold to persons under 18 years of age unless the parent or legal guardian of the purchaser witnesses the transaction.

Resources

Charitable Gaming Registrar
Oregon Department of Justice
Charitable Activities Section — Gaming Unit
1515 SW Fifth Ave., Suite 410

Portland, OR 97201
(971) 673-1880
www.doj.state.or.us
charitable.activities@state.or.us

Internal Revenue Service
TE/GE Division, Customer Service
P.O. Box 2508
Cincinnati, OH 45201
(877) 829-5500 — Toll Free
www.irs.gov

Oregon Liquor Control Commission
9079 SE McLoughlin Blvd.
Portland, OR 97222
(503) 872-5070
(800) 452-6522 — Toll Free
www.olcc.state.or.us
mary.whiteaker@state.or.us

Oregon State Police
Gaming Enforcement Division
Tribal Gaming Section
400 Public Service Building
Salem, OR 97310
(503) 378-6999
egov.oregon.gov/OSP/
osp.ged@state.or.us

Oregon Council on Problem Gambling
24 Hour Oregon Helpline: 1-877-MYLIMIT (695-4648)
OCPG Office: 503-685-6100
Current website: www.oregoncpg.com
National: 1-800-522-4700
Portland: 1-800-233-8479
Lane County: 1-800-605-3423
2 Stop Now: 1-877-278-6766

Statement of Nondiscrimination and Compliance with the Americans with Disabilities Act (ADA)

The Americans with Disabilities Act of 1990 (ADA) requires all programs, services and activities of state and local governmental agencies to be accessible to persons with disabilities.

The Oregon Department of Justice does not discriminate in providing access to its programs, services and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, sexual orientation, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government.

For additional information regarding (1) the Department's ADA compliance, (2) its policy of nondiscrimination, (3) availability of the information in this pamphlet in a different format, or (4) procedures for resolving a complaint that the Department has discriminated in providing access to programs, services and activities - please contact the ADA coordinator:

ADA Coordinator

1162 Court Street, NE (southwest corner at 12th Street)
Salem, Oregon 97310
(503) 378-5555
(503) 378-5938 - TTY
(503) 378-8732 - FAX

PUBLIC COMMENT LETTERS

P-1

Heartline Mental Health Practitioners, LLP

255 W. Stewart Ave. Suite 101 Medford, OR 97501
Ph: 541-772-5992 Fax: 541-772-5996
Susan Wrona, RN, PMHNP

January 18, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, OR 97232-4165

RE: "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project"

Dear Mr. Speaks:

I am writing to express my fervent and informed **opposition** to this project as both a mental health professional and homeowner in Medford, OR. Across over 30 years in Psychiatry/Mental Health here in the valley I have borne witness to the devastation caused to individuals and families because of gambling. Currently I have a client struggling with the end of a 40 year marriage in an attempt to preserve whatever she could of a financial legacy for her children. Her husband had a gambling habit early in their marriage but across the last 12 years it escalated into a full blown addiction. The grief in this family is profound. They are only one example of many people I have attempted to help involving a gambling addiction. I am not naïve to the fact that there are a variety of outlets for gambling that are already in the valley and that people can easily drive north or south on I5 and find a casino. But I do object to making it easier and to the lure for people who may never have gambled or perhaps can't afford to travel out of town. This ruins families and individuals.

As a homeowner I object to such an establishment being in my community. I think it will create numerous police problems, become an eyesore and have a plethora of unintended negative consequences in all the areas you are evaluating in your environmental impact assessment. I was actually born on the Seneca Indian reservation in Salamanca, New York. The town had leased the land in the late 1800's from the tribe for something like $100/year for 100 years! When that lease was up in the 1990's it was quite tumultuous. But I wholly supported the need to repay and repair the devastation the United States perpetrated on our Native American population. I realize there are areas of the United States where that demeaning and diminishment continue and I am aware that the tribes who have casinos have been able to raise funds for the full betterment of their tribe. I assume the latter is already true for the Coquille Tribe who already has a casino. The Rogue Valley is not ancestral land for the Coquille Nation – that alone should prohibit them from even being considered.....and obviously they already reap the benefits of having a casino on their ancestral land.

I plead with you Mr. Speaks to deny this application by the Coquille Tribe, they, their supporters and advertising firm can magnify and make pretty all the proposed benefits but they surely do not outweigh the negatives.

Sincerely,

Susan Wrona PMHNP

Susan Wrona, MN, RN, BC
Psychiatric Mental Health Nurse Practitioner

Richard E. Moore
2861 anita Circle
Medford, Oregon 97504
January 18, 2015

Stanley Speaks, NW Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232

DEIS SCOPING COMMENTS
COQUILLE INDIAN TRIBE FEE-TO-TRUST AND CASINO PROJECT

The Coquille request for a casino in Medford is completely inappropriate and without merit. To change the guidelines for the establishment of Indian casinos would open the door to any group (Indian-related or not) with an interest in building a casino. The state of Oregon could then very likely become as the state of Nevada. Original guidelines allowed for each tribe/band to have one casino on Indian land. The Coquille people, if not the entire BIA, should respect these rules.

Casino guidelines need to be more restrictive, not expanded.

Sincerely,

Richard E. Moore

P-3

15RD-0185

Coquille tribe Casino in Medford Or.

To Whom it may concern:

I am writting in regards to the Casino that's proposed in medford, or. I really hope it does go through & their tribe builds here.

I am an older retired person here. I've been driving to Canyonville to play the slots. That's a long drive for me & since I don't like being away from home that long. I have a husband who requires a lot of attention & care & since I'm his full-time Caregiver I have to get someone to check on him if I'm gone for any lenth of time. There's a lot of retired people in this area who would use a Casino closer, especially if they can't be gone for a day or drive that far. Playing the slots is my entertainment once ever month or two. I'm sure between the jobs it'll provide & keeping

that money local would help Medford too. The Indian Tribes who build casino's donate to many local projects too that creats more jobs & money kept here. I sencerely hope the City & the Indian tribal people can work out a plan to help both sides.

Thanks

Mrs Elizabeth Munson
3431 S. Pacific Hwy.
Glenwood Pk. Sp 99
Medford, Or. 97501

DEIS Scoping Comments
Coquille Indian Tribe Fee-to-Trust + Casino Project

25 January 2015
2569 Old Stage Rd.
Central Point · OR · 97502

Stanley Speaks
NW Regional Director
Bureau of Indian Affairs
Portland · 97232

Dear Mr. Speaks –

We are very much opposed to the Coquille Tribe's casino in Medford – not only for socio-economic reasons – but also because southern Oregon is not their ancestral land.

Approving their project would set a precedent and cause many future problems — any tribe could locate a casino-gambling operation anywhere!

The Coquille tribe is trying to establish themselves in Southern Oregon by buying property, agreeing to lease property, + maintaining an office — all in Medford.

Please, do not approve this project!

Sincerely,

Joanne R. Wilcox Robert Gurley

15RD-0210
RECEIVED
JAN 28 2015
BUREAU OF INDIAN AFFAIRS
NORTHWEST REGIONAL OFFICE
OFFICE OF THE REGIONAL DIRECTOR

P-5

January 26. 2015

DEIS - Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project.

attention Stanley Speaks:

I am writing in opposition to the casino in Medford.

1. I feel it should be outside the city of Medford. The proposed sight would cause congestion in that area, it's bad enough as it is!
2. Seniors would go there and spend money the don't have. (some of them)
3. Will food stamps be used for cash?
4. Will there be sidewalks along the highways for those without cars.
5. Will there be authorities to help the homeless who will go in to use the bathrooms and free coffee. etc.
6. I am writing for 18 seniors who are homeless since and who are concerned about the problems.

Sincerely -

Junelle Benedict
P.O. Box 662
Jacksonville, Oregon
97530

15RD-0209

K. Mallams
2855 Heritage Rd
Central Point, OR 97502

January 26, 2015

To: Mr. Stanley Speaks

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

The BIA has absolutely no business approving a reservation, trust land or a casino by the Coquille Tribe in Medford.

1) It is NOT within the tribe's historic territory

2) All the tribes in Oregon, including the Coquille, agreed WITH THE GOVERNOR to have only one casino per tribe. The BIA has no business allowing any tribe to renege on that agreement.

3) There are already 2 tribal casinos within an hour of the Rogue Valley, and a third is under construction, by the Karuk Tribe.

4) There are already enough social problems

in the Rogue Valley — drugs, prostitution, gambling in places like the Purple Parrot, pawn shops that have received stolen property from people who need money for their bad habits. A casino would only add to this as the majority of gamblers would be people who cannot afford to lose money.

5) The Tribe takes the profit out of the Valley — to their territory on the Coast and we, the residents are left to pay for all the traffic, crime, extra policing with increased taxes.

6) The Coquille Tribe already received 6,000 acres of land from the Federal government. That is their reservation.

NO COQUILLE CASINO IN MEDFORD

Sincerely,
Katy Mallams
(Katy)

P-7

15RD-0217

To: Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs

From: Tom Blankinship
PO Box 1228
Talent, OR 97540

Subject: DEIS scoping comments, Coquille Indian Tribe FEE-To-Trust and Casino Project

I am very concerned about increased traffic congestion and increased crime that would be caused by a casino in our community. Please consider these issues in your environmental impact statement. It is difficult for me to see how a casino could possibly be an advantage for Medford, and it seems very odd that a tribe can simply claim a casino location and have it included as a part of "reservation land". In fact, downright crazy! Makes no sense at all to me.

Tom Blankinship

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: Lara Murray Organization: Parents Teachers Org Ashland School District

Address: Ashland Or

Comment: No Casinos in Medford!

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

February 3rd, 2015

Regarding: DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust and Casino Project

Mr. Stanley Speaks, NW Regional Director
Bureau of Indian Affairs, NW Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4165

Dear Mr. Speaks:

My name is Kelly Coates. I have a Bachelor's Degree in Aquatic Wildlife Biology and a Master's Degree in Organismal Biology and Ecology.

I have concerns regarding the potential significant impacts to land, water quality, air quality, biological and cultural resources from the proposed Medford Casino. I respectfully request that the Bureau of Indian Affairs take into consideration the following concerns in regard to preparation of the Environmental Impact Statement (EIS).

- An increase in impermeable surfaces and subsequent storm water runoff on the proposed 2.4 acre fee to trust lands as well as adjacent fee lands that would not be analyzed in the EIS.

- Impacts to water quality in Bear Creek from storm water runoff, these impacts include: increased levels of copper and other heavy metals, sediment, oil, grease and toxic chemicals from increased motor vehicle traffic, pesticides and nutrients from lawns and landscaping, and viruses, bacteria and nutrients from septic systems.

- Impacts to air quality from increased motor vehicle traffic and casino facilities and associated human health risks.

- Impacts to biological resources including ESA listed Southern Oregon/Northern California Coast Coho Salmon, as well as fall Chinook, summer and winter Steelhead, and Pacific lamprey that use Bear Creek for spawning, rearing and migration.

- Impacts to lottery dollars that fund the Oregon Watershed Enhancement Board and ultimately stream restoration work across the state.

I also have concerns regarding the scope of the project and respectfully request that the BIA consider the environmental impacts from all of the connected actions which would occur on the adjacent fee land. These are just a few of the possible environmental impacts from the proposed casino project.

Thank you for your time.

Sincerely,
Kelly Coates
40 South Central Ave.
Medford, OR 97501

P-10

Ron Bjork
2960 Brownsboro Hwy
Eagle Point, Oregon 97524

Presiding Hearings Officer,

I have live here in this valley since 1960. I served my country in the Army during the Vietnam War. I am a graduate of Cal-Poly at San Luis Obispo. I own a farming and ranching operation just outside Eagle Point.
I am opposed to this proposed Tribal Casino because it will mean a direct loss in tax and gaming revenue to this community and our schools. It will hurt small business's that rely on gaming devices that are crucial to their survival because their margins are so slim.
The amount of lost charitable revenue this county receives from the Cow Creeks,who have been wonderful neighbors and great contributors for many years will be very substantial.
Our youth programs are very reliant on these donations. They are 4H, FFA, scholarships and athletic programs.
I can't understand how the Coquille Indians are trying to claim this is their ancestral lands. Just does not make any sense.

Respectfully,

Ron Bjork

P-11

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: My name is Janet Shalda Janet Shalda Organization: I ~~work~~ with children in a variety of volunteer areas and am familiar with the difficulties many families have with gaming substance abuse and addiction.

Address:

Comment: I don't think a casino will enhance our community.

I think it would change the character of Medford and contribute to the addiction problems we already have here.

See back

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments. Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

I've lived here 18 years

My name is Janet Stolda. I spend a lot of my time as a volunteer in several organizations and with children I see on a daily basis the difficulties many families have with substance abuse and addiction.

I don't think a gaming casino will enhance our community.

I do think it will change the character of Medford and contribute to the addiction problems we already have here.

We did already vote against this casino. I urge you to listen.

Thank you.

P-12

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Jose Zamora Organization: NA

Address: 544 Palm ST, MEDFORD OREGON

Comment: Please bring live Poker to your casino. There is many illegal Poker games in the city and it would be great to have Live POKER.

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
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(Please write legibly)

Name: Elaine Wade Organization: Individual

Address: 2731 Crater Lake Ave # 8

Comment: I was born in Medford Oregon in 1940 & I do not wish to see a Casino located in our beautiful city. I fail to see how you could benefit our Native American people to have it. Law abiding people. We are a pristine city & I think should stay that way. A Casino would add nothing to Medford, Oregon

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Elaine Wade Organization: Indiv

Address: 2731 Crater Lake Ave # 8

Comment:

No, to the Medford Casino

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Marilynn Baldwin Organization: individual

Address: 2994 Freeland Rd.

Comment: 1. what happened to our vote against Casinos?
2. what kind of tax structure, will the casino be held to and how binding is that structure - will we have any recourse if that structure is changed?

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

P-15

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
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(Please write legibly)

Name: Tom Hall Organization: CITIZEN

Address: 1353 Ryan Dr, Medford, OR 97503

Comment: IT SHOULD BE APPROVED... IF THEY HAVE LEGAL RIGHTS TO JACKSON COUNTY.

Tom Hall

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Anne & Rob King Organization: members of this community since 1969

Address: 3436 Creek View Dr Medford OR 97504

Comment: Is this really the kind of business we want in our City? Values & Morals of small town Oregon ~~the~~ certainly are not in the forefront of this pursuit. The casino wins & the people ~~lose~~ lose. Let the people of Jackson County vote on this issue. It significantly affects our families & our children.

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

P-17

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
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(Please write legibly)

Name: HERBERT E. FARISS Organization: AM. INDIAN "WHITE EAGLE"

Address: 1887 GIBBON RD. CENTRAL POINT, OR. 97502

Comment: WE SHOULD PROUDLY INVITE THE OPPORTUNITY TO HAVE THEM BACK IN OUR LOCALE.
PEOPLE HAVE THE RIGHT TO CHOOSE TO GO AND TAKE THEIR CHANCES AT GAMING.
I HAVE NO CONCERN OF AN ENVIORMENTAL PROBLEM.
THE MORE LAND THEY WANT IN ORDER TO BE SUCCESFUL THE BETTER. PURPLE PARROTS, EAGLES, ELKS AND OTHERS HAVE SIMILAR MACHINES AND VEGAS GAME NIGHTS INCLUDING THE MEDFORD GOLF CLUB

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Roger Buchman Organization: _____

Address: 950 Rod & Gun Club Rd

Comment:

Keep Tribes to only "One" Casino
on and in their ancestoral lands

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

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(Please write legibly)

Name: Teresa Negrete Organization:

Address: 2393 Flanders St. White City OR 97503

Comment: As a Concerned citizen, taxpayer and Native American Miwok Tribe - El Dorado CA I oppose this proposal. After hearing Public Comment from both sides I feel that the jobs this proposal would bring are overstated. I feel this would have a negative impact on our County and our Middle and lower Class citizens through addiction to gambling. Thank You.

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

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(Please write legibly)

Name: Michelle Johnson Organization: _____

Address: 2405 Sunny View Ln

Comment: Coquille tribe should not be allowed to have a casino where they have no historic ties.
- Deed of trust has not been followed
- No ties to Rogue Vly.
- No benefit to community
- takes away from existing businesses

I Vote NO.

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
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(Please write legibly)

Name: Freddie Martin Organization: 0

Address: 105 Parkway Circle Phoenix OR 97535

Comment: Eliminate tax-free status and I would be in favor of casino.

Congratulations to PR firm for all the propaganda making us believe it is a good thing for community

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

Written Testimony
EIS scoping on proposal to place a Type II Gaming Casino in Medford, Oregon
February 3, 2015
North Medford High School Auditorium

Dennis C. W. Smith
2654 Brownsboro Hwy
Eagle Point, OR 97524

Bureau of Indian Affairs hearings officer, B. J. Howarton

I appreciate this opportunity to address this issue regarding the Coquille Tribe's effort place a Type II Casino inside the City of Medford.

Let me state my background and interest in this important issue.
I am the retired Jackson County Sheriff, serving 12 years from 1983 to 1995. Prior to that I was a Police Officer for the City of Medford for 10 years.
I was a Town Manager in Lakeview, Oregon. A Police Chief in Talent, Oregon, and returned to the Sheriff's Office as a Administrative Captain.
I am semi-retired and reside in Eagle Point, Oregon.
I am a consultant to the Cow Creek Band of Umpqua Indians.
I am also a member of the Chickasaw Nation.

This hearing process is disappointing to say the least.

- First, the Coquille tribe have absolutely no historical, archeological roots, or ancestral lands here in Jackson County. Unfortunately this hearing process does nothing more than continue to cloud and confuse the facts and contributes to a false historical narrative propagated by the Coquille Tribes. To date there have been no credible researched cultural and historical records that would indicate Coquille presence in this county. There have been no consultations with the State Historic Preservation Office, Native American Heritage Commission, under Section 106 of the National Historic Preservation Act. One would think that this key issue would be addressed by the BIA prior to proceeding with this expensive and time consuming process.
- Second, to place a Tribal Class II Casino within the Medford urban area will have adverse effects on local state gaming operations in this community, in turn reducing much needed revenue to our Schools and social services. Revenue and taxes paid by private business's would be reduced substantially. This issue has not been addressed and the impacts need to be stated in the EIS.
- Third, the issue of the increased impacts of additional addictive behavior has not been addressed on social service costs to the local governments. Medford has one of the highest crime and drug addiction rates in the State. A facility of this nature would only a compound these problems.

- Fourth, the issue of placing a second tribal Casino would destroy the long standing agreement between the tribes and the State regarding "One tribe one casino.". If this gamble by the Coquille is successful, it will create a cascading effect in tribal casinos being placed anywhere in this state.
- Fifth, the Governor opposes this, the Jackson County Commissioners oppose this, the City of Medford, and every southern Oregon legislator oppose this effort. The EIS process requires local government input. Well you have it!

Let's be quite honest, this is about money, a lot of money, by the Coquille's own admission, $40 million. It is a brazen attempt to steal market share by creating a false narrative taking advantage of a cumbersome and confusing set of laws and beau ratio process.

Thank you for your time.

Respectfully,

Dennis C.W. Smith
Sheriff, Retired

Feb 3, 2015

c/o Stephen Speaks
NW Reg. Director
BIA's NW Region
911 NE 11th Ave.
Portland, OR 97232-4165

Mssrs. & Mdmes:

We write from the 2nd floor "High Risk" Psych. ward of Asante Med. Ctr in Medford, OR - because, although I am declared legally "insane" by my "family" and Dr.s ... I am not stupid.

I can see clearly the evils of gambling in all its forms! It leads to addictions of every kind. Drugs, alcoholism, etc. ... even to the self perpetration of gambling itself. We do not need gambling of any kind in the beautiful State of OR that so many call home! And,

ASANTE®
Rogue Regional Medical Center
2825 E BARNETT RD
MEDFORD OR 97504-8332

although I write in defense of the Cow Tribes contra position, their proven posture as responsible stewards of their ill-gotten wealth created by gambling is of value to the State, it still does not address the evils perpetrated by gambling, their proven value as responsible stewards of the wealth created by gambling is still of value!

Gentlemen and Honorable ladies — Medford and OR does not need another gambling mecca especially in such a pristine and beautiful part of your State! Let the Coquille Tribe build its "Fields of Dreams" in the desert — as the movie of the same name asserts — "if you build it they will come!"

Sincerely,

Gerald J. Kehle

26880 Davis Lane, Medford

February 3, 2015

Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs
911 NE 11th Ave.
Portland, OR 97232-4165

Subject: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Mr. Speaks,

I am writing to voice my objections to the proposed tribal casino in Medford. I feel that the acquisition of properties in an urban area without the prior approval of your agency or the City of Medford shows an arrogant disregard for legal and proper procedure, and seems to make the statement that "we're coming to Medford with or without your consent."

The impacts of a casino on a populated area are many – particularly the effect on the infrastructure that even a "class B" casino, will impose. Public utilities and traffic patterns will be adversely affected, requiring the expenditure of public funds to mitigate. Fire and public safety issues are bound to increase, putting added strain on these services.

I would have the same objections if the Cow Creek Umpqua Tribe, who certainly have a more legitimate claim to historical roots in the Rogue Valley, were attempting to build a casino here. The few jobs created will be offset by the disappearance of jobs currently held by employees of existing Lottery outlets as they inevitably succumb to competition from the casino.

Lastly, I know from personal experience the adverse impact of casinos on family life. On numerous occasions I left a wife and children sitting in a hotel room waiting for me to finish feeding my gambling addiction, often resulting in the loss of earnings, and creating hardship for my loved ones. To this day I avoid going near any gambling establishment for fear of renewing this odious and guilt-filled pattern of behavior.

Sincerely,

Michael S. Mace
1013 Mira Mar Ave.
Medford, OR 97504

February 3, 2015

Bureau of Indian Affairs, Northwest Region

911 NE 11th Ave

Portland, Or. 97232

DEIS Scoping Comments, Coquille Indian Tribe Fee-to-trust and casino project

I am writing to protest the planned Coquille Tribe creating a casino in Medford, Oregon. I live in a community of 128 homes and the general opinion, which I am relating is that we have ample video casinos and do not want the coquille or any other tribe building in Medford. I have worked as a psychologist with people who are poor and people who are struggling with gambling addictions and find that the idea of creating a better life style in Medford if we have a casino is totally false, unethical and hypocritical.

Medford has potential developers who are doing far more constructive projects for Medford than bringing us a casino. We have fine educational institutions here that are educating people to do more than work in a casino. We have no need for the employment opportunities that are being advertised on television.

Sincerely,

Jane Y Stormer

Jane Y. Stormer

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Richard L. Milner Organization:

Address: 1501 Bluebonnet Ave., Medford, Or. 97504

Comment: No Coquille Tribe in Medford !!

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

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COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

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(Please write legibly)

Name: Reginald P. Breeze Organization: None

Address: 185 Mariposa Terrace Medford, OR 97504

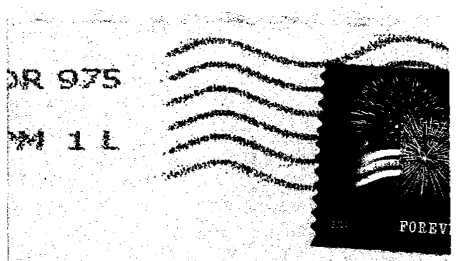
Comment:

In the state of Oregon we've been operating on the premise one casino for each Tribe with each Tribe's casino located in their historical aboriginal land area. I am opposed to the Coquilles building a casino in Medford because:

1. The Coquille already have a large casino in Coos Bay.
2. The Coquille have absolutely have no aboriginal ties to Medford area or Southern Oregon.

If we start down the path allowing Tribes to build multiple casinos and if we allow Tribes to hopscotch willy-nilly around the State opening casinos wherever they feel is a good location we better get ready to see a casino on every corner. This will open Pandora's Box.

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.



RECEIVED
FEB 06 2015
UREAU OF INDIAN AFFAIRS
RTHWEST REGIONAL OFFICE
E OF THE REGIONAL DIRECTOR

2-5-14

Dear Mr. Speaks

I Live near where the casino would be built. and I see no real advantage for the community. Hwy 99 would have heavy Traffic with maybe more drunk drivers. there are area's in medford of high poverty. In my opinion some of those people should not be Gambling.
the coquille Tribe of Indians would not do this if they didn't think they could make a profit.
it's sad that Jackson County think's this is a way To bring in new bussiness into medford. I suggest building a park families can use and maybe a Senior Center.

thank's
Patrick Ryan

John E. Miller
1314 B Center Drive #126
Medford, Oregon 97501

February 5, 2015

Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 11th Avenue
Portland, OR 97232-4165

Dear Mr. Speaks:

This letter is in response to an article in the Mail Tribune regarding the proposed casino in Medford Oregon by the Coquille Tribe and the statement in the article requesting that comments be sent to you by February 17. I have enclosed a copy of the Tribune article with this letter since my letter addresses several statements in the article.

Referring to the statement: "...allowing members a second casino would break Oregon's practice of allowing one casino per tribe".

It is my understanding that in Florence, Oregon, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians have Three Rivers Casino, a Class III facility. They are presently building a Three Rivers Casino in Coos Bay, Oregon, to be opened as early as May of this year. The casino in Coos Bay will be a Class II facility. It seems with this taking place in Oregon, a pattern has been set allowing more than one casino by the same tribe. Therefore, referral to there being a problem of two casinos in the same state is an arguable point.

A retired mental health caseworker was quoted stating "a casino would tempt hard-working people to blow their paychecks in the vain hope of winning." It is already possible for any and all "hard-working people" to "blow their paychecks" at any number of places throughout the Rogue Valley "in the vain hope of winning." In addition, a resident stated that "this sleazy business" only "purpose is to separate people from their money". It is rational to recognize that the purpose of any business is to succeed which means separating customers from their money.

It was mentioned that members of the Shasta Tribe have ancestral ties to the Rogue Valley, however, it was not stated whether the Shasta Tribe was even interested in taking steps to do anything in the Rogue Valley.

In addition to other statements quoted, members of the Cow Creek Band of the Umpqua Tribe stated the Medford casino "would result in few net new jobs in Southern Oregon because employees would be laid off at Seven Feathers..." "The resort announced 93 layoffs Monday, putting part of the blame on talk of a Medford casino." Blaming their layoff sbeing due to anticipation of a casino in Medford is a flimsy excuse for mismanagement. I have personally heard from employees of Seven Feathers about new management taking over . It is outlandish

to blame their layoffs for something that has not yet occurred. I am sure that many of those 93 people would appreciate the opportunity of accepting a job in Medford thanks to Seven Feathers. Cow Creek Human Resources Director, Andrea Davis, was quoted as saying, "The Coquille should not benefit from our loss." It is not due to the Cow Creek's "loss" but due to their action that the Coquille tribe might possibly gain good employees for their new casino.

Many Medford residents and City and County representatives were very negative and fought tooth and nail to keep the present Walmart Superstore from being built in the south end of Medford in the same area and in fact just south on Highway 99 from where the proposed casino will be built. The Walmart parking lot is always packed with customers and I would bet many of those who spoke against it shop there. In the same sense, those locally complaining now about a casino coming to Medford, will be among those enjoying the increased income to our Valley due to added employment and an increase in visitors to our area.

In my opinion, the Coquille Tribe has seriously looked at our Valley and the image the Medford area has tried to portray. Just the name alone which they chose speaks highly of their attempt to fit in. *The Cedars at Bear Creek* takes into account our very own Bear Creek, Harry and David business which has thrived and is universally well known. With the updates in downtown Medford being called *The Commons*, the name *The Cedars* follows a pattern of a new image in our area.

The Rogue Valley appreciates the spring and summer tourist trade. Bringing a casino to Medford will increase that tourist attraction not only through spring and summer but throughout the year. Other local businesses and vendors will benefit from the casino located here. In addition it will bring jobs to our many unemployed residents in search of work.

Thank you for giving me the opportunity to give you my opinion.

- **By Vickie Aldous**
  Mail Tribune
  Posted Feb. 3, 2015 @ 8:51 pm
  Updated Feb 3, 2015 at 10:34 PM

Local residents and members of several tribes offered dueling visions of what a proposed casino in Medford would do to Southern Oregon.

Many came sporting bright yellow T-shirts proclaiming their opposition to a Medford casino, while others wore green shirts saying "Yes to Jobs!" during a Tuesday public hearing held by the Bureau of Indian Affairs at North Medford High School.

Most spoke out against a proposal by the Coquille Tribe to build a casino at the Roxy Ann Lanes bowling alley and the former Kim's restaurant on South Pacific Highway in south Medford near Harry & David operations. The Coquille tribe already runs The Mill Casino in North Bend on the southwest Oregon coast.

Many said the Coquille tribe has no ancestral claim to land in the Rogue Valley and allowing members a second casino would break Oregon's practice of allowing one casino per tribe.

Barbara Barnes, a retired mental health caseworker for Jackson County, said she has seen firsthand the ravages of problem gambling, including bankruptcy, divorce, suicide and criminal activity. She said a casino would tempt hard-working people to blow their paychecks in the vain hope of winning.

Medford resident Bill Mansfield said a casino's purpose is to separate people from their money.

"Let us not allow this sleazy business to come into the city of Medford with their toxic product," he said.

Jackson County Commissioner Doug Breidenthal, Medford City Attorney John Hutti, and retired Jackson County Sheriff, commissioner and Talent Police Chief C.W. Smith said elected representatives in the Rogue Valley, Oregon and Congress have concerns about the proposed casino.

Breidenthal said county officials are concerned about increases in addictive behavior and additional strain on police and fire departments, the Jackson County Jail, the District Attorney's Office, the transportation system and more.

Members of the Shasta tribe said they have ancestral ties to the Rogue Valley, while members of the Cow Creek Band of the Umpqua Tribe said a Medford casino would decimate their Seven Feathers Casino Resort in Canyonville between Grants Pass and Roseburg. About 50 percent of visitors to Seven Feathers come from the Rogue Valley, they said.

The Medford casino would result in few net new jobs in Southern Oregon because employees would be laid off at Seven Feathers, Cow Creek tribal members said. The resort announced 93 layoffs Monday, putting part of the blame on talk of a Medford casino.

Cow Creek Human Resources Director Andrea Davis said Seven Feathers revenue helps fund a food bank, child care, shoes and coats, energy bill assistance programs and other services for tribal children, elders and others. She said a decision to allow a Medford casino would hurt generations of Cow Creek tribal members.

"The Coquille should not benefit from our loss," Davis said.

Some residents said a Medford casino would siphon money from the Rogue Valley to Coquille tribal members in the North Bend-Coos Bay area.

Coquille Tribe Chairperson Brenda Meade countered that a Medford casino would help her tribe fund health care, education and housing programs, while also providing jobs.

"They will be good-paying jobs with excellent benefits," she said.

The Coquille tribe estimates it would make an initial investment of $11 million for construction, would make $6.1 million in local purchases during the first year of operations and would create 233 full-time jobs — with 90 percent of those jobs filled by non-tribal community members.

The proposed Medford casino would only allow certain kinds of video gambling. It would have a different classification from casinos such as Seven Feathers, which allow traditional house games such as blackjack and roulette.

Written comments on the casino proposal are due by Feb. 17 and can be mailed to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, Northwest Region, 911 N.E. 11th Ave., Portland, OR 97232-4165. For more information, call 503-231-6749.

WINSLOW 2024 PE MEDFORD

I HAVE LIVED HERE MY WHOLE LIFE. YOUR REALLY NOT COMPETING. WITH OTHER TRIBES, ITS THE ~~GOST~~ GHOST OF THE ROGUE INDIAN.

IF YOU ARE ABIE TO. I SUGEST HAVEING A POW WOW SHOW MEDFORD YOUR CULCHER. HAVE A SPIRTUAL GATHERING TO APPEL TO THE ROGUE INDIAN FREE TO THE PUPLIC. ANSWERING THERE QUESTIONS SAMPLE YOUR FOOD, DANCE, SHOW US WHO YOU ARE. I HAVE MY SPIRTUAL FAN AND SAGE ITS MY RELIGION SPIRTUAL.

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: Katy C. Winslow Organization: _____

Address: 2024 Perri Pl. Medford, OR. 97504

Comment: I would like make sure the Rogue Indian is Honored! This land was there's. I don't think most of the people in Medford even knows of the Rogue Indian or there History. You as a tribe of Indians and your hardships ~~should~~ should under stand how hard it was just to keep your haritage and be reconized or as the Rogue Indian. Slatered for there land. I would like the Rogue Indians to have a musiam free to the public so you can show people ~~for~~ that you honor the Rogue Indian and there memory! Its not take over the land, because you can. Its like the Rogue Indians. Protected

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks. Northwest Regional Director. 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

ELL THAT NOT ONLY THE ROGUE INDIAN AND WHAT REALLY HAPPENED THEM GOOD OR BAD. BUT YOUR HISTORY TOO. SO, WE KNOW WHO YOU ARE S A TRIBE TOO! HISTORY IS IMPORTANT TO OWER YOUTH. OR IT WILL BE FORGOTTON, LIKE THE ROGUE INDIAN.

IN MY FAMILY, THE KINCAIDS. THE STORYS ABOT THE ROGUE INDIANS. THERE LAST NAME AT THE TIME WAS CONNOR. KINCAID BY MARRAGE A BRIDGE GOING INTO CENTRAL POINT WAS NAME AFTER THE CONNOR FAMILY THAT HELPED THE ROGUE INDIANS. GIVE THEM POTATOES AND SUPPLYS. REFUGE IF THEY NEEDED IT. THE ROGUE INDIANS HAD PUT A BEVER HIDE ON THERE DOOR SO. ALL INDIANS KNOW WERE TO GO FOR HELP. AND THEN. WHEN THE ROGUES. WERE FIGHTING FOR THERE LIVES. THE CONNOR/KINCAID FAMILY WERE UNTOUCHED. STORY GOES THE COLVERY RAN THE ROGUE INDAINS OFF THE CLIFF'S OF THE TABIE ROCK. AND THERE BODY'S OF WEMAN AND CHILDREN AT THE SHORES EDGE OF THE ROGUE RIVER. THEY SAID THE WHITE MAN LOVED THE YOUNG THE BEST. THEY MADE FOR BETTER TARGET PRACTICE THEY RAN FASTER. OUT SIDE OF ASHLAND THERE A ROAD CALLED DIED INDIAN. YOU GET TO HOWARD PRAIRE, IN THOUGHS DAYS THE ROGUE INDIAN KNEW THE MASSIVE ELK HEARDS WERE THERE AND THE WHITE MAN KNEW WERE THE INDIANS WOULD BE.

A CASENO is going to go IN THERE. IF NOT TODAY IT WILL SOME DAY. THIS LAND WAS INDIAN LAND. AND THE ROGUE INDIAN MAY HAVE MOVED TO ANOTHER TRIBE IF THEY WERE ABLE TO EXCAPED. BUT, IN TIME THE ROGUE, BY NOW IS DESOLVED. AT MOST KLAMITH. I BELIEVED THEY WENT TO OR THE APPLE GATE AREA, BUT, THE STORYS I HEARD, THEY HUNTED THE ROGUE INDIAN LIKE THEY WERE DOGS. THESE ARE FAMILY STORES I HEARD. TRUE OR NOT TELL THERE HISTORY AND YOURS. IF YOU WERE CARE TAKERS OF THIS LAND. IT SOUND AS IF YOU WILL TAKE CARE OF THE PEOPLE TO AS IF MEDFORD IS YOUR HOME TOO. MAKE US PROUD.

P-31

Marian M. Owens
6523 Azalea Glen Road
Glendale, OR 97442

February 6, 2015

Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs
Northwest Region 911
NE 11th Ave
Portland, OR 97232-4165

Dear Mr. Speaks,

I am writing in protest of a gambling casino being built in Medford, Oregon by the Coquille Tribe of Indians for the following reasons:

* Never did we see it written in our Oregon history books that the Coquilles inhabited the Rogue Valley. In days of yore, if the Coquilles did on occasion wander onto the land of the Rogues, the Coquille families did not settle in the Rogue Valley. They were a coastal tribe.

* We find it unsettling that the Coquilles desire to build a second casino in Medford even though they know their venture will cause financial harm to the Cow Creek Tribe's Seven Feathers Casino in Canyonville. The word "greed" comes to mind.

* Should the decision be made to allow the Coquilles to build a second casino, Pandora's Box will be opened! What is fair for one tribe is fair for all tribes. Will every Oregon tribe be allowed to build new casinos in any Oregon city of their choice? If this happens, none of the casinos will be able to flourish and serve the purpose for which they were intended.

* Seven Feathers is a vital source of employment in a part of Southern Oregon where employment opportunities are practically nil. The City of Medford and surrounding communities have many more businesses and employment opportunities than Southern Douglas County. Medford would not benefit from a new casino to the degree that Douglas County will be harmed.

* With opposition from both of Oregon's U.S. Senators, Oregon's governor, members of the Oregon Legislature, Jackson County Government and the City of Medford Government, we find it strange that the building of this new casino is still an issue.

Respectfully,

Marian M. Owens

Marian M. Owens
541-832-2182

2-4-15

To: Stanley Speaks

This letter is being written in favor of the Coquille Indian Tribe opening the casino in Medford.

I lived in Medford for 30 yrs there isn't enough places that employee many workers. Harry & David is the company that employes more people in the valley. But, many of their positions are seasonal.

I know many people in Medford & Grants Pass that drive up to Siuen Feathers. But the machines have been so tight that they are no longer going. I have friends here in Grants Pass that would go up and spend 2-3 nights a week who no longer go up there. It isn't true that they are waiting for the casino in Medford to

open. They don't go because they can't win.

Some of the complaints were that the players would get addicted. They have many places where they can go now: Rumple Parrots, Flamingo etc.

I think by permitting them to build a casino would help the tourist trade in Medford. Its close to shopping, motels restaurants. It will bring in a lot of revenue.

Sorry I didn't type this my computer is on the fritz.

Thank You

Sandra Bosca
446 Teakwood
Grants Pass, OR
97526

Marie Arvette
2030 Brookhurst Street #28
Medford, OR 97504

Tel: (541) 772-3205

February 5, 2015

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, Proposed Class II Casino in Medford, Oregon

Dear Mr. Speaks:

I hereby offer comments relating to the referenced Project, not as an environmental scientist, but as an attentive layperson.

The potential environmental impacts being examined in connection with the gaming facility are similar to those raised during the initial study relating to the proposed Walmart Supercenter, subsequently built in the same general area of the proposed location of the gaming facility. Environmental concerns relating to that Supercenter obviously were mitigated. Never while driving in that area since the Supercenter's opening have I observed negative environmental impacts such as increased traffic levels, noise or diminished air quality.

I do not foresee negative environmental impacts resulting from the erection of the proposed gaming facility—certainly no immitigable ones.

I think the gaming facility will be a positive addition to this community.

Thank you,

Marie Arvette

Beagle, Oregon
6 February 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
911 NE 11th Ave.
Portland, OR 97232-4165

Re: Proposed Medford casino

I was not able to attend the recent meeting at North Medford High School (don't know the location of same), so will take this means to give you my input.

I do not think Medford needs this proposed casino:

1. If the government puts the 2.45 acres in trust (since the Coquille have no historical presence in this valley), those properties would be removed from the county tax rolls, yet the facility would need those services to continue - police, fire, sanitation, etc., assuming they would be allowed on "foreign" soil. I suspect the citizens of the county, and especially Medford, would not want to pay higher taxes to provide them. Not to mention the additional water and sewer use in our increasingly arid area.

   As I understand it, the county doesn't want this casino, nor does the city. The state isn't keen on it either, as it will adversely impact the lottery income from this area.

2. Who will provide and fund programs for the newly addicted gamblers? Who will feed, clothe and house them when they spend all their money in the casino, knowing they'll win on the next push of a button?

3. Who will provide the funding for the traffic control devices that should be installed for safe entry and exit from these properties?

4. I'm concerned about any environmental impact on Bear Creek's riparian areas.

5. If the Coquille want income for health and education for the 100 or so members who now live in Jackson County, I'd think they could have funded a trust, or even a special account, with the nearly $2 million spent on the purchase of these properties. According to news reports, they paid $1.2 million for Roxy Ann Lanes and $650,000 for Kim's. With the renovation or demolition and building costs (depending on the most recent story), it seems that those monies would have been a good start on a health/education fund. Other than the general dumbing of America, what's wrong with our public schools?

6. I don't like the way the Coquille have handled the purchase transactions. Why all the secrecy? I feel it was underhanded and now don't trust what the tribe says. Even the new commercials give differing stories. I don't think most of the profits will stay here, or be used here, but will go to the tribal headquarters on the coast. Their casino there is lovely, and we've been treated well there for bowling functions.

As a bowler, I want to decide when I stop, not a few Coquille. If this goes through, I'll have no further reason to go to south Medford. This means those merchants will lose my business - my UPS Store, pharmacy, groceries, restaurants, etc.

These are just a few of my thoughts and concerns regarding the proposed Medford casino and why I think it will not be a good thing for our area.

Sincerely,

Kristin Schulz

Kristin Schulz

Stanley Speaks
N.W. Regional Director
Bureau of Indian Affairs
Northwest Region
911 N.E. 11th Ave.
Portland, Oregon
97232-4165

Thank you very much for the opportunity to provide written statements regarding the proposed Casino in Medford

My name is Steve Wisely, age 75 and a resident of Medford, Oregon since age four except for some brief absences to gain an advance degree from the University of Oregon and serve as a public school superintendent in school districts outside the area. I retired in 2003 following 18 successful years as superintendent of the Medford School District. I have a Ph.D in Educational Administration and have taught for four Universities. I mention all of this so that you will have a better understanding of the background I bring to my request.

As a long time resident of Medford I have seen the community grow from 12,000 people in 1944 to nearly 80,000 currently, watched a thriving lumber industry reduced to nearly

nothing, wigwam burners and smudge pots as well as seeding of fog disappear and a pear industry reduced to make way for a wine industry. Large malls have been built, many have displaced "mom and Pop" stores. I have watched the makeup of the area's population change dramatically but still remain the friendly community that raised me. In other words, change has occurred dramatically and will continue to change.

While watching numerous changes occur, I observed many public forums as you had recently draw the "yes" and "no" groups. I have learned that those against an issue are always better organized and draw a larger crowd. I watched a group a few years ago hold up the construction of a new Walmart on the South side of Medford for years who probably never shopped in a Walmart but when it was constructed brought a great deal to the community and to those who needed it

The purpose of my writing is not to voice a positive or negative opinion toward a potential Casino in Medford but to express the following:

- Public forums, while important, never bring out a clear representation of the community. In fact in your case people outside the community may have been greater than those from the community
- Generally, the group of people who attend are the "no" ones.
- City or County officials have made negative comments based on "What if" or "I think"
- Generally, for every "no" there is a "yes" for example, the Ashland site area, mainly closed for the last two years, has not brought revenue to the area but a Casino would.
- Changes in the Medford area have been made not based on emotion or opinion but on facts, reality from other regions, as well as state and federal laws
- The impact on Seven Feathers Casino is their problem just as competition from new department stores or restaurants bring challenges to those already here

I would ask that a decision on this matter be made by following the legal process and be based on facts not emotions and biases

of individuals who speak out or write "Letters to the Editor." If all the necessary requirements to meet the laws are met, the Casino must be approved. If, on the other hand, the laws can not be met, the matter should not proceed. I look forward to your continued dealing with this matter and a decision forthcoming.

Thanks, again, for listening.

Steve Wisely
2949 Hollyburn Ridge
Medford, Oregon 97504
(541) 773-3596

P-36

February 4, 2015

Bureau of Indian Affairs
ATTN: Mr. Stanley Speaks
Northwest Regional Director
911 Northeast 11th Avenue
Portland, OR 97232-4165

Subject: Coquille Indian Tribe-Fee-to-Trust and Gaming Facility Project

Mr. Speaks,

As a resident of Medford, Oregon, I am opposed to the Coquille tribe building a casino in our city, for the following reasons:

Medford has a poverty level of 23%, well above the national average of 15.8% and I am convinced that gambling will exacerbate this situation, not improve it. We already have a significant drug problem in Jackson County, and crime as well as poverty will undoubtedly increase if a casino moves in. Who will be responsible for addressing these issues? Not the Coquille tribe, but the taxpayers. This socio-economic impact must be addressed.

A casino will also have an impact on our air quality, due to heavy traffic, water quality from runoffs created by large parking areas, which could potentially affect Bear Creek where Coho salmon come to lay their eggs. Again, who will address these issues?

The Rogue Valley is a beautiful area, filled with culture, known for its amazing Shakespeare Festival, the Britt Festival, and others. We want to keep it that way, and a casino is a complete clash with the culture of the Rogue Valley.

The Coquille tribe needs to realize that casinos are not a sustainable way of ensuring their livelihood, but rather the exploitation of other people's weaknesses. Furthermore, they have no ancestral rights to this land, and setting this precedent could be disastrous for Oregon and the entire country. I hope they can find a more appropriate and ethical-type business to ensure the welfare of their tribe.

This project has been opposed by our senators and Governor John Kitzhaber and should not be allowed.

Quality of life matters a great deal to the Rogue Valley residents and we would like to preserve it for our children and grandchildren.

Respectfully,

Simone D. Coffan

Mrs. Simone Coffan
2499 Happy Valley Drive
Medford, OR 97501
(541)773-7280

Feb. 6, 2015.

Dear Sir,

I testified at the Medford City council meeting held in (2013) re.

What part of "We don't want a gambling casino in the Rogue Valley" don't you all get?

I don't care what color the people promoting it ... beige, yellow, red, black, etc. etc. etc.!! The idea of gambling is immoral. Its effects are poverty and heartache. Why don't the promoters bring in a big convention center and attract some worthy causes?

Surely they can benefit some other way and it could raise the standard of living and quality of life here in the Rogue Valley.

Patricia Ann Wolfe

Patricia A Wolfe
1955 Woodside Dr
Medford OR 97501-8181

2-6-15

Stanley Speaks
NW Regional Director
Bureau of Indian Affairs
911 NE 11th Ave
Portland OR 97232-4165

Sir:

Gambling is a disease. For that reason I'm opposed to a casino in Medford at the former Kim's Restaurant site.

Sincerely
Gordon Nunnally

Mrs. Miriam R. Nunnally
Mr. Gordon D Nunnally
3121 Old Military Rd.
Central Point, OR 97502-1115

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: Gerald TROTTA Organization: self

Address: 4155 GRIFFIN CR Rd MedFord OR 97501

Comment: Please Adress these ISSUES

(1) CLASS II vrs CLASS III gaming, why is CLASS II being proposed. IS the intent to morph into A CLASS III FACILITY?

(2) is a compact with the STATE of Oregon required For a class II FACILITY

(3) does the 2.5 ACRE parcel have to be put into trust

(4) whould the trust parcel have reservation STATUS, CAN Addiotional LAND be put into trust once (over)

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

the intial parcel is placed into trust.

(5) can the land still be placed into trust if the gambling proposal is denied by the BIA.

(6) once land is in trust would any local jurdistions, laws and regulations apply (county an city).

(7) what are legal implications of reservation status

(8) Are class II gaming facilities addresed in 25 CFR code of Federal regulations, and how do they differ from class III

(9) since the proposed facility is a class II, and the Cow creek facility is a class III, what are the actual impacts to the cow creek Tribe.

(10) Is the approval of the medford city council requird for BIA approval?

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

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(Please write legibly)

Name: Debbie Crause Organization: Bussiness Owner

Address: 718 Williams Ct medford, OR 97504

Comment: The people have spoke the majority of us said no & The Commissioners said No to the Coquille We don't need or want this in our town, It won't make my town a better place to live. Coos Bay & North Bend is Broken go home & Contribute to your town! Your presents here is only to take from my Community! Far more jobs will be lost, than what the Coquille bring. This isn't good Policy for all to participate in. Bad form!

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

NORTHWEST REGIONAL OFFICE
OFFICE OF THE REGIONAL DIRECTOR
97232$4182

Stanley Speaks
ATTN: NW Regional Director

P-41

KATALYST, INC.
facilitating community change... adding value to our natural resources *(541) 227-9024 * rcoffan@gmail.com*

February 6, 2015

Mr. Stanley Speaks and Dr. BJ Howerton
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Ave
Portland, OR 97232-4164

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust Casino Project, Medford OR

Mssrs. Speaks and Howerton,

I own a water resource consulting firm in southern Oregon. I am also an adjunct professor at Southern Oregon University, and am the Interim Board Chair of the Rogue Basin Partnership. I have helped communities throughout Oregon look after our natural resources for over 20 years. Please consider these comments and concerns as you continue the EIS scoping process for the Fee-To-Trust Casino Project being solicited by the Coquille Tribe.

Comments # 1 and #2 are by far the most important.

1). The concept of buying land in another area that is not a tribe's ancestral lands to strategically place a casino will set a new precedent, as will allowing a tribe to build a second casino less than 200 miles from a casino they already have built on their ancestral land. Both of these precedents would be catastrophic in the long term. It would open a floodgate of others who will follow suit. What would prevent other sovereign nations from exercising the same right? If the city of Medford does not allow this, why couldn't the tribe do the same thing in a nearby town? Why not Portland or Eugene? Or Denver or Kansas City? Communities would be flooded with gaming facilities, whose locations would be dictated by population demographics and economics. This has nothing to do with "Ancestral Ways" of the Native Americans, and everything to do with avarice.

(socio-economic impact; local, and throughout entire country)

2). Allowing one tribe to buy land and build a gaming facility in an area of another tribe's ancestral lands will create animosity and pit one tribe against another. This was clearly demonstrated during the public comment period in Medford on 2-2-2015. This is counter to the mission of the BIA to *"provide quality education opportunities from early childhood through life in accordance with the tribes' needs to cultural and economic well being in keeping with the wide diversity of Indian tribes, and to carry out the responsibility to protect and improve the trust assets of American Indians."*

(socio-economic impacts within the Indian Nations)

3). This project will cause an indirect loss of State Lottery dollars from gaming. Lottery dollars are used for public education, economic development, problem gambling treatment, and watershed enhancement and salmon restoration. The Oregon Watershed Enhancement Board (OWEB) has provided excellent oversight and management of work pertaining to watershed restoration and enhancement. Most of the funding for OWEB projects comes from State Lottery dollars. The loss of funding from the State Lottery dollars that would normally be used for programs in the Rogue Basin must be determined and remedied.

(socio-economic as well as environmental impacts)

4). The proposed site is located 1000 feet upslope from Bear Creek along a major arterial street in a downtown area. Bear Creek is the most urbanized stream in southern Oregon. However, it continues to provide spawning habitat for Coho and Chinook salmon as well as the Pacific Lamprey, and spawning is on the rise. Stormwater runoff from the proposed facility is a key concern. Though structures and parking lots already existed in the past, they were constructed before regulations and guidelines were set in place to minimize runoff from impervious surfaces and treat contaminants in the stormwater before it flows into our creeks and rivers. Furthermore, as it currently stands there is adjacent land slated for parking use for this site, which is currently NOT being considered as part of the EIS. The retention and treatment of urban stormwater runoff must be implemented in association with any changes or new construction. Specifically:

a) all of the land that is potentially associated with this project must be evaluated in the EIS,

b) the EIS should not simply consider the option of "No Increase" in stormwater runoff,

c) a clear plan must be developed to minimize or eliminate runoff from the facility, and

d) a demonstration project highlighting the passive detention and treatment of urban stormwater runoff must be included as an educational outreach effort.

(environmental impacts)

I urge you to stop the process now, and consider these far reaching, and long-term, impacts that will be unleashed, should these precedents be set.

Respectfully,

Robert Coffan, President and Principal Hydrologist
Katalyst, Inc.
2499 Happy Valley Dr
Medford, OR 97501
541-227-9024

KATALYST, INC.
facilitating community change... adding value to our natural resources *(541) 227-9024 * rcoffan@gmail.com*

February 6, 2015

Mr. Stanley Speaks and Dr. BJ Howerton
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Ave
Portland, OR 97232-4164

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-To-Trust Casino Project, Medford OR

Mssrs. Speaks and Howerton,

I own a water resource consulting firm in southern Oregon. I am also an adjunct professor at Southern Oregon University, and am the Interim Board Chair of the Rogue Basin Partnership. I have helped communities throughout Oregon look after our natural resources for over 20 years. Please consider these comments and concerns as you continue the EIS scoping process for the Fee-To-Trust Casino Project being solicited by the Coquille Tribe.

Comments # 1 and #2 are by far the most important.

1). The concept of buying land in another area that is not a tribe's ancestral lands to strategically place a casino will set a new precedent, as will allowing a tribe to build a second casino less than 200 miles from a casino they already have built on their ancestral land. Both of these precedents would be catastrophic in the long term. It would open a floodgate of others who will follow suit. What would prevent other sovereign nations from exercising the same right? If the city of Medford does not allow this, why couldn't the tribe do the same thing in a nearby town? Why not Portland or Eugene? Or Denver or Kansas City? Communities would be flooded with gaming facilities, whose locations would be dictated by population demographics and economics. This has nothing to do with "Ancestral Ways" of the Native Americans, and everything to do with avarice.

(socio-economic impact; local, and throughout entire country)

2). Allowing one tribe to buy land and build a gaming facility in an area of another tribe's ancestral lands will create animosity and pit one tribe against another. This was clearly demonstrated during the public comment period in Medford on 2-2-2015. This is counter to the mission of the BIA to *"provide quality education opportunities from early childhood through life in accordance with the tribes' needs to cultural and economic well being in keeping with the wide diversity of Indian tribes, and to carry out the responsibility to protect and improve the trust assets of American Indians."*

(socio-economic impacts within the Indian Nations)

3). This project will cause an indirect loss of State Lottery dollars from gaming. Lottery dollars are used for public education, economic development, problem gambling treatment, and watershed enhancement and salmon restoration. The Oregon Watershed Enhancement Board (OWEB) has provided excellent oversight and management of work pertaining to watershed restoration and enhancement. Most of the funding for OWEB projects comes from State Lottery dollars. The loss of funding from the State Lottery dollars that would normally be used for programs in the Rogue Basin must be determined and remedied.

(socio-economic as well as environmental impacts)

4). The proposed site is located 1000 feet upslope from Bear Creek along a major arterial street in a downtown area. Bear Creek is the most urbanized stream in southern Oregon. However, it continues to provide spawning habitat for Coho and Chinook salmon as well as the Pacific Lamprey, and spawning is on the rise. Stormwater runoff from the proposed facility is a key concern. Though structures and parking lots already existed in the past, they were constructed before regulations and guidelines were set in place to minimize runoff from impervious surfaces and treat contaminants in the stormwater before it flows into our creeks and rivers. Furthermore, as it currently stands there is adjacent land slated for parking use for this site, which is currently NOT being considered as part of the EIS. The retention and treatment of urban stormwater runoff must be implemented in association with any changes or new construction. Specifically:

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(environmental impacts)

I urge you to stop the process now, and consider these far reaching, and long-term, impacts that will be unleashed, should these precedents be set.

Respectfully,

Robert Coffan, President and Principal Hydrologist
Katalyst, Inc.
2499 Happy Valley Dr
Medford, OR 97501
541-227-9024

Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 N.E. 11th Avenue
Portland, Or 97232-4165

February 7, 2015

Dear Mr. Speaks,

Rather than say I am opposed to the proposed casino in Medford by the Coquille Tribe, I would rather attempt to make a case in favor of the Cow Creek Band of the Umpqua Tribe.

As a retired Rogue Valley reporter and a former city councilor, I covered a lot of news and issues. During my career, I was aware of the good the Cow Creek Band did through grants to many organizations. In this rural area of many low-income residents, there is much need. It seemed that any program needing financial help usually could count on the Cow Creek Band. One such organization was the Upper Rogue Community Center that (at the time) had after school programs for youth, a food bank, transportation to doctor's appointments, emergency help for distressed residents and much more. This is just one example.

If the Coquille Tribe is allowed to open a casino in Medford, the Cow Creek Band would be forced to layoff more employees with potential hardship in the future for tribal children and seniors. I'm sure revenue is already down due to the poor Southern Oregon economy. I feel another casino would be unfair to the band after the good they have done in this community.

According to what I read in the news, the Coquille Tribe does not have ancestral land in the Rogue Valley. Please continue the traditional of one casino per tribe in Oregon.

Sincerely,

Margaret Bradburn

Margaret Bradburn
441 Candis Drive
Eagle Point, Oregon 97524

P-43

2/7/15

From:
Guy Swartz
Roberta Swartz
3431 S. Pacific Hwy. #81
Medford, Or. 97501

"DEIS Scoping Comments, Coquille Indian Tribe
Fee-to Trust Casino Project

Our favorite Casino is the Mill in North Bend, Oregon. It is a clean, fair and orderly place to play but we don't get over there often as it is quite far away. The main people in opposition of this proposed casino is the Cow Creek Tribe (Seven Feathers). They have a monopoly on the Interstate 5 freeway from Washington To California. It is time that they have some competition!

The residents is Medford really need the jobs! Several large firms have laid off many people in the past few weeks, in the Medford area.

Once the Cow Creek Tribe heard that the Coquille Tribe was considering a casino in the Medford area, they really started to promote themselves. Opened a local office, bought a cattle ranch, donating to local charities, etc. Heard very little from them until the word was out.

The Coquille Tribe will be more than happy

to work with & cooperate with the city, county & State To address any concerns regarding Traffic, security, utilities, etc.

Please consider this letter as a "Yes" vote. "Welcome to Medford."

Thank you,

Guy Swarts Guy Swarts

Roberta Swarts Roberta Swarts

2-6-15

ATTENTION:

-Re. Kim's in Medford - Mr. Stanley Speaks

Respectfully, DEAR Sirs:

There's so many gambling (neighborhood) joints here in this county. We actually know 2 separate people in their 30's who are deeply in debt because of their gambling ADDICTION. One of them moved to ALASKA for a year. She PAID ALL her debts off and moved back into the community. I Guess there is NO Gambling in Alaska. My senior-gambling-friends, on occassion, take the bus to "Seven Feathers". It's An excursion they enjoy.

If "Kims" becomes a casino, WHAT will happen to the employees of places like the purple parrot, etc? It seems like a casino in our community would wreak havoc on small businesses that are already established.

It seems like forever that Indian (NATIVE Americans) children have huge suicide & ADDICTION RATES. Towns near reservations have high homicide

RATES.

Isn't there a more constructive plan for "Kims"?

CAN you please bring something in, that the Native American youth can be a part of? A project that will give them pride & education (vocation). ← ↑

One of my in-laws are married to a native American family - He says the household basically stays home & receives their monthly checks. Their children do not work & are getting obese by the day! They are bored. They have no discipline nor desire to acquire skills in general! :(

Aren't there more progressive plans to educate & guide the native American youth? Something to give them Hope & pride? A? Come on - this is the 21st century - GRASP this opportunity - ~~country~~ - the population is NOT enough to support MORE "brainless" Gambling! WHAT about the children & future generations! THANK you, GOOD LUCK

1788 Key DR.
Medford, OR. 97501 BARBARA Mercer

February 4, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region

I am writing in regards to the proposed casino in Medford Oregon. I am opposed to it 100%, but not entirely for reasons others have given. I feel if an adult wants to spend their money in a casino it should be their business and the local government shouldn't play big brother and monitor their actions. That is our right as an adult. What I don't like about the proposal is the Coquille Tribe already has their quota of casinos. It seems to me that they are bending the rules to meet their own desires. If the rule is one casino, then one it should be. They shouldn't be able to classify casinos differently to meet their end goal. A casino is a casino, period. They aren't playing by the rules. The rules were put in place to maintain control of situations that have the potential to get out of control. We need checks and balances. Everything seemed to be running smoothly until the Coquille Tribe thought up a way to attempt to slide under that rule.

The Rogue Valley is a quiet, quant area. The main focus is family and outdoor activities. I don't feel Medford is a appropriate area for a casino, I feel it would change the atmosphere in a negative way. But my main argument is still, the Coquille Tribe needs to follow the rules that have been set in place for ALL tribes. They shouldn't be able to reclassify casino categories or decide they should have one of each classification. One casino per tribe should be one per tribe, whether it's a class A or B or C. The tribe can make the decision of which ONE they want and that should be the ONE they have.

Thank you for the opportunity to voice my opinion in this matter.

Katherine Goin
Medford, OR

2/7/15

TO: Stanley Speaks

FROM: DAN HOLLAND - 2871 Shantel, Medford 97504

RE: Indian application for Medford casino.

I support the Indian tribes' application to build + operate a casino in Medford.

D. H.

DANSHANTEL@GMAIL.COM.

Alexander S. Pawlowski
4146 Hemlock Drive
Medford, Oregon 97504

Stanley Speaks, NW Regional Director
Bureau of Indian Affairs
911 N.E. 11th Avenue
Portland, Oregon 97232-4165

February 4, 2015

Re: Testimony for DEIS Scoping Comments/Coquille Tribe Fee-to-Trust and Casino Project

Director Speaks,

I feel compelled to present testimony in favor of the Coquille Tribe, especially in reaction to the aggressive campaign launched by a "competitor," the Cow Creek Tribe. The last straw was their running negative ads in running up to last night's hearing and then "laying off" 90 of their employees up in Canyonville the morning of the hearing—coincidence? Don't think so. How utterly deceitful—I was embarrassed for them.

I have had first-hand dealings with both parties in my role as President of the Medford Cruise Association (terms in 2012 and 2013). Seeking sponsors for one of our biggest annual events, I sought out the Cow Creek Tribe first—they declined without as much as a courtesy call. It was at this point that I called upon the Coquille Tribe and they immediately and enthusiastically became involved. At this point the Cow Creek Tribe, through a local radio station group, tried to become a sponsor of the Cruise but we, respectfully, declined. The significance is that the Cow Creek tribe advertises itself as being community minded, to the detriment of the Coquille Tribe. I learned that, in this instance (arguably Medford's largest community event) that this is not true. Exacerbating this are Cow Creek's relentless ads (radio, TV, newsprint, and billboard) denouncing and belittling the Coquille Tribe. Nothing short of a frontal assault.

So I took the opportunity last year to travel to Coos Bay on Spring Break and stayed a night to check them out for myself. Comparing their casino to that of Seven Feathers is day and night. In fact, my wife and I just stayed at Seven Feathers last Saturday night to see Lilly Tomlin perform. Seven Feathers is MUCH more like Las Vegas than is The Mill Casino. The people (meaning staff and management) are far more congenial and friendly at the Mill Casino than what we have experienced from their Canyonville counterparts. There is little comparison.

Speakers were trotted out at the hearing in Medford (pre-arranged by the Cow Creek public relations firm—professional lobbyists). These individuals spoke of the evils of gambling and resulting addictions—wouldn't those same issues apply to Seven Feathers as much as they might apply to the Mill Casino? The Coquille Tribe at no point has raised its voice or responded in any way to the ugliness shown them by Cow Creek. And to me this evidence is so overwhelming that to disregard it is to ignore the facts before you. I cannot say if the Coquille Tribe has a territorial right to the Medford area—but what I can tell you is that my interactions with their representatives on a number of occasions have been friendly, professional, and respectful.

I wholeheartedly support the Coquille Tribe's right to enter the Medford market.

Alexander S. Pawlowski

Feb. 8, 1915

Dear Mr. Stanley Speaks:

I write this letter with a deep and serious concern for our society at large and in particular where I live the Medford area. Any activity that is addictive in behavior such as drugs (prescription or illegal), pornography, smoking, alcohol, immorality or gambling cost our society immensely.

These addictive behaviors lead to the break down of marriage thus damaging lives and eventually in the demise of a healthy society. Also, the financial cost to provide programs to break these habits and bringing people to a place of being a contributor to society and not a burden, is tremendous.

For these reasons and having personally known those whose lives have been seriously damaged by these addictions, I do not wish to have a casino in our area. These are not the kind of jobs and environment I want people exposed to.

We, the "white" people, brought alcohol to the Native Americans and in many other ways robbed them of their lands and lifestyle. So, I do not want casinos robbing anyone of a healthy life style, a strong marriage or a productive skilled job. There is nothing productive or beneficial in gambling.

Might it be more edifying and beneficial to the Tribes and the community they live in, to invest in a company that would make a product that they could be proud of and provide skill training, such as Southwest Indian Foundation produces.

May your Tribe pursue what is best for their families and our community.

Respectfully yours,

Diana M. Nelson

Dear Sirs.

I wish to add my name as voting against bringing a casino to Medford Or. in the future. Lottery dollars bring revenue to various organizations but I can't see that the casino will. In fact if it only employs under 100 people and then patrons lose money there gambling; it will only hurt our local economy.

Sharron Lawson

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 N W. 11th Avenue
Portland, OR 97232-465

"DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project"

I am writing to object to the Coquille Indian Tribe constructing a second casino in Oregon. In agreement made with the Governor of Oregon a number of years ago, each Indian tribe was granted permission to construct one casino in the State. The Mill Casino in Coos Bay is owned by the Coquille Tribe and appears to have operated successfully for quite a few years.

It is my position that permitting each Oregon tribe to construct a second casino would not be in the best interests of the state.

Economic Instability is an issue in Medford, OR and affects people of all ages. Medford is not as economically stable as the upper Willamette Valley, and our residents are not as financially well off as residents of that area. That is demonstrated by a larger than average number of lower wage-paying jobs and an overall poverty rate of 23% compared to the national rate of 15.8%. (Based on Mail Tribune article 1/26/15, which quotes recent study done for City of Medford by J-QUAD Planning Groups of Addison, TX).

My view is that boasting a casino would provide higher incomes for Medford families is unrealistic. What is more realistic is that lower income families will be inclined to bet on life getting better, and more will in casino gambling. What is realistic is to understand that families who can ill-afford to gamble will often use their rent and food resources for gambling, and young family members will suffer as always.

Southern Oregon needs more money for public transportation, which was just voted down by residents, as well as transportation infrastructure jobs, which the Congress has failed to vote for in six years. If the tribe wants to be helpful to our area, let it spend its money to provide decent low-rent housing for adolescent and young students who are living without parents, or with parents who would benefit from free educational programs and a good place to live.

We are facing less public transportation, fewer good paying jobs, 50% of our population living in rentals, and not having a lot to look forward to.

I don't think a casino is the answer. Please do not build one here. Build some housing, or hire some unemployed people, train them to care and cook for children and young people. That would greatly improve our area.

Carol N Doty

Carol N Doty
1040 W 13th Street
Medford, OR 97501

2/9/15

P-51

February 9, 2015

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region

Dear Mr. Speaks:

I am very concerned about the Casino/Gaming Facility that is proposed for Jackson County in Medford. I seriously believe that the potential, if not actual, negative factors are real.

Casino Gaming always plays to human emotions about getting rich quickly. The temptation to get rich quick may be subtle, but is very real. There are numerous people who don't get rich and lose many, many dollars foolishly.

This loss of money is a huge danger to families. Financial problems are a very big factor in marriage divorce. Healthy families are the foundation of a stable society. We must not unnecessarily put families at risk in this manner.

Casinos/Gaming facilities will bring in a very high risk (if reality) of more illegal activities for Jackson county and Medford. Our law enforcement services are already very busy and they are also very concerned about the increase of illegal activity when the Marijuana law becomes a reality in July. The legal negative ramifications of a Casino must be considered as a big negative for our community.

Finally, a Casino will bring some jobs to Jackson County. But there will be a loss of jobs to the Cow Creek Casino (as has been previously stated in other reports). So, the supposed job gain is just jobs rearranged with no real and meaningful employment gain.

Respectfully,

Gary W. Nelson

Gary W. Nelson
100 Walnut Place
Phoenix, OR. 97535

Stanley Speaks, NW Regional Director

February 9, 2015

Bureau of Indian Affairs -Northwest Region

911 NE 11th Ave.

Portland, OR 97232-4165

Dear Mr. Speaks:

I wish to go on record as opposing the casino being built in Medford, OR.

The few jobs it will provide will not outweigh the negative impact on this community.

There are already too many places to gamble, what with the Oregon Lottery. The machines are in restaurants, bars, Purple Parrots all over town. This leads to gambling addiction, and say what you will, the programs are to no avail.

I am a compulsive gambler and have abstained for nearly 4 years now, but not before I squandered a vast amount of money.

The people who can least afford to gamble are the ones who spend all their money; hoping, praying and trying to get rich, and all too soon it is an attempt to recoup their losses, (which they never do) and so the cycle begins.

The counselors will talk with you, have you go to meetings, but it is like a drug and you just keep going back, trying to recover your losses and hoping to win it big!

You know very well that the casinos are not built by winners, only on the backs of losers. I know you will think this is all about me, but really, I have seen the misery and heartache it brings.

Please consider this in you final decision (if it has not already been made). I say that because you have invested monies in clearing and purchasing the land already.

Thank you,

Janice Reuse

1050 Hopkins Rd
Central Point, OR 97502
541-665-0121

P-53

February 9, 2015

Director, Bureau of Indian Affairs
Northwest Region
911 N.E. 11th Ave.
Portland, OR 97232-4165

Having one casino on the west coast apparently is not enough for the Coquille Indian Tribe, now they lobby for a second one in our town of Medford. This comes under the heading of GREED! Now they can profit more off the backs of hard working people who can least afford to throw away money at a casino. Clearly gamblers do not win over time.

I do hope any environmental study will show the impact from just the traffic alone. I have seen the parking lot at Seven Feathers and it is hard to imagine that many cars pulling into the casino and out of the casino onto Highway 99.

I don't believe the advertised gain of jobs. There will be loss of jobs in the all too many state lottery ma & pa stores in the Medford area. Jobs increases will very likely be far less than advertised.

There are enough casinos in Oregon to satisfy everyone's urge to gamble and all are within a reasonable drive.

Very truly yours,

Catherine M. Shauger

Catherine M. Shauger

I lived in Coos Bay, Oregon for 2 years and that town is a perfect example of a casino being a boon to a community.

Small mom-n-pop shops and restaurants that would have struggled, were able to thrive because of the tourist industry brought in by The Mill. Coos Bay/North Bend (during my time there) had an extremely low crime rate.

In my opinion the only valid concern is that smaller gaming places will not be able to compete and will lose that aspect of their business; though ideally that would only be a small part of their business income and could possibly be offset by a larger tourism industry.

Based on my personal experience in Coos Bay, I support building a casino in Medford.

Desirae Oaks, CFO
Ultra Pure Water, Inc.
716 S Grape St. Medford, OR. 97501
(541)734-0828

P-55

2260 Jasmine Ave.
Medford, OR 97501
February 6, 2015

Northwest Regional Office
Bureau of Indian Affairs
N.E. 11th Ave.
Portland, OR 97232-416

RE: Coquille Gambling Casino

Dear Bureau of Indian Affairs,

We totally oppose the Coquille gambling casino proposed for Medford Oregon. We do not need such an attractive nuisance in our community. There are adequate opportunities to partake of this type of gambling experience in already existing venues in Medford, with the profits staying in Medford, supporting many small businesses.

If gamblers want a casino experience, free shuttle busses leave from Medford, and return the same day to Seven Feathers and Clamoya in eastern Oregon. It seems unfair to allow an outsider Indian group to violate the State's policy of one tribe, one casino.

This is the wrong type of public assistance to native American economic development, at the social expense to our local economy. We will pay the price for lost wages, problem gambling, social disruption, bankruptcy, alcohol and family abuse.

We speak from experience: A tenant's husband in our rental, stole her life's savings, gambled it away, and abandoned her for the streets. She lost her job as a result, and had to move in with relatives. This, we fear would become commonplace if we had a casino in our back yard.

Please say **NO** to the Coquille's casino proposal in Medford!

Sincerely,
William Meyer &Diane Gravatt

Diane Gravatt William P. Meyer

February 10, 2015

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, NW Region
911 NE 11th Ave.
Portland, OR 97232-4165

Dear Director Speaks,

Hi! I hope that you are doing well. May I please speak up against the proposed Coquille Tribe gambling casino in Medford, Oregon?

Overall, I do not see a net economic or social benefit to the Medford area from this proposed casino. Instead, I see the casino as removing resources from the Medford area. For example, any jobs that are created might come at the expense of existing jobs, such as those in lotto.

Also, there are potential problems with a casino. For example, there is problem gambling, with its associated social costs, including addictive behavior. People might be spending badly-need money trying to win at gambling.

Finally, I have heard that it has been Oregon's practice of allowing one casino per tribe. I understand that the Coquille Tribe already runs the Mill Casino in North Bend.

Thank you for your time and for considering my comments. I greatly appreciate it.

Sincerely yours,
David McAlaster
725 Terra Ave Apt 5D
Ashland, OR 97520-8505
541-261-6666
Davidmc03@yahoo.com

P-57

WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: L N Sturges Organization: _____

Address: 2552 Thorn Oak Dr #102 Medford, OR 97501

Comment: If we have to have a casino - it should be a local tribe - 7 feathers?

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

P-58

February 10, 2015

RE: The Cedars at Bear Creek

Mr. Speaks,

I would urge that the BIA consider the request of the Coquille Tribe, and place the land purchased here in Medford, into trust allowing them to move forward with the Cedars at Bear Creek gaming project. Recently, Erickson Air-Crane cut 119 jobs locally and Darigold is closing their plant at the end of February.

Any project that would provide jobs and help with economic development should be encouraged and permitted to move forward. Even though we keep hearing the economy is improving, it seems that Southern Oregon has not caught up. I feel confident that the Coquille would continue their long term relationship here in Jackson County and will be perfect business partners.

Regards,

Scott Lubich

Medford, OR

CHRISTINE GREENE

1218 Twin Rocks Drive
Central Point, OR 97502
Phone (541)773-5898

February 10, 2015

Stanley Speaks
Northwest Regional Director, Bureau or Indian Affairs
911 N. E. 11th Avenue
Portland, Oregon 97232-4165

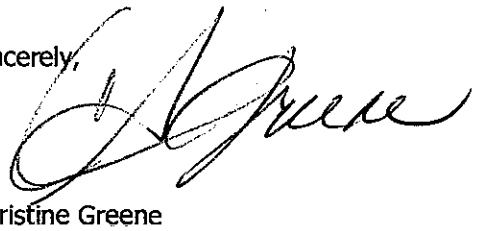
Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Mr. Speaks,

I am writing you regarding the proposed tribal casino in Medford, Oregon. I am opposed to it as it is my understanding it is one casino per tribe. I feel this is wrong for the Coquille tribe to even attempt to open one in my area. I also feel we have far too many similar operations such as Purple Parrot's (Oregon Lottery) in our area. I further do not know how this proposal has gotten so far with The Bureau of Indian Affairs.

I feel if either the Takelma, or the Latgawa tribes (which is my understanding are the only truly indigenous tribes of the Medford area), or maybe even the Shasta tribe wanted to open a full (not machines only) casino in Medford I would not oppose it, provided they did not already have a casino.

Sincerely,



Christine Greene

February 11, 2015

Stanley Speaks
Bureau of Indian Affairs
Portland, OR 97232

I am definitely opposed to the proposed Coquille Tribe casino being established in Medford. This region's ties with the Cow Creek Band of Umpqua Tribe of Indians is well recognized. Canyonville is a destination; we do not need a video casino in our backyard.

The jobs created would be marginal, at best. Exposing the public (employees, included) to second-hand smoke and the health issues resulting would devastate our health care system and families involved. Gambling is "pie in the sky." Already a poor area, Medford would become even poorer.

Seven Feathers Casino in Canyonville has supported Medford. We need to be loyal to their heritage and appreciate their contribution to our economy here in Medford. The Coquille Tribe need to stay in Coos Bay, where they belong!

Donna Galphance
2055 Sunset Dr.
Medford, OR 97501

P-61

2.12.15

Dear Mr. Stanley Speaks,

My husband & I are against the proposed Coquille tribe casino in Medford, Oregon. As a 44 year resident of the Rogue Valley we list the reasons below.

1. We question the "legality" of a casino when 1 casino per tribe is allowed.
2. There are already video "parlors" in the Rogue Valley and no more are necessary.
3. Being on the I-5 corridor and close to the California border, we already have issues with drug trafficing and gang related issues. Do we need another magnet for illegal activity in our area?
4. Gambling addiction leads to

serious ramifications - fenancial difficulties, emotional, social, family disfunction, health issues and all of these issues have health issues we state taxpayers end up paying for through our various health & social and criminal systems.

5. Will an added burden be put on police & fire protection? Also the legal community will be taxed with further caseloads.
6. Transportation issues and traffic problems will be present at an already busy area of town.
7. The Coquille Tribe's lofty advertising campaign on TV and in mailers about high paying jobs, increased employment and high impact on the local economy is questionable and the above listed issues have a down-side at a high cost to our community. The claims of high strong community support does not ring true with the negative consensus at the recent North Medford High

School town meeting which over-
whelming was negative toward the casino.
8. Lastly, the photo of the proposed Cedars
at Beer Creek facility is, in our
opinion, unattractive and doesn't
"fit" into other buildings in that
locale.

Please consider these questions
when coming to a decision on
this casino in Medford.

Thank you.

Sincerely

Laurie Tepley
Marvin Tepley

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 N.E. 11th Ave.
Portland, OR, 97232-4165

DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Mr. Speaks-

I am writing a letter in support of the proposed project and fee to trust agreement proposed by the Coquille Indian Tribe. The tribe has proven themselves as a reliable community partner, an excellent employer, and the jobs they provide, as well as the local contractual agreements they propose, will provide a much needed boost to the local economy.

Lottery terminals such as the ones used at the proposed facility are used widely in the local area, a new facility containing these machines should not change any of the local issues such as crime or addiction. To put it simply, those that have wanted to gamble have had legal access to hundreds of the same gaming machines in the local area for many years. A new larger facility to replace the broken down and vacant building in the area will help draw additional tourism to the greater Medford area and perhaps even influence passerby's to stay in the area for a longer time, enjoying the many other shops, parks, and recreational opportunities.

I believe the area to be well positioned to handle the extra traffic, and with the tribes well known affinity for protecting the environment and caring for their neighbors any environmental concerns will assuredly be put to rest. The tribe has a wonderful relationship with local police, fire and other government services in the bay area, and there is no reason to expect otherwise in Medford and Jackson County. The Medford area needs jobs, some have commented that the facility will simply replace existing jobs and close other facilities. I believe these claims to be grossly exaggerated. The many communities that support local tribal gaming facilities have not had issues with casinos causing the closure of other businesses. Wages must also be considered, with the higher then average wages proposed, employees will have more money to contribute to the local economy.

In closing I would like to say reiterate my support for this project. The Coquille Indian Tribe is an excellent employer, providing good wages and benefits, as well as a fair and benevolent community partner. These things combined make this proposal a win for everyone!

Thank You

Julie Lackey Wright
P.O. Box 1057
Rogers, AR
72757

February 13, 2015

Stanley Speaks,
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 N.E. 11th Ave.
Portland, OR 97232-4165

Dear Mr. Speaks,

Please do not allow the Coquille Indian Tribe permission to build a casino in Medford, Oregon. This is not fair to the Cow Creek Band of Umpqua Indians or to the citizens of Medford.

We do not need more gambling facilities and we do not need more land put in government trust (that is an oxymoron for sure – government trust is long gone!).

It is scary to wonder why a group of Indians would buy up land supposedly not knowing if they would get reservation status to proceed with their plans. Smells like some underhanded shenanigans to me and maybe kickbacks???.

Please do not allow this casino project to go forward.

Thank you,

Karen Whalen

Karen Whalen
951 Lawnsdale Road
Medford, OR 97504

From: Regional Director's Office

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WRITTEN COMMENT CARD

BUREAU OF INDIAN AFFAIRS – PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

NORTH MEDFORD HIGH SCHOOL – MEDFORD, OREGON
February 3, 2015

IF YOU WOULD LIKE TO SUBMIT A WRITTEN STATEMENT, PLEASE COMPLETE THE FOLLOWING INFORMATION AND COMMENT IN THE SPACE PROVIDED BELOW. GIVE TO ATTENDANT OR DROP IN THE WRITTEN COMMENT BOX. COMMENTS MAY ALSO BE SUBMITTED BY MAIL TO THE ADDRESS LISTED BELOW. WRITTEN COMMENTS ON THE SCOPE OF THE EIS MUST ARRIVE BY FEBRUARY 17, 2015.

(Please write legibly)

Name: [illegible] Organization: [illegible]

Address: [illegible]

Comment: [illegible]

Please give to attendant, drop in Written Comment Box, or mail to: Bureau of Indian Affairs, Attention: Mr. Stanley Speaks, Northwest Regional Director, 911 Northeast 11th Avenue, Portland, Oregon, 97232-4165. Please include your name, return address, and "DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust Casino Project" on the first page of your written comments.

Mr. Stanley Speaks,
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 N.E. 22th Ave.
Portland, OR 97232-4165

Dear Mr. Speaks,

Permitting the Coquille Indian Tribe to build a casino here in Medford, Oregon is completely wrong. It does not live up to the laws regarding such a transfer of land. How can the tribe justify less than three acres of land as ancestral lands when none of the tribe members have been living on it all these years?

A casino will not generate very many good paying jobs nor will they be of much consequence but the damage the casino will do to the citizens will be enormous; gambling is the only hope that the needy have of getting out of poverty, thus they will be hurt even more.

Medford has such wonderful medical facilities and is a lovely place to live, PLEASE, do not permit a casino to spoil it.

Nothing about this land transfer appears to be legal which arouses questions about how it got to this point. Keep our faith in our country and deny this transfer.

Thank you,

Gladys Magro

Gladys Magro

1410 N. Keene Way Dr.
Medford, OR 97504

David Elsbernd, President
Voices of Problem Gambling Recovery, Inc.
8832 SE 16th Avenue
Portland OR 97202

Mr. Stanley Speaks,
Northwest Regional Director,
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue,
Portland, Oregon 97232–4165.

Re: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project''

Dear Mr. Speaks,

I am writing on behalf of Voices of Problem Gambling Recovery, Inc.(VPGR). While VPGR does not in general take a position on casinos and gambling per se, we are opposed to a casino in Medford, Oregon.

Gambling in Oregon brings in a lot of revenue, but the costs are equally high:

- $445 million: estimated annual cost to Oregonians *(Moore, 2008b)*
- Higher rates of bankruptcy, divorce, criminal justice involvement
- Higher rates of other mental health problems and suicide
- Higher frequency of problems on the job and loss of productivity

With an estimated 74,000 Oregonians who are problem or pathological gamblers, any new source of gambling is an opportunity for unsuspecting Oregonians to develop a gambling problem or addiction. This can cause all sorts of grief for themselves, their families, and society.

When a casino is located in a rural area, it becomes a destination resort. But when a casino is located in a metropolitan area, access is ready and it is much easier for a susceptible citizen to develop a gambling addiction. It is this ready access of a casino in Medford that we are opposed to. VPGR encourages you to deny the application to build a casino in Medford.

Sincerely,

David B. Elsbernd

David Elsbernd, President
Voices of Problem Gambling Recovery, Inc. *(A 501c(3) non-profit corporation)*

Marla k. Cates

TRANSMITTED BY FAX, 2-17-15

C/O Telefax: (503) 231-2201

Stanley Speaks
Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

RE: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

Dear Mr. Speaks:

I am writing to express a few concerns about the proposed gaming casino in Medford.

The traffic impacts will be considerable. Highway 99 is an extremely busy corridor, in the middle of a metropolitan area. It seems a very odd place to site a gaming destination presumably designed to attract large numbers of people.

Does the facility intend to serve alcohol? If so, then this intensifies my concerns about impacts to traffic in addition to safety.

My understanding is that this facility is to be video only. We already have numerous video gaming businesses in the valley, I do not think we need more.

This would be the second facility for the Coquille tribe. One per tribe is plenty.

Sincerely,

Marla Cates.

POB 537 Talent OR 97540

February 17, 2015

Mayor Gary Wheeler
City of Medford
411 West 8th.Street
Medford, OR 97501

Dear Mayor Wheeler,

Please add my voice to those who are in opposition to the proposed gambling casino in Medford at the old Kim's restaurant location, or pass this on to those who are evaluating this propose project for you.

For me it is not the question of is this truly ancestral land, whether it is only a Class II casino, meeting all the EPA or traffic or socioeconomic issues. My understanding is that each tribe was allowed one casino. Period. If the Coquille Indian Tribe is now allowed two, will not all the other tribes in Oregon be looking to also expand?

Those who can least afford to spend their limited money on games of chance, will be given even more opportunities to spend, loose and become dependent on social services provided by others with our taxes. Having to drive to Canyonville to Seven Feathers may be a deterrent today. Having another casino locally at hand, in our town, will provide a temptation some cannot resist.

Please resist the pressures from the BIA and others who would put a casino in Medford. Thank you.

Respectfully,

R.M. "Mike" Heverly
2104 Quail Point Circle
Medford, OR 97504-4523

Cc:
Medford City Manager
BIA, Northwest Region, Portland

"CASINO PROJECT"

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

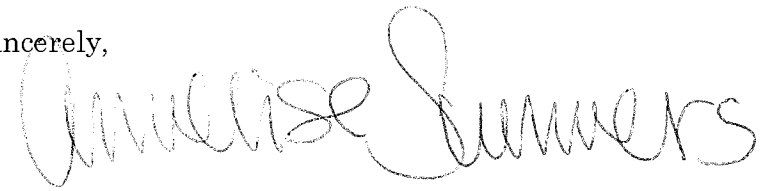
Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should consider the positive impacts this project will have on employment opportunities in the community.

As it has been presented, the new gaming facility, the Cedars at Bear Creek, will create at least 200 new jobs – jobs that currently do not exist in the local economy. These will be created in an area where local residents are diligently and even desperately seeking work. Judging by what the Coquille Tribe's other gaming facility pays its workers, average salaries at the new facility should compare quite favorably to current local wage levels.

In addition, many of these new jobs will be eligible for a benefit package. Again, judging by the Tribe's current casino, these benefits will greatly improve access to health care for the families of employees, including the Tribe's successful wellness program. This is no small matter for local workers and should be part of the EIS story.

Supporters of this project strongly encourage the Department of the Interior and the Bureau of Indian Affairs to proceed as quickly as possible to produce an Environmental Impact Statement and, soon after, grant approval of the Tribe's request. This is a project that will provide for the growing needs of the Coquille Tribe and will produce jobs for local workers, opportunities for local businesses and additional benefits for the entire community.

Sincerely,



Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should consider the positive impacts this project will have on employment opportunities in the community.

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Sincerely,

Linda Maier

P-71

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should consider how the Cedars at Bear Creek will add to the local economy.

While we have heard how the project will create at least 200 new jobs, their impact goes beyond the families of those 200 workers. The spending power of those jobs will create jobs in other businesses and organizations in the community. Likewise, the new facility will need to purchase a variety of goods and services from local vendors who, in turn, will need to hire additional workers to meet the new demand. Direct spending on wages, goods and services have a considerable indirect effect on jobs in the local economy that should be considered in the final EIS document.

Evaluations in the EIS also must take into consideration that the proposed facility is located in an economically distressed area of South Medford. Its presence can increase traffic and visibility for existing businesses and encourage new business to locate in the area. The new interchange on Interstate 5 that serves this area was designed specifically to encourage the kind of business development that the Cedars at Bear Creek represents.

Supporters of this project strongly encourage the Department of the Interior and the Bureau of Indian Affairs to proceed as quickly as possible to produce an Environmental Impact Statement and, soon after, grant approval of the Tribe's request. This is a project that will provide for the growing needs of the Coquille Tribe and will produce jobs for local workers, opportunities for local businesses and additional benefits for the entire community.

Sincerely,

Mike & Cheryl Johnson

5110 Azalea Dr

Grants Pass, Or. 97526

Mar. 1, 2015

Dear Mr. Speaks,

In regards to: DEIS Scoping Comments, Coquille Indian Tribe Fee to Trust and Gaming Facility Project

We attended the meeting in Medford and did have questions and comments after we went to that meeting. We do not have any real concerns regarding building a casino in this location. We have been to this location many times over the span of almost 30 yrs. We heard about comments regarding rain run-off at this location. While that was Kims Restaurant, didn't they have gutters and down spouts for that huge building. I never read or heard anything about there being any problems. With new construction and technology, it's bound to be more efficient then what has existed there. As for environemental, was the added traffic...With Medford expanding at that end of town, they have allowed for businesses to come in and re-designed the roads and added traffic signals to accomodate the extra traffic. I know that in the Rogue Valley Jobs are needed, long term, good paying, stable jobs are most needed in the valley.

I did have a concern upon hearing about 1 tribe, 1 casino rule or policy. Maybe you could steer me in a clear direction or a publication for clarity. Also what is the 2 part Determination Process?

If the government allowed the tribe to be given the Restoration Act, then it seems this is due to the tribe. All this is a technicaility, is that correct?

I also heard at this meeting this will be a class II casino and the advantage over the class 3 is the

tax advantage?

In closing we just wanted to say, we like the idea of having a closer casino and choices. more competition will hopeful make the casino experience more afforadable and enjoyable. We don't believe this will cause the big lay-off that Cow Creek claims. We believe yes at the beginning Cow Creek will see a decline, most people will want to come see the new casino. We think long term there's will be enough people from Oregon and Calif. So both locations can enjoy the revenue. We drive all over the state and into Calif. We talk to people at the different

casinos we go to and they do the same. We think the Coquille Casino offers better deals, so will travel the distance.

Thank you for your time

Kind Regards,

Mike and Cheryl Johnson

P-73

March 1, 2015

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region,
911 Northeast 11th Ave.
Portland, OR 97232-4165

I believe that a casino will be a bad thing for Medford. It will encourage people to spend money they do not have. This isn't a wealthy community.

In addition, I believe it is wrong for the Coquille tribe to muscle in on the Umpqua tribe's territory. If another casino is built in Medford, the Umpqua tribe will lose almost all their business in Canyonville. Why drive to Canyonville when you can lose your whole paycheck right here in Medford?

The Coquilles say the new casino will bring new high paying jobs. Their casino on the coast doesn't have high paying jobs. We have lots of minimum wage jobs here already.

They can keep their casino. It won't add to the quality of life in Medford.

Mrs. Carol Palmer
1817 Inglewood Dr.
Medford, OR 97504

DEIS Scoping Comments
Coquille Indian Tribe Fee-to-Trust and Casino Project

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

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Supporters of this project strongly encourage the Department of the Interior and the Bureau of Indian Affairs to proceed as quickly as possible to produce an Environmental Impact Statement and, soon after, grant approval of the Tribe's request. This is a project that will provide for the growing needs of the Coquille Tribe and will produce jobs for local workers, opportunities for local businesses and additional benefits for the entire community.

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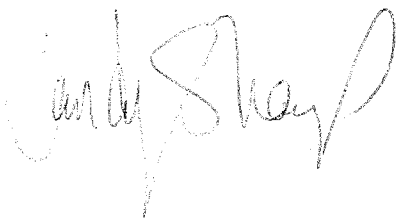

P-75

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should consider how the Cedars at Bear Creek will add to the local economy.

While we have heard how the project will create at least 200 new jobs, their impact goes beyond the families of those 200 workers. The spending power of those jobs will create jobs in other businesses and organizations in the community. Likewise, the new facility will need to purchase a variety of goods and services from local vendors who, in turn, will need to hire additional workers to meet the new demand. Direct spending on wages, goods and services have a considerable indirect effect on jobs in the local economy that should be considered in the final EIS document.

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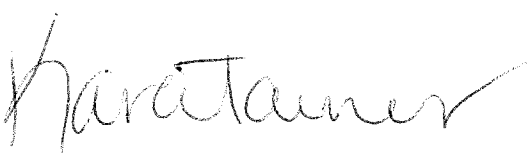

P-76

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

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Sincerely,

P-77

To: Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
Northwest Regional Office
911 Northeast 11th Ave.
Portland, Oregon. 97232-4169

From: Christopher K. Tanner
PO Box 1744
Bandon, Oregon. 97411
RE: DEIS Scoping Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Mr. Speaks,

Thank you for providing this opportunity to comment on the Coquille Indian Tribe's Fee-to-Trust application for the proposed gaming facility in Medford, Oregon. I support this project. I would like to briefly talk about the job I have with the Tribe and how my salary, minus the taxes that come out of my paychecks, is a socio/economic benefit to the community I live in. I feel the gaming project in Medford will have the same positive socio/economic benefit in the Medford community from the employee salaries, the taxes withdrawn from those salaries, and the fees paid to Medford by the Coquille Indian Tribe for utility, police and fire protection services.

My name is Christopher Tanner. I am a Coquille Indian and also an employee of the Coquille Indian Tribe. I have worked for the Coquille Indian Tribe as a member of their Culture, Education and Library Services Department for 19 years. For every day and every hour of those 19 years of employment with the Coquille Indian Tribe, I have paid both state and federal taxes just as any other employed person living in Oregon does. My home is in Bandon, Oregon and while I work on trust land, I do not live on trust land; therefore I pay state taxes. These taxes support government programs designed for the benefit of all citizens in my community. The salary I earn from my work with the Tribe pays for my utilities, the payment on my house and goods and services I buy from local businesses. Recently, I made a donation to the Coos County chapter of Habitat for Humanity. The money I used to make this donation came from the salary I earned working for the Coquille Indian Tribe.

My wife and I live in Bandon and have been homeowners there since 1999. We pay property taxes on this home to Coos County; these taxes go to support the local school district, several county government programs and special projects that have been approved by voters in our community.

My employer, the Coquille Indian Tribe, pays the City of North Bend for utility, fire and police services to The Mill Casino-Hotel and the surrounding lands the Tribe owns at that site. These payments in lieu of taxes have done through an agreement between the Coquille Indian Tribe and the City of North Bend. Since opening its casino in North Bend in 1995, the Tribe has paid the city over $5,000,000 for these services. These are payments in lieu of taxes and the City of North Bend receives a socio/economic benefit from these payments.

At one time in this near 20 year agreement have the payments been halted. The city and Tribe disagreed on the amount of the payments and this disagreement did result in a lawsuit filed by the city. During this period, two quarterly payments (the Tribe pays the city every three months), were missed. When the lawsuit was settled, the city received these missed payments. Many people say Indians and Tribes don't

pay taxes; my 19 year history of paying taxes from work I do with the Coquille Indian Tribe proves this false.

The City of Medford will receive the same socio/economic benefits if the Coquille Indian Tribe's fee-to-0trust application is approved and the proposed gaming facility is built at the specified location in Medford's city limits. The Coquille Indian Tribe will not be able to operate a casino without the cooperation of the city. Without an agreement, the Tribe would be able to provide the services to the gaming facility that are needed to have it operate efficiently while also assuring that customers are safe. Medford will receive payments in lieu of taxes for the services it provides the gaming facility and this creates a positive socio-economic impact for Medford. These payments represent revenue Medford does not currently have. To my knowledge, there is no other business opportunity like the Coquille Indian Tribe's proposed gaming facility within Medford's city limits that has the potential to fund city government programs

I am a Coquille Indian who has contributed tens of thousands of dollars for the socio/economic benefit of my community through the taxes withheld from my paychecks. The City of North Bend receives the same benefits from the Tribe via the long-standing payment in lieu of taxes agreement.

For these reasons I ask that the Tribe's fee-to-trust application for its approved gaming facility be approved. The project on the Tribe's property in Medford, Oregon will created a positive socio-economic impact on the city with payments in lieu of taxes, the taxes paid by employees of the casino, Tribal member and non-Tribal alike, and the salaries of the facility's employees.

Sincerely,

Christopher K. Tanner

Heather L. Tanner

P-78

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should consider how the Cedars at Bear Creek will add to the local economy.

While we have heard how the project will create at least 200 new jobs, their impact goes beyond the families of those 200 workers. The spending power of those jobs will create jobs in other businesses and organizations in the community. Likewise, the new facility will need to purchase a variety of goods and services from local vendors who, in turn, will need to hire additional workers to meet the new demand. Direct spending on wages, goods and services have a considerable indirect effect on jobs in the local economy that should be considered in the final EIS document.

Evaluations in the EIS also must take into consideration that the proposed facility is located in an economically distressed area of South Medford. Its presence can increase traffic and visibility for existing businesses and encourage new business to locate in the area. The new interchange on Interstate 5 that serves this area was designed specifically to encourage the kind of business development that the Cedars at Bear Creek represents.

Supporters of this project strongly encourage the Department of the Interior and the Bureau of Indian Affairs to proceed as quickly as possible to produce an Environmental Impact Statement and, soon after, grant approval of the Tribe's request. This is a project that will provide for the growing needs of the Coquille Tribe and will produce jobs for local workers, opportunities for local businesses and additional benefits for the entire community.

Sincerely, Daniel Wolf

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building The Cedars at Bear Creek, a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should remain focused on the impact this project will have on the lives of Coquille Tribal Members.

There is no question that the ongoing growth of the Coquille Tribe has created needs that have overwhelmed the Tribe's current sources of revenue. Even though the Tribe has expanded its existing gaming and telecommunications businesses and has worked to enhance its forestry operations, there will be a growing shortfall of revenue to cover existing programs. This new gaming project is designed to address some of that shortfall.

Restoration of the Coquille Tribe brought with it a requirement that the Tribe provide for the needs of its members and to achieve self-sufficiency. The steady increase in Tribal membership should be a clear sign that the Coquille Tribe has been very successful in accomplishing this task. This project is necessary to continue that success and prevent its members from sliding back into the conditions that were prevalent 25 years ago. Any study involving the current project must reflect the real needs of the Coquille Tribe and the ability of the Tribe to provide for those needs now and into the future.

Supporters of this project strongly encourage the Department of the Interior and the Bureau of Indian Affairs to proceed as quickly as possible to produce an Environmental Impact Statement and, soon after, grant approval of the Tribe's request. This is a project that will provide for the growing needs of the Coquille Tribe and will produce jobs for local workers, opportunities for local businesses and additional benefits for the entire community.

Sincerely,

Jeannie Blanca

P-80

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

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Sincerely,

Soo Lee

P-81

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building The Cedars at Bear Creek, a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should remain focused on the impact this project will have on the lives of Coquille Tribal Members.

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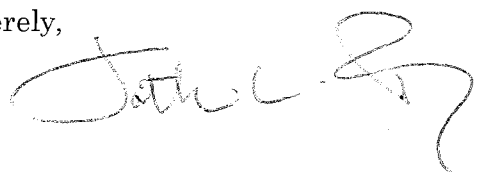
Sincerely,



P-82

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232-4165

Dear Director Speaks,

Thank you for this opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust for the purpose of building The Cedars at Bear Creek, a Class II gaming facility in Medford, Oregon. In developing its Environmental Impact Statement (EIS), the Bureau of Indian Affairs should remain focused on the impact this project will have on the lives of Coquille Tribal Members.

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Supporters of this project strongly encourage the Department of the Interior and the Bureau of Indian Affairs to proceed as quickly as possible to produce an Environmental Impact Statement and, soon after, grant approval of the Tribe's request. This is a project that will provide for the growing needs of the Coquille Tribe and will produce jobs for local workers, opportunities for local businesses and additional benefits for the entire community.

Sincerely,

Shawna Mercer

P-83

Robert W. Larson
447 West Harrison Street
Roseburg, Oregon 97471

To: Bureau of Indian Affairs
Northwest Regional Office
911 Northeast 11th Avenue
Portland, Oregon 97232-4169 Subject:Coquille Tribe's Proposed Class II Project

Dear Bureau of Indian Affairs,

I am Robert W. Larson from Roseburg, Oregon. Born and raised in nearby Mryrtle Creek, Oregon and I strongly support the Coquille Tribe's proposed "Cedars at Bear Creek" Class II project to be built in Medford, Oregon.

I have worked in and around Southern Oregon for the past 43 years and have seen our entire Southern Oregon area go through some rather hard times with the economy. The Coquille Tribe's proposed "Cedars at Bear Creek" Class II project will put some life and needed vitality into the South Medford Area. As a school bus driver I have seen this area go downhill fast with the loss of many timber operators in the area and the loss of jobs and logtime bussiness just closing their doors.

The "Cedars at Bear Creek" will have a very positive impact for all of Medford and the surounding areas by creating jobs in an area where local residents are seeking work. Thease new jobs will help boost the value of the labor force throughout the city of Medford and Jackson County. Many of these new jobs will be eligible for benefits that will improve access to health care for families of workers.

With the "Cedars at Bear Creek" as proposed, will add to the local Medford economy; first, by creating the spending power of over 200 new jobs in the community and second, by opening up vendor opportunities for local businesses to provide goods and services to the new Class II Gaming Facility. Just the direct spending of those vendors will create other jobs in the Medford community and fuel the economy for continued added business growth.

The positive impacts created by the presence of the "Cedars at Bear Creek" will help turn around an economicall distressed area of South Medford. The commercial and retail mix in the area of Interstate 5 and Exit 27 will benefit from increated traffic and visibility that this new gaming facility will bring. There will be no advese impacts in the Medford area with this proposed facility, just look at Canyonville. The Canyonville area has prospered with the Class III facility there opererated by the nearby "Cow Creek Creek Tribe". The Crime rate did not go up when that facility was Class II or Class III. I stongly support and standby this project 100 percent.

Sincerely submitted,

Robert W. Larson

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, OR 97232-4165

Dear Director Speaks,

Thank you so much for the opportunity to comment on the Coquille Indian Tribe's request to have land taken into trust so that a Class II casino can be built in Medford, OR. In developing its Environmental Impact Statement (EIS), I would like the Bureau of Indian Affairs to consider the positive impacts that may be afforded the Medford community should this project be allowed to move forward.

One such positive impact would be the reduction of greenhouse gas emissions. Medford residents who may wish to enjoy gaming entertainment would no longer have to drive 70 miles of I-5 freeway, but rather make a trip to a facility within their local community. This reduction in driving would ultimately prove beneficial to the environment.

Also, local gas station owners may benefit economically as drivers that travel great distances for entertainment may be forced to fill up their tanks out of town, but if the option to find local entertainment exists (Class II casino) local pumps will be utilized at a greater rate. In short, local money will stay in the local community.

Sincerely,

APPENDIX E

SCOPING MEETING SIGN-IN SHEET AND TRANSCRIPT

SCOPING MEETING SIGN-IN SHEETS

SIGN IN SHEET/MAILING LIST

PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
February 3, 2015

Please Print Legibly

NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
Rob Taylor	N-A	N-A		✓
Justin Mathison	Roseburg OR	Cow Creek Tribe		✓
Marilyn Baldwin	Central Point	individual		
Soo Lee				✓
Pax Richardson	Central Point, Ore.			
Wendy Richard Rudd	CB. OR	CEDCO/TMC		
John Michaek	843 W 3rd Medford OR 97501			
Ron Ratisseau	1842 Valley View			✓
~~Elaine Wade~~				
Eric Mitton	1428 Bluebonnet Ave.			✓
Jose Coronado	2115 Robert Rd			✓
Brent Hackwell	8425 Agate Rd. White City			
Griffin Allegis				
Cheyenne Mellin	PO BOX 341 Glendale OR 97442	CCIW Creek	✓	
CAROL FERGUSON	P.O. BOX 154, GLIDE, OR 97443	Cow Creek TRIBE	✓	

~~* name on back (with 4 sec.)~~

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PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
Rick Moir	3559 National Dr Ste. 102 Medford 97504	Lanphier Associates, Inc	X	
Sarah Briggs	2371 NE Stephens St Ste 100 Roseburg OR	Cow Creek Govt offices		X
Rusty AraRawa	7864 Laura LN White City, 97503	Coquille Indian	X	
Gordon S. Sharp	2533 Gould Ave Medford 97504	"		
LeaEtta Sharp	2533 Gould ave Medford, Or 97504	Coquille indian		
Jon Ivy	1445 Arlington Dr medford, OR 97501	Coquille Indian Tribe	X	
Tony Barbieri + Sandy	2410 Meado Ct Medford 97504	Resident		X
Mark W Scharff	240 Charlotte Ann Rd Medford 97501	Homeowner	X	
ROD Debban	1065 Alturas St Myrtle Creek, OR 97457	Seven Feathers Casino		X
Jessica Burkett	750 A E. Vilas Rd Central Pt 97502	Bear Creek G.C.		X
Robert Burkett	750 A. EAST VILAS CENTRAL PT 97502	BEAR CREEK G.C.		X
BoB Burkett	7802 Atlantic Ave White City, OR 97503	Bear Creek GC		X
Chris Ripsam	612 North Berkeley WAY	HOMEOWNER		
CARL & Holly Churchill	P.O. Box 1124, Shady Cove, OR 97539	Ahmahmutsan Tribe		X
CRYSTAL ANDRUS	1038 STERLING CREEK RD, MEDFORD OR 97530	COW CRK TRIBE		X
Clifford Semple	24 Morning Glory Central Point 97502	Time Out		X
Anne Kehoe	3436 Creek View Dr Medford 97504	—		X

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PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
Neal + Vera Jones	25 Eagle View Dr, Eagle Point, OR 97524		X	
Bill Wamsfield	P.O. Box 1721, Medford OR 97501	—	✓	
Roger Beachman	750 Rod & Gun Club Rd CC 469			X
Jill Sandoval				
Mark O'Neil				
Terry Hopkins	858 NE A St GP OR 97526	Southern Oregon Elmers		X
Sue Kupillas	749 Pierce Rd Medford 97504		✓	
Linda Bowman	795 Ridgeway Ave C.P. 97502	—		
Cynthia Medeiros	1836 Woodlawn Dr., Medford 97504	—	✓	
Michael Rule	PO BOX 433 Phoenix OR 97535			
Jennifer Akins	2332 Howland Hill Rd Crescent City CA 95531	Elk Valley Rancheria	X	
?	?	?		
Robert Coffan	2499 Happy Valley Dr. Medford OR 97501	Katalyst, Inc	X	
Dick Gordon	1030 CALLAWAY DR. MEDFORD, OR 97504		✓	
John Huttl	411 W. 8th St. Medford OR 97501	City of Medford		
Lorraine Swiggert	341 Roundgate Dr. Medford, Or.	Coos Tribe	✓	
Mike Swiggert	" " " Medford	Coos Tribe	✓	

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PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO
PLEASE PRINT LEGIBLY				
Debra Sanchez	336 Broadway St. Myrtle Creek	7 Feathers Casino		X
Matt Garcl	336 Broadway Myrtle Creek OR 97457	7 Feathers		
Scott Mickelson	3050 Tremont North Bend OR 97459	CIT	X	
Anne Cook	2678 Merye Loop, Coos Bay, OR 97420	CIHA		✓
Joe Cook	1685 N. 16th St. Coos Bay OR 97420	The Bite's On Tackle		✓
Toni Ann Brend	PO Box 5877 Charleston OR 97420	Coquille Ind Tribe		✓
Karen Wanscher	PO Box 102 Canyonville OR 97417	7 Feathers		—
Forrest P Lewis	Medford, OR			X
Mr. Mrs G Appleton	Medford	Coquille - go		
David Wixms	Medford	11 11		X
Mike Hale	840 Woodbridge Dr. Medford			✓
Stephan Barott	1446 St. Andrew Way, Medford, OR 97504		✓	
Roxanne Barott	11 11 11			
Aaron Barney	PO Box 286 Idleyld Park, OR 97447	7 Feathers		✓
Steve Beasley	5213 Griffin Lane, Medford 97501			✓
Mary Evenson	Medford			

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PUBLIC SCOPING MEETING
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North Medford High School – Medford, Oregon
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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
J.m Prevatt	7812 Harlan dr White City Or.	(Rogue Shasta) Shasta Spiritual Nation	✓	
DENNIS C.W. SMITH	2654 BROWNSBORO HWY. Eagle POINT, OR	RETIRED SHERIFF	✓	
Steve Guenther	378 Sq-30 St Eagle Point Or	Cow Creek tribe	✓	
BARBARA DISNEY	3306 So. PAC Hwy #106 MEDFORD 97501	Retired-Live in LOCAL AREA	✓	
Dan Courtney	827 Hickory St Roseburg, Or. 97470	Cow Creek Tribe	✓	
Beth Gipson	201 Gallahad loop Myrtle Creek	Cow Creek Tribe	✓	
Mel Gipson	"	"		
Kevin Geraco	Myrtle Creek, OR	Cow Creek		✓
Copy may	Myrtle Creek OR	Cow Creek		
Michelle A. Dagel	PO Box 555, Sutherlin OR 97479	CTUIC	✓	
DUSTIN Beauvais	2658 Hickey Ln Coos Bay OR	Coquille Tribe		
Brenda Meade	99891 Lampa Ln. Myrtle Point	Coquille Tribe		
C Johnson	5110 Azalea Dr.	Shawnee		✓
Randall Fugate	Central Pt			
Barbara Boehnlein	533 Barry Circle, Medford, OR 97501	Retired - Live in area		✓
Tod Hunt	2415 Geary Cir Medford 97501	resident		✓

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PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
SAMANTHA MCDONALD	ROSEBURG OR 97471	SEVEN FEATHERS		
Shawn McDaniel	785, Canyonville, OR	Seven Feathers		
Dali Jagel	Roseburg OR 97471	SEVEN FEATHERS		
Rich Rader	Roseburg OR 97471	Seven Feathers		
Melinda Willoughby	Medford OR 97504			
Beavais ③	medford 97504	Coquille		
Lyman MEADE	Myrtle Point OR 97458	Coquille	X	
MICHAEL JOHNSON	5110 Azalea Dr. 97526		X	
Dena Neet	401 S.E. 3rd	Canyonville Seven Feathers		X
Terri HAUSOTTER	754 NE Hillcrest 97457	Seven Feather		X
Linda Hale	840 Woodbridge DR Medford 97504		X	
Kimberly Rogers	545 Charlotte Ann Rd medford 97501		X	
Simone Coffman/Robert	2499 Happy Valley Medford 97501		X	
CHARLES SOWELL	4250 W. MAIN ST MEDFORD OR 97501			
JAMES SOWELL	772 RITA LYNNE med OR 97501			
Yelegaq Hunt	2415 Glory C. Rd, Medford 97501		X	
Tim Vredenburg	4140 E/Gurose Rd Roseburg OR		X	

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COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
February 3, 2015

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
Loretta Kuehn	3201 Tremont St. N.B 97459	CEDCO	X	
Judy Metcalf	924 Inlet Loop CB	CEDCO		
Greg Aldridge	110 McCully Ln. Jacksonville OR	CEDCO		
Gloria Johnsen	183 Norman Ave # 106 Coos Bay, OR	Tribal Member	X	
Dora Short	183 Norman Ave #107 Coos Bay OR	Tribal Member	X	
Lisa Sandberg	510 Miluk DR. Coos Bay, OR.	Triba Member	X	
Jill Thomey J	2934 Fairfax St. Medford 97504	Cow Creek		X
Jacob Mijares	~~[illegible]~~ 40 S. Central Ave Medford or 97501	Cow Creek	X	
Ruth Ann Liles	435 Liles Lane Umpqua 97486	Cow Creek	X	
Vanessa Reece	360 Pack Saddle Rd Myrtle Creek OR	Cow Creek	X	
Peter Knight	PO. Box 265 Riddle OR 97469	Cow Creek	X	
Mary Howren	PO Box 1123 Canyonville OR 97417	Cow Creek	X	
Dixie Doyle	2666 NW Stryker Dr. Apt. #3 Roseburg, OR 97471	Cow Creek	X	
Dave Jonassen	1324 N. W. Dameron Dr, Rsbg, OR 97471	VIDC		X
Robert Bauer	9321 N. Applegate Rd Grants Pass, OR 97526	CEDCO	X	
Jarred Bennett	125 SE Oriole St Grants Pass OR 97526	Cow Creek		
John Watt	127. So. Keene Way Dr. Medford	Citizen		√

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO
PLEASE PRINT LEGIBLY				
Scott Lubic #		JW A		✓
Joyce Huerta		cow creek		✓
Orris Huerta		cow creek		✓
Lynda VanNaman	Myrtle Creek	Cow Creek		✓
Tammy Rondeau	Roseburg	Cow Creek		✓
Kathleen LUA	Coos Bay	KO KWELL		✓
cindy elbert	Coos bay	Ko kwell		✓
Kelly Coates	Roseburg			
Ann Carnahan	Roseburg	Anvil		
Jessie Pheard	Roseburg			
Minh James	Myrtle Creek	Cow Creek		✓
Ana Puffa	Myrtle Creek	Cow Creek		✓
Sara Bennett	Canyonville, OR	✓		✓
Nicki Vanassche	Winston, OR	Cow Creek		✓
the	canyonville	cow creek		
Jason McGuire	CANYONVILLE	Cow Creek		✓
Brian Prawitz	Roseburg	Cow Creek		✓

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO

PLEASE PRINT LEGIBLY

Brian Fraser	1530 Windsor St. Ashland, OR 97520		✓	
Robert Van Norman	269 Aker Dr. Myrtle Cr. 97457		✓	
Conny Lake				
Sheri Meza	2604 Mexeye Lp. Coos Bay OR 97420		—	
John Garrett	2642 Mexeye Lp. Coos Bay OR 97420		—	
Vicki + John Pickard	PO Box 273, Azalea, OR 97410		✓	
Susan Martin	459 Rose Av Myrtle Creek OR 97457		✓	
Ed Metcalf	PO Box 3117 Coos Bay OR 97420		✓	
Jan Metcalf	PO Box 3117 Coos Bay Or 97420		✓	
Margaret Simpson	64164 Fairview Rd Coquille OR 97423		✓	
Jose Zamora	544 Palm, Medford, OR.		✓	
VELMA ADDIS	343 PARK STREET, RIDDLE, OR 97469			—
Gary Jenkins	P.O. Box 2231 Myrtle Crk OR 97457	Cow Creek		✓
SHERI SALTER	ROSEBURG, OR 97471	COW CREEK		—
Betty Summers	1034 W 13th Med.			
Terry Miller	P.O. Box 4173 Medford			

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North Medford High School – Medford, Oregon
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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
Sheila Cha	2662 Mexeye Loop Coos Bay, OR	Coquille Tribe	✓	
Duke Summers	2634 Mexeye Loop Coos Bay, OR	Coquille Tribe	✓	
Brad Finch	3201 Tremont Av. N. Bend	Mill Casino	✓	
Gerald Ramsell		Cow Creek Tribe		
Joe Parpsil	P.O. Box 664 Riddle OR 97469	Cow Creek Tribe	✓	
Nemie Castro	126 Preston CT Canyon 97417	" " "	✓	
Tina Cain	PO Box 214 Wolf Creek, OR 97497	Cow Creek	✓	
George Chaney	681 Hamlin Drive Canyonville OR. 97417	Cow Creek Tribe	✓	
Linda Wood	P.O. Box 124 Grants Pass, OR 97528	Cow Creek	✓	
Shawn Nash	111 Hazel Lane Glendale OR 97442	Cow Creek	✓	
Adrianna Brim	Willamette Substation	Cow Creek	✓	
Andrea DAVIS	2311 NE St. Helens Rd. OR	Cow Creek		✓
Patti Jo Chinn	103 View Lane Days Creek	Cow Creek	✓	
Barbara Barnes	207 Florence Ave Medford	None	✓	
Alan Griffin	3335 Edgewater N.E.	Coquille	✓	
Tom L Cox	1244 NW Riverfront DR Roseburg	Cow Creek		✓
TERRI PORCARO	1930 ROOSEVELT ST. NORTH BEND	COQUILLE	✓	

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North Medford High School – Medford, Oregon
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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO

PLEASE PRINT LEGIBLY

Cayla Lowell	11 Gregory	Cow Creek		X
Edna DeCarlo	Pamela ST	Cow Creek		
mia Martinez	333 Ruckles M.C.	Cow Creek		
Cindy Delay	988 NE Johnson S Me	CC	X	
Elaine Wadel	2731 Crater Lake Ave # 8	individual		X
ELANA N. HAMMER	1418 COQUETTE ST. MFR OR 97504	"		X
HERBERT E. FARISS	1887 GIBBON RD, CENTRAL POINT, OR 09	CREEK	X	
Heather Hansen	2314 Galls Creek rd Gold Hill	Cow Creek		X
Rob [redacted]	[redacted]			

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PUBLIC SCOPING MEETING
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February 3, 2015

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO

PLEASE PRINT LEGIBLY

Crave Patterson	1524 shoestring rd.	Cow creek tribe		

SIGN IN SHEET/MAILING LIST

PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
February 3, 2015

Please Print Legibly

NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO
PLEASE PRINT LEGIBLY				
Jamisha Reed	423 Fourth Ave Riddle, OR 97469	7 Feathers		
[illegible]		7 Feathers		
Anette Stumbo	2231 Coyote Creek Rd. Wolf Creek OR 97497	7 Feathers		
Gidget Mullins	875 Blossom Creek Rd Winston 97496	UBL		
Dave Mullins		—		
Robert Walton	695 Stage Coach Rd Canyonville	7 Feathers		
Michael Rondeau	38 North River Roseburg	Cow Creek Member	X	
[illegible]				
Anne Batzer	1888 Pine Gate Way White City	Cow Creek Foundation		
Scott Quinn	64236 Second Ave. Happy Camp, OR 96039	Karuk Tribe.	X	
Michael Ereey	1932 Stevens Rd., Eagle Point. 97524			
Raquel Summers	514 Hamilton Medford OR 97501	Raquel Summers		
Betty Summers	1034 West 13th Medford OR 97501	Betty Summers		
[illegible]	10 Crater Lake Ave. Medford OR 975[illegible]	Standard Financial		
Dianne Duckworth	2715 S Pacific Hwy Medford OR	Bear Creek Motel	X	
Janet Shalda	2244 Ridge Way, Medford, OR 97504		X	

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Linda Lucas				
Fred Lucas				
JEFF DAMM				
ELEANOR RAMMOND				
Vickie Aldous				

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			YES	NO

PLEASE PRINT LEGIBLY

Alex Romanow				
B Schmack				

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PUBLIC SCOPING MEETING
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North Medford High School – Medford, Oregon
February 3, 2015

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			YES	NO

PLEASE PRINT LEGIBLY

Beverly Layer	2341 Gene Cameron Way Medford	Concerned more citizen		

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PUBLIC SCOPING MEETING
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North Medford High School – Medford, Oregon
February 3, 2015

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO

PLEASE PRINT LEGIBLY

Sherman D. Simmons	5756 Hwy 234 Central Point, OR 97502		X	
Roger Kehn	8495 Crater Lake Hwy W.C. 97502		X	
CLAUDE McCOMMEN	2810 FOOTS CR Gold Hill OR 97525			
Kaitlyn Lee	1018 Olympic Ave Medford, OR, 97504			X
CRAIG FRONEK	601 VALLEY VIEW DR MEDFORD, OR 97504			X

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PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
February 3, 2015

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO
PLEASE PRINT LEGIBLY				
Mary KWART	1467 Siskiyou Ave #42, Ashland		X	
James Lusch	300 Coquille Way	Mail Tribune		X
MARK GAGNON	64566 E. Bay Rd., North Bend, OR 97459	Coquille Tribe	X	
Robert Fitch	33 Quail Run shady cove OR 97539			
Dianne Lorber	1055 Ellendale #203 - Medford			

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PUBLIC SCOPING MEETING
COQUILLE INDIAN TRIBE – FEE-TO-TRUST AND GAMING FACILITY PROJECT

North Medford High School – Medford, Oregon
February 3, 2015

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST?	
			YES	NO

PLEASE PRINT LEGIBLY

Gerald Trotta	4155 GRIFFIN CR Rd 97501	Self	✓	
Germaine Ploos	614 S. Holly St Medford OR 97501	—	✓	
Laura Grosz	524 Barnes Ave Medford OR 97504	none	✓	
PHYLLIS SIMPLER	610 E MAIN ST MEDFORD OR	TIME OUT	✓	
Amira Fitch	33 QUAIL RUN DR S.C. OR 97539			
Shila Schelle	1521 Orchard Home Drive Medford OR 97501		✓	
Chad Paxton	" "	"		
Danyan Dyke	732 Sylvia St Ashland 97520			
M. Dawkins	1130 Barrington Circle 97520	—	✓	
Ben Evans	831 mesa Dr Eagle point 97524	—		
Andrea Maude	Grants Pass	—		✓
B. Beltinger	212 Island Pointe Med OR			✓
Teresa Negrete	2393 Flanders St. White City OR	—		
PATRICK McKenzie		—		—

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PUBLIC SCOPING MEETING
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North Medford High School – Medford, Oregon
February 3, 2015

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NAME	ADDRESS	ORGANIZATION	PLACE ME ON THE MAILING LIST? YES	NO
PLEASE PRINT LEGIBLY				
Freddie Martin	105 Parkway Circle Phoenix			X
Ed Hyde	2756 Ruth Dr MFR			X
Elizabeth Worthington	2454 Highgate St. Apt.	Siletz Tribe	X	
Chris Lindsey	1023 Morton Street, Ashland	ScienceWorks Museum		
Scarlet, Austin Guenther	378 Fargo St. Eagle Point, OR 97524			X
Connor Wist	650 Monroe St Ashland, OR	KDRV		X
Cheyenne Evans	831 Mesa Dr. Eagle Pt OR		X	
Marcia Durham	1009 Mc Pherson Lane Medford, Or 97504		X	
M Rose Johnson	2405 Sunnyview Lane		X	
Carrie McCoy	2957 El Dorado	Rocky Boy Chippewa-Cree	X	

SCOPING MEETING TRANSCRIPT

IN RE:

THE COQUILLE INDIAN TRIBE FEE-TO-TRUST AND GAMING FACILITY PROJECT PUBLIC HEARING

TAKEN ON
TUESDAY, FEBRUARY 3, 2015
5:25 P.M.

NORTH MEDFORD HIGH SCHOOL
1900 NORTH KEENE WAY DRIVE
MEDFORD, OREGON 97504

APPEARANCES

RYAN LEE SAWYER
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Portland, OR 97232
(503) 231-6749 ext 6749
Bj.howerton@bia.gov

IN RE:

THE COQUILLE INDIAN TRIBE FEE-TO-TRUST

AND GAMING FACILITY PROJECT

PUBLIC HEARING

TAKEN ON

TUESDAY, FEBRUARY 3, 2015

5:25 P.M.

RYAN SAWYER: Good evening. Can I have your attention, please. Welcome to the public hearing for the proposed Coquille Indian Tribe fee-to-trust and gaming facility project draft environmental impact statement.

My name is Ryan Sawyer. I am with the Analytical Environmental Services. We are the environmental impact statement consultant working for the Bureau of Indian Affairs. I will be the moderator at this evening's public hearing.

At the table with me is Dr. BJ Howerton, Environmental Protection Specialist for the BIA northwest regional office, and Bibiana Alvarez with AES.

We are here today to take public comment on the scope of the environmental impact statement for the proposed transfer of approximately 2.4 acres

of land within the City of Medford into federal trust and the subsequent establishment of a tribal casino by the Coquille Indian Tribe.

This is a scoping meeting intended to ask the public what is important to address in detail in the EIS. The BIA needs to understand the key issues that are important to both the general public and government agencies.

I'd like to take a moment to recognize several elected officials in attendance tonight, including Coquille Tribal Chair Brenda Meade and Jackson County Commissioner Doug Breidenthal.

There may be other elected officials present, and we will give them all an opportunity to speak at the beginning of tonight's hearing. If there are any other elected officials in the audience tonight who would like to speak, please identify yourself to one of our representatives in the lobby.

Both written and spoken comments will be accepted at tonight's meeting. If you have a written comment or letter that you would like to submit, please hand it to one of our representatives in the back or at the tables in the lobby.

We will also have cards available if you

want to make a written comment on one of our cards. You can take a card, make a comment and put it in one of the boxes in the back or hand it to one of the representatives.

You can also mail it to the BIA on the address on the card. Just make sure that it is in the mail prior to the deadline which is February 17th, so next Tuesday.

If you would like to make a spoken comment tonight, please fill out one of the yellow speaker cards in the back table and hand it to one of our attendants or put in our speaker card box.

We will take speakers in the order that we receive the cards. Everyone will be given three minutes to speak in order to make sure that everyone has the community to speak tonight. After all the speakers have given their comment, assuming there's time, we will provide individuals with an additional three minutes to continue their remarks if they would like to speak further.

With that said, due to the constraints of time, a public forum, such as this, is not the best place for lengthy comments. If you have a lengthy comment, we encourage you to submit that comment in writing. All comments will receive equal weight

whether or not they are spoken or written.

We have a stenographer present who will record your comments word-for-word so that they can be considered fully as comments on the record.

And please understand that the purpose of the hearing tonight is not to have a question-and-answer session or a debate. We will not respond to questions or engage in a debate.

We are here to listen to your comments and concerns and make sure that all of your comments are carefully recorded.

At this point I will turn the meeting over to Bibiana who will provide a brief PowerPoint presentation on the proposed action and the EIS process.

BIBIANA ALVAREZ: Thank you, Ryan.

And good evening to everyone. I will give a brief PowerPoint presentation on the proposed action and the EIS process.

The National Environmental Policy Act or NEPA for short, is a procedural statute that requires the analysis of potential environmental impacts of major federal actions.

In this case the proposed major federal action is that the Coquille Indian Tribe requested

that approximately 2.4 acres of land be taken into federal trust. Prior to deciding whether to approve or deny that request, the Bureau of Indian Affairs, or BIA, must conduct a NEPA environmental review to determine the potential environmental impacts of that action.

The first step of the NEPA process is to see whether the categorical exclusion or an exemption applies. Categorical exclusions are appropriate if the action is minor or would not normally result in significant impacts.

This does not apply in this case. If it is not appropriate to issue a categorical exclusion, the lead agency would consider preparing an environmental assessment to determine whether significant environmental impacts may be present.

If no potentially significant impacts are identified, the lead agency will prepare a finding of no significant impacts and conclude the NEPA process.

If there is more than a moderate likelihood that significant adverse impacts may occur as a result of the project, the lead agency would prepare an environmental impact statement. This is the NEPA path we are on for the Coquille

Indian Tribe fee-to-trust acquisition and gaming facility project.

We will address each of the steps in the EIS process in detail in later slides.

As I stated earlier, the proposed action is that the Bureau of Indian Affairs would acquire 2.4 acres of land currently owned by the Coquille Indian Tribe in trust and that the tribe would subsequently renovate an existing bowling alley to convert it into a gaming facility.

The proposed gaming facility would contain an approximately 16,700 square foot gaming area, a 5,100 square foot bar/deli and other supporting facilities.

Adjacent land may be improved with additional parking areas for the proposed gaming facility. These lands are not part of the fee-to-trust application.

The proposed fee-to-trust property is located within the incorporated boundaries of the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99 between Charlanne Lane and Lowry Lane.

Here is a preliminary draft site plan for the project that shows the location of the gaming

facility and potential parking areas.

Here is a comparison of the existing Roxy Ann Lane bowling alley and the proposed gaming facility remodel.

Returning to the EIS process, the BIA published the notice of intent to prepare an EIS on January 15th, 2015. If you would like to read it an NOI is posted at WWW.COQUILLEEIS.COM.

We also have carbon copies of the NOI at the sign-in tables. We will post all future NEPA documents online at the site for public review.

Scoping is the process by which the lead agency solicits input from the public and interested agencies on the nature and extent of issues and effects to be addressed in the EIS.

The scope of a document includes the extent of the action, range of alternatives and types of impact to be evaluated.

This is the list of issues we currently expect to study in the EIS: Based on the comments we receive during the scoping process, additional issues may be added to that list. Once again, the comment period ends this Tuesday -- ends Tuesday, February 17th, 2015. Please hand in your written comments or mail them into the BIA before that date.

After the close of the scoping period, the BIA will prepare a scoping report that includes all public comments including everything said at this meeting. The BIA will use that scoping report as a guide during preparation of the EIS.

The BIA will prepare a draft EIS that analyzes the potential environmental impacts of the proposed act along with a reasonable range of alternatives.

The draft EIS will be made available for public review for at least 45 days. The BIA will hold another public hearing during that 45-day comment period where the public can provide comments on this document.

After the public review comment period closes on the draft EIS, the BIA will prepare a final EIS that includes responses to substantive comments that will make this document available to the public for review for at least 30 days.

After the close of this review period, the BIA will then issue a record of decision, or ROD for short, that includes the BIA's decision on the proposed action. Issuance of the ROD marks the end of the NEPA process.

Comments can be sent to Mr. Stanley

Speaks, the regional director of the BIA, at the address on the slide. Dr. Howerton is also available if you would like to request additional information.

RYAN SAWYER: Thank you, Bibiana.

I would just like to clarify. I believe I said earlier that comments are due next Tuesday. It's actually two weeks from today. So I apologize for that.

We would like to give the Coquille Indian Tribe the first opportunity to speak tonight.

Coquille Tribal Chair, Brenda Meade, can you please make your way up to the podium. Thanks.

BRENDA MEADE: I hope I am not messing with your mike there.

Greetings. My name it Brenda Meade, and I serve as the chairperson of the Coquille Indian Tribe.

I am honored to attend tonight's public hearing that begins the process of the BIA's placement of 2.4 acres of land in trust for the Coquille Indian Tribe.

The Coquille Tribe was one of many Oregon tribes that were formally terminated in 1954. This meant that our status as a sovereign government was

erased. Western Oregon is one of the few places in the country where this failed government policy was attempted. But even after formal termination, the Coquille people continued to meet and to address the needs of their elders, their children and their community.

A generation later congress reversed the tribe's termination and formally restored the tribe to federal recognition in 1989. That federal law called the Coquille Restoration Act provides the tribe with the tools to help rebuild what was lost during the termination period.

It defines things like our connection to lands and what is called a five-county service area that includes Jackson County. In the law congress also promised the tribe a process to put lands into trust in those five counties for economic development.

The process that begins tonight is part of that promise to the Coquille Indian Tribe. Our main priorities historically and today have been to assure the health of our people, educate our children and create opportunities for our tribal members and their families, opportunities like good paying jobs with solid benefits and the ability to

grow and prosper within those jobs.

Unlike most tribes, we do not distribute gaming revenue in payments directly to our tribal members. Instead we dedicate 100 percent of gaming revenues to fund our governmental programs including healthcare, education, housing, social services, infrastructure and governmental operations.

Congress through the passage of federal law has provided us with federal law that recognizes the ability of tribes to conduct commercial gaming as a means to address the needs of their people.

Today we ask the federal government to uphold its promise to the Coquille people and to consider our trust land application on its merits.

To assist in the consideration of our application, we are here tonight to listen to any concerns that may be raised regarding our efforts. Those concerns will be addressed by the Bureau of Indian Affairs in its assessment. Because we are a part of this community, we look forward to this process and ultimately to making this project a success for all.

Typically in the BIA's review of projects such as this one it develops a plan designed to mitigate actual impacts. The Coquille Tribe intends

to embrace those recommendations and intends to put them in place.

We are taught to only take what we need and to always leave some for the others. As such, the tribe intends to fully pay for what it needs. The local governments that may provide our needed services will be fully compensated. We have no intentions of taking from this community we live in but rather to give back to it.

As a result of this project coming to fruition, the tribe will be able to enhance and give back to the community. The jobs generated by this project during construction and permanent jobs will be filled by local residents. They will be good-paying jobs with excellent benefits.

The goods and services provided at the facility will be purchased from local vendors. The tribe's culture is to support and participate in the community including charities and civic projects and capital investments. This project by helping fill our needs enables us to fill needs of the community.

There is a lot of misinformation out there about our project. This is unfortunate. The tribe is seeking to have this land taken into trust as part of the establishment of its restored land base

as provided in its restoration act.

This is no different than the process that other western Oregon tribes committed to have their lands qualified for gaming including Coos, Siletz Grand Ronde and Cow Creek.

We have been asked repeatedly about a two-part determination, which is the label used for tribes seeking to game on lands that are not part of the restoration of their land base. That is a different process under federal law with different rules that simply do not apply to those applications or to these lands.

Our application does not require that the tribe must somehow prove that it has a greater entitlement to have lands here other than any other tribe. The fact is that several tribes have ancestors with historic ties to this valley including Coquille.

The fact is that only for the Coquille Tribe does its restoration act identify Jackson County explicitly as one of the five counties for land to be restored, the tribes land base.

The question of which tribe has a greater entitlement to lands in this valley need not be answered for purposes of this application. Our

tribe has not opposed the gaming interests of other tribes in this state, and we would hope the same respect.

These issues regarding a two-part determination or which tribe has the greatest entitlement to have lands in the valley are not relevant to the purpose of this hearing which is intended to hear views on possible environmental impacts that should be studied in the BIA's assessment. We raise these issues only because we know that there are people here today to make such argument, and we want to set the record straight.

So tonight we look forward to beginning the process, this process of interaction and understanding with the community, and to having an opportunity to address any and all concerns that are presented to us. We welcome your thoughts, questions and comments, and we sincerely thank you for the opportunity of being here.

We have an office here in Medford. I would encourage anyone with questions to contact us directly, and we will be happy to talk to you.

The Coquille Tribe is here to listen to all concerns today. Thank you.

RYAN SAWYER: Thank you.

Okay. Now we will proceed with the public comments. Remember that all of your comments will be limited to three minutes. There is a light box up front here that is set to three minutes. The yellow light will let you know when 30 seconds remains.

Also, just a few ground rules and suggestions for giving comments. First, when you begin to speak, please state your name and where you are from clearly for the record and please speak as clearly as possible into the microphone so that the court reporter can accurately document your words. We request that when you are done speaking please turn over any transcripts to the court reporter. You can just put them in a little pile over here on the stage.

Please summarize your main point within your three-minute comment window. Be as specific as you can. We will require that the audience does not make any noises that would distract from the stenographer's ability to accurately record the comments.

Please do not applaud or express displeasure with any comments. If we can't hear a speaker's comments because of disturbances in the

auditorium, the hearing will be stopped until order is restored.

Speakers are required to address this table and address the BIA with your comment so that the BIA can hear what you are saying and so that the stenographer can accurately record your words. If you do not address the table directly, I will ask the stenographer to stop recording, and we will move to the next speaker.

This hearing is not a referendum. We are not here to count the number of people for or against the project. The purpose of the hearing is to collect comments on the adequacy and scope of the draft EIS and all comments -- excuse me -- not the adequacy and scope.

Because the draft EIS hasn't been released, the purpose is to get comments that will influence the scope of the draft EIS, and all comments will be considered equally no matter how many times they are made. So please limit the substance of your comments accordingly. And if someone ahead of you has already made your point, there is no need to repeat it.

To manage the meeting in an efficient manner, I will read five names at a time for people

to come up to speak based on when they return their speaker cards.

We have the front row reserved. So, please, if your name is called come and sit in the front row until it's time for you to speak.

As a courtesy to our elected official in the audience, Doug Breidenthal, we will be giving you the first opportunity to speak. If you can please make your way to the podium, I will also call up the next four speakers now: James Prevatt, Vera Jones, Robert Van Norman, Steve Gunther.

Excuse me. Is Doug Breidenthal in the audience?

DOUG BREIDENTHAL: I don't mind yielding. That's fine.

RYAN SAWYER: Go ahead then, sir.

DOUG BREIDENTHAL: That's fine.

RYAN SAWYER: If you could just please state your name clearly.

JAMES PREVATT: I am James Prevatt. I am spiritual leader and council member with the Shasta Nation. Shasta Nation is a sovereign nation of Indians. This is our aboriginal land from Cow Creek down to Black Butte and from Coquille -- or from Chetco over to Kaynak.

And from time beginning this has been Shasta land. Rogue River land is Shasta Nation, and if we allowed another tribe to come into this land it's interfering with our tribal sovereignty in this area. We are the aboriginal people of this area, and, therefore, we disagree with any other tribe or any other nation coming in here and building anything in this land, and we don't feel that it would be correct -- you have to excuse me. I had a stroke so I don't speak too well anymore.

But it's imperative that our tribal traditions for all tribes, whether they are here or anywhere else in this country be understood and that we still live in the old ways, the many ways here.

And I have family here. I was born here 73 years ago. I grew up in Kerby, and all this land has been Shasta land clear back to my great grandfather, Edick Weather and Big Ike. His daughter was Hila, and his granddaughter was Bertha, my mother.

So I ask you: Think about what you are doing and remember that this is sovereign land, a sovereign nation to the Shasta people. Thank you.

DOUG BREIDENTHAL: Hi. I am Doug Breidenthal. I am the chairman for the Jackson

County Board of Commissioners. I am here on behalf of Jackson County.

As we look at this scoping, we have a few concerns about the notice of intent that originally came out that we don't believe it provided adequate detail for the proposed project. It didn't provide for alternatives to the proposed project; therefore, it's very difficult for the county to provide comments on the potential impacts and the sufficiency of the alternatives at this point in time.

Comments that we have on the procedural issues at this point would be the EIS should consider whether the project should be subject to a two-part determination process. Consider impacts of off-reservation casinos in accordance with 25 USC Section 2719 and the precedent that this casino will set for all the tribes and local communities in the State of Oregon and potentially across the nation.

The EIS should identify a reasonable range of alternatives, including but not limited to, expansion of existing Coquille gaming facility, nongaming alternatives, alternative sites for the casino on existing Coquille land.

Detrimental impacts of the EIS should

consider the potential of the proposed project and evaluate all potential mitigation measures, including but not limited to: Land resources; water quality, including water quality on the ground water aquifer and storm water drainage; air quality related to the construction and vehicular traffic once the proposed project is open; socioeconomic impacts including impacts on the gaming competitors, local nonprofits; increase in addictive behavior; and whether the proposed casino would change the character of Medford; resource use patterns, including the regional transportation, the traffic system, public services including water and wastewater systems, electrical utility providers, law enforcement, firefighting services, our local jail facility, district attorney prosecution and, of course, our court system.

One thing we would like to ask is that a cumulative effect of all these potential impacts is summarized and studied also. On January 30th of 2015, the county submitted a written request for a 60-day extension to be able to file written comments relating to the scoping. We ask that you honor that so that we are able to reduce this to writing to make sure you have it clearly and adequately in your

hands as a written document. Thank you.

(Discussion held off the record)

RYAN SAWYER: Did you get that in the back? Can you turn up this microphone in the front a little bit?

Just a reminder to please turn in your transcripts to the stenographer here. It makes her job a lot easier. Thanks. Next speaker, please.

VERA JONES: Thank you for the opportunity. I appreciate it.

My name is Vera Jones, and I live in Eagle Point, and I am an elder of the Cow Creek Band of the Umpqua Tribe of Indians, and I am very happy to be able to be here tonight.

As you know, the Coquille Tribe has asked the government for permission to build a casino in Medford, and I want you today to please consider the devastating economic impact this casino will have on my tribe.

Our casino in Canyonville currently receives 50 percent of its business from Medford and the Rogue Valley. If you were to approve Coquille's second casino, my tribe would lose at least half of its casino revenue.

The loss of revenue would directly and

severely impact services my tribe provides to its members, to our children and to our elders. These services include emergency assistance, educational programs, work force, health insurance, housing programs, cultural opportunities, elder benefits and elder burial benefits -- excuse me -- burial benefits. Sorry about that.

There are 131 elders who depend on tribal services. We have limited resources already, and we would greatly suffer with this 50 percent reduction in services. It would be very, very devastating to us.

I ask you today to consider the severe negative social economic impact our tribe would experience if you allowed the Coquilles to place a casino in Medford.

The Coquille Tribe should not enrich itself at the expense of my tribe's welfare.

This goes beyond what my tribe would experience. You have already heard the previous speaker. There are community concerns here that need to be addressed. And I ask that the Coquille's application be denied.

Thank you very much.

RYAN SAWYER: Next speaker.

ROBERT VAN NORMAN: Thank you.

The first thing I would like to do before I say anything else is I would like to recognize and have all the veterans who are willing to stand please stand and be recognized.

Veterans.

RYAN SAWYER: Could you please address your comments to the front. This is not the kind of comment that we are proposing.

ROBERT VAN NORMAN: Thank you for your service.

I am a Cow Creek tribal member on the tribal board of directors and Vietnam veterans. My dad and three of his brothers were serving in World War II at the same time. Then in 1965 to 1968 my parents had two sons that were drafted. We left a little town just over the hill from Medford.

I didn't know where Vietnam was, but I can remember the day to this day how glad I was to see Medford the day I came home. My wife now of 48 years that I hadn't seen for more than a year was there waiting for me.

We started a family, raised two sons, have six grandchildren. One grandson just completed serving a tour in Afghanistan in the Marines. Some

of my sons and grandkids do work for the tribe. If we are able to provide for our tribe as well as the surrounding communities will depend on your decision to allow what amounts to reservation shopping and going against what our governor says, one casino per tribe.

If you let this go forward, every tribe in Oregon will be close behind wanting you to do the same thing for them. As a veteran, I did what I was asked to do.

To allow a neighboring tribe to enter Medford will affect tribal veteran programs. A lot of veterans to this day are suffering from the effects of war, PTSD. A lot are homeless. Suicides are on the rise, and there are many health issues.

I am grateful and thankful that I can stand here and fight to carry on what our elders, our tribal people and our veterans had as a vision to take care of our families.

I will close with one thing. I remember that I heard an elder say at a powwow, Indian people pray a lot.

I pray our tribal families and nontribal community families don't lose a lot of the things the Cow Creek Band of Umpqua Tribe of Indians have

worked so hard to achieve.

Thank you.

RYAN SAWYER: I believe I called Steve Gunther earlier. Is he still in the audience here?

STEVE GUNTHER: Hi. My name is Steve Gunther. I am a Cow Creek tribal member. I have lived here in the valley for over 30 years.

It is my understanding that the Coquille Tribe has asked the Bureau of Indian Affairs and the Interior to take lands into trust for the purpose of building a casino. The Coquille Tribe are claiming that these lands should be restored to them.

With that said, how can you restore lands that were never inhabited in the first place. The Coquille Tribe have no aboriginal or historical connection to the valley. Their lands are 160 miles west of the valley.

Restored lands should mean something. It can't just be a ploy for the Coquille Tribe to build a casino.

I ask you to hold the Coquille Tribe to the same standard in the evaluation whether the Coquille has an aboriginal or historical connection to the valley. I ask when you find that the Coquille Tribe has none of these connections that

you deny the Coquille's application to restore lands that were never theirs to begin with.

Thank you.

RYAN SAWYER: The next five speakers will be: Brian Fraser, Dennis Smith, Reg Breeze, Cindy Elbert, and Michael Rondeau.

And I apologize if I am mispronouncing some of these names.

Again, I would like to remind the audience to please refrain from making disturbing noises including applause while somebody is speaking here because it impedes the ability of our stenographer to record comments.

Thank you.

DENNIS CW SMITH: Mr. Chair, before you start on my time, everybody is sort of having a hard time understanding anybody talking. For some reason it reverberates.

(Discussion held off the record)

DENNIS CW SMITH: All right. I will try to be clear so everybody can hear me.

Can you hear me now? All right.

Welcome Dr. Howerton. Thank you very much, and our greetings to the BIA having an outstanding representative.

My name is Dennis CW Smith. I live in Eagle Point, Oregon. I appreciate this opportunity to speak on this issue regarding the effort to place a type 2 casino inside this City of Medford.

Allow me to state my background and interest in this important issue. I am the former Jackson County Commissioner. I am also the retired sheriff of this county and a former police chief for the City of Talent. I have served this community for 40 years as a peace officer and a public official.

Aside from my service in the Vietnam War in the Air Force, the Rogue Valley has always been my home since birth. I am also a proud member of the Chickasaw Nation headquartered in Ada, Oklahoma.

I realize the time is short and our public statement is limited to two minutes.

First, the Coquille Tribe have absolutely no historical, archeological or ancestral lands here in Jackson County. This hearing does nothing more than cloud the fact in the public's mind and contributes to a false historical narrative.

Second, a place -- to place a class 2 gaming facility within an urban area will have adverse effects on local state gaming operations in

this county plus reducing the revenue and taxes derived from the proceeds which also support our local schools.

Third, the voters of this state rejected in 2012 not wanting any off-reservation gaming. Placing this proposal outside of the ancestral lands within an urban city will create a cascading effect throughout the state as well as in this county. The long-standing policy of one tribe, one reservation and one casino is basically out the window.

Let's all be honest. This is about money, and it's a lot of money. By their own admission the Coquilles say it is about $40 million in direct and indirect money. It is a blatant attempt to steal the market share creating a false narrative, taking advantage of a cumbersome and confusing set of laws and process.

I will be providing additional information in my written record. Thank you for your time.

REGINALD BREEZE: Good evening. My name is Reginald Breeze. I am a lifelong resident of the Rogue Valley.

In the State of Oregon, we have been operating under the premise that one casino for one tribe, and along with that premise we have been

operating along with the idea that tribes develop on their historical aboriginal land area.

I am opposed to the Coquilles building a casino in Medford. The Coquilles already have a large casino in Coos Bay, Oregon. The Coquilles have absolutely no aboriginal ties to Medford or Southern Oregon.

If we start down the path of allowing tribes to build multiple casino and if we allow tribes to hopscotch willy-nilly around the state opening casinos wherever they feel there is a good business location, we better get ready to see a casino on every corner. This will open Pandora's box.

Thank you very much.

BRIAN FRASER: My name is Brian Fraser. I am not a member of any tribe. I am here strictly as a resident of Jackson County.

For many reasons I object to the Coquille's intention to open a casino in Medford. I will briefly address four of those.

One: This violates the one tribe/one casino agreement that I as an Oregon citizen feel that I have with every tribe in the state an agreement that balances the needs of all the parties. The Coquilles

already have a casino, the Mill, which is in their ancestral territory.

Two: Seven feathers --

RYAN SAWYER: Could you speak a little closer. I am so sorry to interrupt you, but if you could speak a little closer to the microphone it eliminates that reverberation noise.

BRIAN FRASER: Okay.

RYAN SAWYER: Thank you.

BRIAN FRASER: Seven Feathers as a class 3 casino must donate as least 6 percent of its profits to local nonprofits. They have donated over 14 million dollars to Southern Oregon nonprofits.

Jackson County receives more of that money than any other county, and the donations are funded by the operations of Seven Feathers. Allowing a casino in Medford would significantly reduce the money available to fund those donations.

A class 2 casino, on the other hand, which the Coquille group is proposing, is under no legal obligation to do so. In fact, the tribe's only purpose in pursuing this project as stated and published in the federal register is to provide benefit to its tribal members who are in the Coos Bay area as are their current and ancestral lands.

It will be an economic drain on this area to the tune, by their estimation, I had heard 34 million. CW heard 6 million more. They beat me.

Three: If the Coquille are allowed to open a casino outside of their ancestral lands and/or have multiple casinos, that standard would have to apply to every tribe in the state. So it would encourage unchecked proliferation of casinos in Oregon.

Four: Also severely impacted would be the Oregon lottery which also funds nonprofit projects in Jackson County. A casino in Medford would cut into these funds that they generate and significantly reduce the revenue available to support their good works. The county commissioners, the city council, Governor Kitzhaber, local state representatives and senators and the overwhelming majority of Oregon's federal congressional delegation have rejected this idea.

I strongly urge anyone who has a voice in this decision to join with them to reject the possibility of allowing the Coquille to open a casino in Medford.

Thank you.

MICHAEL RONDEAU: Thank you for this opportunity. My name is Michael Rondeau. I am the

CEO for the Cow Creek Band of Umpqua Tribe of Indians.

First I would respectfully like to express the Cow Creek Tribe's concern regarding the limited information provided in the notice of intent. The notice of intent should describe the proposed action and possible alternatives; however, the Coquille notice of intent did not provide adequate detail regarding the proposed action, and it did not provide any alternatives.

The scoping process is meant to be an early and open process identifying significant issues related to a proposed action. When there is insufficient detail regarding the proposed action, it is difficult for the participants of the scoping process to identify significant issues.

Accordingly, the Cow Creek Tribe requests the BIA publish additional detail regarding the proposed actions at the earliest possible opportunity.

I would also like to express the Cow Creek Tribe's concern that the number of jobs that will be provided by the proposed action is overstated. The Coquille has stated that the proposed action will create 233 direct jobs. We believe that this

estimate overstates the number of jobs that will be created by the proposed action.

Our analysis based on the type of facility indicates that the proposed action will likely only employ 128 people, not 233.

Further, the Coquille has failed to take into account the fact that the introduction of a casino in Medford will negatively impact nearby video lottery establishments. Our analysis indicates that the proposed action will result in the closure of nearby video lottery establishments and the loss of 117 direct jobs. Accordingly, we believe that the net increase in jobs in Jackson County would be 11.

When determining potential impacts of the proposed action, the EIS should consider whether the proposed action will create jobs or merely replace jobs that are lost. NEPA requires an agency to present a reasonable range of alternatives in an EIS. Of here, the BIA has not produced a list of the alternatives that will be considered in the Coquille EIS.

We suggest that the EIS should consider as an alternative a potential expansion or improvement of the existing Coquille gaming establishment. The

Coquille already operates the Mill Casino in North Bend. The improvement or expansion of the Mill Casino is a reasonable alternative that should be examined in the EIS as it would need to meet the broad purpose provided in the notice of intent to improve the economic status of the Coquille.

Also, a gaming facility on an alternative site to the proposed site may also meet the Coquille's purpose.

Further, the EIS should include an analysis of whether there are any nongaming alternatives that would meet the Coquille's purpose.

NEPA also requires an agency to fully identify and evaluate the potential detrimental impacts of the proposed action and reasonable mitigation measures. The Coquille's proposal implicates concern about the economic impacts to the Cow Creek Tribe. Implementation of the Coquille's proposal will have a significant detrimental effect on the Cow Creek Tribe's governmental revenues, revenues that are used to fund education, health, social services for tribal members.

Specifically implementation of the Coquille's proposal --

RYAN SAWYER: Sir --

MICHAEL RONDEAU: -- could jeopardize the Cow Creek Tribe's ability --

RYAN SAWYER: I apologize.

MICHAEL RONDEAU: -- to care for our tribal elders.

And my final comment would be restored lands needs to mean something. How do you restore something that was never there is to begin with.

RYAN SAWYER: Cindy Elbert.

CINDY ELBERT: My name is Cindy Elbert. I am from Coos Bay, and I am from the Coquille Indian Tribe.

I am thinking that it's a great idea for this casino to happen is because we need more competition. It's like Dutch Brothers and all those places, the reason why they are thriving now is because they have the competition from the other people.

I am thinking that if the people approve of it they will be able to help Jacksonville, help Medford and the other places. Not only that, but they will be able to increase the jobs that are needed for other people. That's all.

RYAN SAWYER: Okay. The next five speakers: Jacob Ansures, Dan Courtney, Andrea

Davis, Gary lake, and Barbara Barnes.

JACOB ANSURES: My name is Jacob Ansures. I currently am a Cow Creek tribal member, and I currently live in Eagle Point, Oregon.

Dear Director Speaks, I would like to ask that during the NEPA process and while looking at alternatives your office takes into account the disastrous outcome that interpreting the Coquille's Restoration Act as automatically calling all lands in its five-county service area, 15,603 square miles of Coos, Curry, Douglas, Jackson and Lane counties, as gaming eligible restored lands will have on those respective counties.

As we know, in order to create a comparison between landless restored tribes and existing tribes congress provided in Section 2719 that restored tribes such as Coquille, may obtain and have it taken into trust for gaming purposes if certain criterion is met.

Essentially it created a situation that threatens mandatory land acquisitions, reservation lands under 25 CFR 292.11 (a)(1) making them almost automatically gaming eligible and discretionary land acquisitions off-reservation lands under 25 CFR 292.11 (a)(2) subjecting their eligibility for

gaming to stricter scrutiny.

Coquille asserts that the Restoration Act provides the authority to take all lands in its service area into trust which would put 15,603 square miles of Oregon lands spanning five counties in categories to be treated as essentially its original reservation.

No need for government approval; no taking into account the effect that the gaming operation will have on the surrounding community; no limitations on the distance from existing tribal lands and population; no need to show modern temporal or historical connection to the land; and, most importantly, no limitation on the number of gaming operations that the tribe might open in its 15,603 square mile service area.

Allowing this land to be taken into trust under 292.11 (a)(1), in other words, will allow Coquille to open up casinos throughout the greater State of Oregon with no limit. In addition, it will set up a precedent for all other tribes with similar restoration acts such as the Yslete del Sur Pueblo, the Keweenaw Bay Indian community and the United Indian Auburn Indian community to operate gaming facilities on lands to which they have no historic

connection virtually anywhere they please.

This is not what congress intended. Congress intended two things: One, to put newly restored tribes on equal footing with existing tribes and, two, to give states and local communities a voice when off-reservation casinos are considered.

Coquille's attempting to avoid the impact of federal law and Interior allows it to do so. It will open the floodgates for gaming far beyond Indian country, throughout the nation. This effect needs to be taken into account during the NEPA process on both national and local levels.

RYAN SAWYER: I would like to call John Huttl with the City of Medford up to speak next.

I am sorry, sir. You can go ahead and have your turn. But, John Huttl, if you could make your way up to the front you will be our next speaker. Thank you.

DAN COURTNEY: Good evening. My name is Dan Courtney. I am the chairman for Cow Creek Band of Umpqua Tribe of Indians and the head of the Cow Creek Tribal Nation.

I am asking that the EIS should consider whether the project should be subject to the two-

part determination process. Section 2719 (a) of the IGRA prohibits gaming unless a tribe can meet one of two exceptions: First is the two-part determination process which requires, one, consultation with state and local officials and nearby Indian tribes and, two, a determination that the gaming operation will be in the best interests of everyone involved including the surrounding community. In addition, it requires governor -- approval from the governor.

Second is the restored lands exception which requires if a tribe is already gaming on other lands that a tribe's Restoration Act authorizes the taking of subject lands into trust.

Coquille's Restoration Act states that, one, the secretary shall accept any real property located in Coos and Curry counties but not exceed 1,000 acres into trust.

And two, the secretary may accept any additional acreage in the tribe's service area pursuant to authority under the Indian Reorganization Act, or the IRA. Because of the IRA -- because the IRA authorizes a second type of trust acquisition, not Coquille's Restoration Act itself, the restored lands exception does not apply to these types of acquisitions.

Because Coquille is already gaming on other lands, if it wishes to take lands into trust it must go through the two-part determination process. This process takes into account the effect that the project will have on local community and other Indian tribes and requires the state's blessing.

This is the process that all other tribes must go through when taking off-reservation land into trust. It puts Coquille on par with all other tribes which is what congress intended.

Indeed, without consulting with tribal governments that are potentially affected by the proposed actions throughout the EIS process, especially regarding alternatives, BIA is likely breaching a trust and judiciary duty of those tribes.

The EIS should take this into account also. And along these same lines the EIS should consider an alternative site for the proposed gaming establishment.

Thank you.

JOHN HUTTL: Trying to avoid the echo which seems inescapable.

Dr. Howerton, thank you for coming down to

Medford. I am John Huttl on behalf of the City of Medford. Our City Council has a prior scheduled meeting this evening. So all of the elected officials for this city are tied up, and I speak on their behalf.

We have submitted two documents in the record this evening. The first document was a request for an additional 60 days beyond the deadline for written comments to submit additional written comments. And it also asks for recognition as a cooperating agency and just, for people listening, asking for a cooperating agency isn't an indication of whether the City of Medford supports or otherwise opposes the application. It's a technical term of art.

Also then, we have submitted another document which indicates our opposition to the process that the Coquilles have outlined for you to analyze their fee-to-trust application.

Those are in our written comments, and, again, they espouse -- the City of Medford espouses the two-part determination under 25 USC Section 2719 sub (b) sub (1) sub (a), and I won't go into all of that.

Second, we heard that this is the

beginning of a process, but for the city the process began years ago, and in 2013 we held our own town hall meetings and took comments for us to respond to the northwest director on the fee-to-trust application.

And so what we have done is we have incorporated the city council resolution 2013-68 that we submitted in the fee-to-trust application, and we are resubmitting that in the NEPA process.

That resolution by the city council opposed the project because we couldn't support it with the information that we had.

And in that resolution and some of the analysis in it our understanding was supported by the county. You have heard from Doug Breidenthal this evening. It was also supported by the governor and multiple elected state officials of Oregon as well as some of our federal elected officials, and we have no information at this point that any of those elected officials have changed their position which essentially questioned the process and the determinations by the Coquilles.

So those are the comments from the City of Medford, and we reserve the right to submit additional written comments.

Thank you for your time, and thank you for coming down to Medford today.

ANDREA DAVIS: Thank you for your time. I appreciate it. My name is Andrea Davis, and I am a Cow Creek tribal member, and I also am the director of the human services department for the tribe.

I work closely with our elders program, our energy assistance program, our tribal food bank, our safety program, our child care program, and our project warm for shoes and coats program.

All of these programs rely heavily on revenues generated by Seven Feathers Casino and Resort in Canyonville, Oregon.

It is my understanding that if you were to approve a casino in Medford for the Coquille Tribe Seven Feathers would lose 50 percent of its revenue. Such a steep decrease in revenues would severely reduce the important service my tribe provides to our children, elders, employees and other members. Many of our tribal members will have nowhere else to turn for the help the tribe is currently providing for them.

Your decision regarding the Medford casino will not only impact the next few generations, the next seven generations, but it will impact all

future generations of my tribe. Please decide against the Medford casino. The Coquille should not benefit from our loss.

Thank you.

BARBARA BARNES: Good evening. My name is Barbara Barnes. I have lived in Jackson County since 1971. I am also a retired case manager from Jackson County Mental Health. I worked there from 1991 until 2011.

I believe the gaming facility proposed by the Coquille Tribe in the location they propose would be very detrimental to the City of Medford. I base this decision, this comment, on the fact that my work at Jackson County Mental Health -- in my work I attended several conferences on problem gambling, and I saw firsthand the ravages of problem gambling.

Research quoted recently in a series published in the Oregonian beginning in November 2013 and research I have read elsewhere has established that revenue from video poker and video slots comes from a very small proportion of the population, and most of these players are problem gamblers.

Problem gambling as described by mental

health professionals is a very serious addiction resulting in bankruptcy, divorce, criminal activity and suicide.

A study quoted in the Oregonian by MIT -- a study undertaken by MIT established the link between video slots and compulsive gambling.

As I understand the nature of the proposed gaming facility, the one inside the City of Medford, it will only offer video, poker and video slots similar to a very large Purple Parrot.

This will not be the type of casino that one expects a tribe to establish with entertainment and fine dining, where you go for things other than just gambling. This is a place where people will go to gamble.

This link with the location of the proposed casino near one of Jackson County's primary employers, Harry & David's and practically next door to the popular shopping destination of Walmart is cynical in the extreme.

The number of jobs created cannot possibly offset the harm done by encouraging hard working people to blow their pay checks in the vain hope of winning.

Thank you.

GARY LAKE: Good evening. Thank you for being here. My name is Gary Lake. I am a past councilman for the Karuk Tribe, and I am also past vice-chairman of the Shasta Nation.

I heard the Coquilles speak tonight, promises from the government. I heard the tribe speak of a service area. I heard the Coquille Tribe speak of meeting the needs of their people through gambling.

The Coquille Tribe is 186 miles away. What they are attempting is nothing short of reservation shopping. They say they have no intent to take away from the community. Tonight not once did I hear them speak about the Shasta people. I didn't hear about them helping the Shasta people in their efforts for their recognition and reinstatement process.

The Shasta is the rightful people, the natives to this land. This in my opinion -- this is discrimination of the Shasta culture through soft genocidal practices for profit. This is one tribe profit tearing off the demise of another tribe.

The Shasta's customs and cultures are extremely important to this region. The Shasta people's customs and cultures are a significant

factor in the environmental practices in management of the lands within this region.

This endeavor socioeconomically impacts adversely not only the Shasta people and the people of this community but the Cow Creek and even the Karuk Tribe. In my opinion as well as the majority of the Shasta people, it is smoke and mirrors and it's for profit only.

Thank you. I hope that it is opposed.

RYAN SAWYER: I have the next five speakers: Kelly Coates, Jesse Plueard Jose Zamara, Bill Mansfield, and Rob Taylor.

KELLY COATES: Hello. Thank you for being here tonight.

My name is Kelly Coates. I have a Bachelor's degree in aquatic wildlife biology and a Master's degree in organismal biology and ecology.

I have concerns regarding the potential significant impacts to land, water quality, air quality, biological and cultural resources from the proposed Medford casino.

I respectfully request that the BIA take into consideration the following concerns in regard to the preparation of the EIS:

An increase in impermeable surfaces and

subsequent storm water runoff on the proposed 2.4 acre fee-to-trust lands as well as adjacent fee lands that would not be analyzed in the EIS; impacts to water quality in Bear Creek from storm water runoff.

These impacts include increased levels of copper and other heavy metals, sediment, oil, grease, and toxic chemicals from increased motor vehicle traffic, pesticides and nutrients from lawns and landscaping, and viruses, bacteria and nutrients from septic systems; impacts to air quality from increased motor vehicle traffic and casino facilities and associated human health risks; impacts to biological resources including ESA listed Southern Oregon/Northern California coast Coho salmon as well as fall Chinook, summer and winter steelhead and Pacific lamprey that use Bear Creek for spawning, rearing and migration; impacts to lottery dollars that fund the Oregon Watershed Enhancement Board and ultimately stream restoration work across the state.

I also have concerns regarding the scope of the project and respectfully request that the BIA consider the environmental impacts from all of the connected actions which would occur on the adjacent

fee land.

These are just a few of the possible environmental impacts from the proposed casino project.

Thank you for your time.

JESSE PLUEARD: Good evening. My name is Jesse Plueard, and I am a lifelong resident of Oregon. I am also an archeologist. I completed my Bachelor's degree at Southern Oregon University in Ashland, and I will be receiving my Master's degree from the University of Oregon this spring.

I have been working in the cultural resource management field in Southern Oregon for over 15 years. As Southern Oregonians, we have a cultural heritage that is rich with the earliest inhabitants and their traditional life ways, pioneer settlement and gold mining activities, 20th century architectural practices and World War II era military facilities. And the items and places associated with these activities comprise Southern Oregon significant historic properties and cultural resources.

As a part of the NEPA process, the BIA as the lead federal agency has the responsibility to take into account the proposed Medford casino's

impact to cultural resources.

Furthermore, Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR 800, require that any federally-assisted undertaking such as this one take into account the project's potential to impact significant historic properties.

The Section 106 process seeks to accommodate historic reservation concerns through consultation with other parties with an interest in the effects of the undertakings on historic properties. The goal of consultation is to identify historic properties' potential to affect and assess its effects and seek ways to avoid, minimize or mitigate adverse effects on historic properties.

So, in accordance with federal regulations, I ask that the BIA initiate meaningful consultation with interested parties including the Oregon State Historic Preservation Office, interested Indian tribes, local historical societies and other members of the interested public.

The consultation must seek to identify historic properties by establishing the area of potential effect not only within the project footprint but also in cultural view sheds. Only

through meaningful consultation will potential impacts to cultural resources be identified.

Thank you.

BILL MANSFIELD: My name is Bill Mansfield. I am a citizen of Medford, and I have been for 57 years.

Commercial gambling is the business of separating people from their money and somehow making them think they are having fun. You folks call it a gaming facility. I think that is an innocuous term. I would prefer calling it just what it is, and that's a gambling establishment.

Actually, gambling, the word gambling, is a misdemeanor because for the operator it's not a gamble at all. It or he wins, and for the customer it's not a gamble at all. He or she almost always losses. They think they are going to win, but they almost never do.

The proponents of gambling picture gambling, commercial gambling, as a happy-go-lucky group with financial security and having fun, and that's probably true in some parts of the industry, but it's not true for everybody. They fail to picture the people that -- a couple different groups that I think about.

One, of course, is the gambling addict whose life is ruined and sometimes results in death because of its addiction that is brought on by this industry.

And a second group that is not talked about much, but I am going to talk about it, is the family man who uses the family milk money to spend on the somehow fantastic idea that he is going to make money for the family, but, of course, he doesn't. He comes home without money and uses the family milk money for his ill-gotten activities.

The State of Oregon is no better. The State of Oregon is responsible for these social ills in large part. The Indians are not the only people who are guilty of bringing on these social ills. I have no grief for the State of Oregon because they carry on the same kind of gambling activities.

Let us not allow this sleazy business to come into the City of Medford with their toxic product.

Thank you much.

ROB TAYLOR: Hello. My name is Rob Taylor. I am from Coos County where flannel is still formal wear.

I have a special aspect because I come

from the county that has a Coquille Indian casino, and I can tell you right now that I am here to speak to defend the free market.

The system is inequitable. It has imbalances in it. Right now we have a Mill Casino that is not paying property taxes. At the point in time when they came in, they promised to pay the City of North Bend a hotel tax, and they reneged on that putting the city in some very financial hard straits.

But it's not the fault of the Coquilles. It's the fault of the system that allows them to get away with breaking a contract and not being bound by that contract, and that is the fault of the system that we have created.

I am one of the gentlemen who stopped one of the largest wetland expansions on the West Coast, the Bandon mosquito preserve as we like to call it. The reason I mention this is that a lot of the profits the Coquille Indian Tribe got, they commingled that money with a lot of money from the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service which is the sister agency of the Bureau of Indian Affairs, and they came out and they tore out huge swaths of my county, completely destroying our

tax base.

And considering the Mill itself doesn't even pay property taxes, I would advise you citizens to ask this question: If the Coquille Indians and the casinos are not paying for all the basic services that all the rest of us are using, then who is paying for it? I can answer that. You, the taxpayers, will be paying for this.

It breaks my heart to see the Shasta Indian Tribe, the Cow Creek Indian Tribe and the Coquilles fighting with each other over a feigned and false process.

Their culture is not steeped in gaming or casinos. They have a rich heritage, and we are perverting that with a system that rewards an industry that promotes vice. As I said, as someone who supports the free market, I would have no problem with this casino, but it is the system itself that is corrupt.

So I ask yourselves to look beyond what you are offering yourself or what the Coquille's might be offering you, but look at what the system has done to all of you tonight as we stand around as our own tribe, some in green, some in yellow, divided, divided communities.

Why? Because there are inequities in the system, and that to you is why I am opposed to this project.

And thank you for your time.

RYAN SAWYER: Is Jose Zamara here?

Okay. I think we are going to break for five minutes to give the stenographer a chance to stretch her legs and so people can use the restroom if they need to. Thanks.

(Recess taken)

RYAN SAWYER: Sue Kupillas, Don Chance, Anne Cook, Joe Cook and Jane Metcalf.

SUE KUPILLAS: I will speak right into it.

RYAN SAWYER: Okay. Can everyone please take a seat. We are getting started.

You can please start your comments. Thank you. If you are ready. Thank you.

SUE KUPILLAS: Do you want to start now?

RYAN SAWYER: Please proceed.

SUE KUPILLAS: Thank you for coming to Jackson County to hear our opinions.

My name is Sue Kupillas, and I am a former Jackson County Commissioner. I was commissioner here for 16 years, and I also deal now with federal forest, NEPA and EIS processes. So I am quite

familiar with the process that you are going through to make this determination. And I am getting feedback. I am sorry. I am trying to get it close.

So issues that I find are exceedingly important with the EIS process is there are several things that we haven't heard a full scope of the intent and inadequate detail to list the listing of the alternatives, and so we can really speak to specific issues. This is very broadly put out there. We would like to hear more detail about the alternatives.

The EIS should require that the project be subject to the two-part determination as the process has some potential unintended consequences that go beyond building a gaming facility in South Medford.

That is, building a project off-reservation has serious consequences on state and national levels. The governor, state officials and local elected officials should have direct and considered input on the consequences of setting this precedent.

So the determination which should be considered is the two-part determination which is more difficult to prove but allows all affected parties to weigh in. If the two-part determination

is used, they must prove that the gaming facility would be in the best interest of the tribe and would not be detrimental to the surrounding community.

The proposal would be detrimental to the surrounding community, I believe, because the loan for the proposal is located not far from a high school and near a youth sports facility used by youth from all over the State of Oregon and in fact in big national baseball tournaments.

So it's not a location that is good for siting this adult facility, and I believe that if they used the two-part determination that they will find that it will have detrimental effects to some of these surrounding institutions that we are so proud of here in Southern Oregon.

One area that the EIS should address is the social and economic impacts to other gaming facilities including employment and revenues. That would include the facilities operated by the Karuk and Cow Creek tribes.

So is that my three minutes? I will wrap up my comments.

So I believe that the social and economic impacts not only to the surrounding areas and to the community and to the other tribes should be taken

into consideration, and I certainly believe that the two-part process allows for state and local officials to weigh in.

I can't conceive that --

RYAN SAWYER: Ma'am, if you could please wrap up your comments and observe the time limit.

You will be given an additional three minutes to speak at the end if you would like.

SUE KUPILLAS: Thank you. Thank you very much.

DON CHANCE: Hi. Name is Don Chance. I am from Bandon/Coos Bay area.

Unlike most of the people in this room, I worked for the Coquille Tribe. I am the guy that was hired to oversee the construction and then operate Heritage Place, the assisted living facility in Bandon, Oregon.

I enjoyed it. It was a great project, but I saw the tribe change and change significantly. I remember when Stan Speaks came in a year into the operation and saying how proud he was that the Coquille Tribe would be the first tribe in the northwest and maybe the United States to actually be a self-sufficient tribe.

They are still not self-sufficient. The

tribe has a very bad habit of not honoring the contracts and commitments it makes in my community.

Let me quote some cases. The first one is Chance v. Coquille Indian Tribe. I had a contract with the tribe to manage Heritage Place. I wrote the contract in accordance with the BIA regulations. It had a waiver of immunity for enforcement of the contract, and, low and behold, none of those contracts could be enforced. The tribe thought that was funny that they didn't have to honor the contract.

The second one is the Mill Hotel and Casino. I remember Ed Metcalf and the tribal council saying, as they did tonight, that they just want to be part of the community and pay their fair share.

They agreed to pay a motel tax of $15 a night. They stopped paying. It now -- it never was clear on why they did it, but after it was stopped our paper printed in the front page of the paper this title: "The word of the Coquille Indian Tribe is not worth the paper it is printed on."

Even now they are proceeding with going against the contract they signed with the governor to have one casino for each tribe. They don't seem

to understand that at some point they need to honor their commitments.

The group that I look to to force them to honor their commitments and the contracts they sign is the Bureau of Indian Affairs, and you guys need to step up, and you need to do that.

What is going to happen if you continue to allow the tribe to do what they are doing is everybody on this West Coast will become antitribe, and I don't want that. There are too many good tribes out there that are doing really positive good things, and some of the people that are helping in California and up in other areas of this country are relatives of mine, and I am glad to see those people get educational opportunities and job opportunities.

But don't let people throw out the baby with the bath water because if you do not curtail the tribe from signing contracts and then not abiding by them the American public will grow tired of it, and they will petition their congress who will petition the Department of Interior, and this stuff will stop.

So the two things that I would like to ask you to look at tonight are: One, make the Coquilles live up to what they sign.

And, No. 2, with all of these tribes start means testing these tribes. I read the self-sufficiency plan they wrote. I believed in it. They threw it out the window because they can make a lot more money by just doing what they want.

They take the money, and they hide it in the Setco side of their operation, and they don't have to declare it on the tribal side, and then they sit there with their handout and we the taxpayer pay for a lot of these programs.

So I am asking the BIA to step in, look at these things and do what's right for all the tribes.

Thank you.

ANNE COOK: My name is Anne Cook. I am the executive director of the Coquille Indian Housing Authority. We provide affordable housing opportunities for low income native Americans in the tribal service area which includes Coos, Curry, Douglas, Jackson, and Lane counties. Coquille programs serve all native Americans within that service area, not just Coquille tribal members.

I would like to address the impact that the proposed facility would have on three aspects of the human environment.

One, income from the proposed facility

will expand the Housing Authority's ability to provide housing assistance to low income native Americans within the local area positively impacting local landlords and the local housing market.

Second, a portion of revenue will support nonprofits in the area via increased granting ability through the Coquille Tribal Community Fund that gives back to the communities it serves.

Third, it will contribute to the local economy through jobs. Many may not be aware, but for the last few years the Coquille Indian Housing Authority has ranked in the Oregon business magazines top 100 best nonprofits to work for in the State of Oregon as well as the top 100 green companies to work for in the State of Oregon.

This program measures employee satisfaction with pay, benefits, supervision and other aspects of employment.

Not only did we place in the top 100. We placed in the top 10. In addition we have very little turnover with the Coquille Tribe. In the operation I work for, our shortest term employee has been with us for over six years. Our longest term employee has been with us over 20 years.

In conclusion, the tribe is a good

employer, a responsible steward of natural resources and a good neighbor.

Thank you.

JANE METCALF: Good evening. My name is Jane Metcalf, and I am from Coos Bay, Oregon.

The tribe is a great tribe to work for. I worked for the tribe since 1990 of which almost 24 years, myself and my staff of those 24 years have worked in Jackson County doing client services to our children and families and will continue to do so forever.

I do support the casino for the jobs it will bring and for the positive impact that it will bring on Jackson County.

Thank you.

JOE COOK: Good evening. My name is Joe Cook. I am from Coos Bay, and I run the Bite's On Bate and Tackle Shop in Coos Bay, and I am just here to say that personally in our shop we have derived a great deal of economic benefit working with the Coquille Tribe.

They do an annual derby and purchase prizes and so forth through our shop. In addition to that, they do an annual elders fishing trip, and they hire every guide in the area to guide the folks

on the bay.

And they have brought a great deal of economic benefit to the community, and they spread it out well.

And, in closing, I would say they are and have proven to be a reliable partner for local businesses.

Thank you.

RYAN SAWYER: Okay. The next five speakers: John Michaels, Linda Borum, Anne Batzer, Forrest Lewis, and Jose Coronado.

JOHN MICHAELS: Hello. My name is John Michaels. I am a resident here in Medford. I am not a member of any tribe probably because they have standards. I am a former city council member.

At the time when I was on the City Council, we did have a hearing and heard testimony, and very convincing testimony, that demonstrated that the Coquille Tribe did not have any claim, tribal claim, on the land here in Jackson County, and I won't go into a lot of that, although I do support a lot of the comments that were made earlier about the impacts here in the area.

But what I wanted to talk about is something not really being addressed, and some of

that has to do with the impacts of this reservation shopping will have, not just here in this area, but a decision by BIA in favor of the Coquilles will set a precedent not just around Oregon but around the country, and as such it will set tribe against tribe in a way the white people could never have hoped to have damaged them.

It will set tribe against tribe in court, and it will undo some of the work that some of the bills and congress and things have hoped and have solved and taken care of some of the damage we had done in years past, so undo much that work.

And the worse part is it will be self-inflicted amongst the tribes. We already see that here. We already see two tribes fighting against each other, and it is just going to be -- it is just going to happen all around the country.

And so when you speak of impact, not just here, although there is that impact, all around this country there is a huge impact by allowing this land into trust, and it is in setting a precedent and I urge you not to do that.

Thank you.

LINDA BORUM: Hi. My name is Linda Borum. Closer?

My name is Linda Borum, and I live in Central Point, and I want to thank you for the opportunity to voice my concerns. I will be simple and to the point.

A casino is just what the town of Medford needs, another place for people to gamble away rent, food and retirement money. Entertainment? Lots of booze to while away the time stuffing money into mindless machines. Some will find it irresistible not to go weekly or more.

Let's not forget those driving often in a stooper possibly headed for an onramp on the freeway in the wrong direction.

I am sure a huge electronic messaging board will be part of the decor entrance that will repeatedly flash their advertising on a regular basis. A casino in Medford is not what we need to enhance this area in any way.

Thank you for your time.

ANNE BATZER: Hello. My name is Anne Batzer, and I live here in Jackson County, but I work with the Cow Creek Umpqua Indian Foundation as a program officer.

With the rest of the staff at the foundation, I review grant applications, and then I

visit with local nonprofit organizations that seek the Foundation's support.

The Cow Creek Umpqua Indian Foundation's goals are to support family, advance education, and in recent years, to just make sure that people are fed.

Since the Cow Creek Umpqua Indian Foundation's beginning in 1997, it has awarded more than $15,250,000 to seven counties in Southern Oregon. That's Coos, Deschutes, Douglas, Jackson, Josephine and Lane counties.

Jackson County has received over $2,657,000. When this is amortized it figures out to be $13,025 per month for each of the last 16 years to nonprofit organizations in Jackson County.

Because of my 25 years of working with various nonprofits, I am familiar with the very important services these services provide. The Cow Creek Foundation's ability to support and assist children and families in our region is directly linked to the profits from the Cow Creek's only casino, a class 3 facility, Seven Feathers Casino Resort.

The proposed Coquille class 2 facility would potentially cut in half all profits from Seven

Feathers. This is according to a study by Nathan & Associates, a nationally renowned economic analysis firm.

As you know, class 2 casinos are not asked to give charitably. A very probable scenario could be that nonprofits in Jackson County and throughout southwestern Oregon that our foundation has supported would no longer receive any funding.

This is a really serious matter here in our community. It is a matter that has impactful socioeconomic implications for Medford and for all of the Rogue Valley.

Thank you.

FORREST LEWIS: Good evening. My name is Forrest Lewis, and I will preface my concerns.

For 17 years I have put my life on the line of these citizens as a police officer. I worked with CW.

And, CW, I did vote for you because I knew if you got the elections --

RYAN SAWYER: Excuse me. Could you please address your comments to this table. Thank you.

FORREST LEWIS: Relax.

RYAN SAWYER: Okay. I would just like you to observe the rules that everyone else has been

adhering to.

FORREST LEWIS: Everybody has talked about environmental impact. One concern I have is the human environment. I have seen, because I have been to other cities, where gambling is concerned and how it has gone downhill for the family communities. This community does not need to go that route.

Now, I know you are a federal agency, and of late federal agencies have proven they do not support the 10th Amendment to the constitution, states rights.

We voted against casinos, and yet here you are trying to shove it down our throats.

Thank you.

RYAN SAWYER: Is Jose Coronado here? No? Okay.

The next five speakers: Joe Brenhom, Racquel Summers, Robert Coffan, Yelena hunt, and Tod hunt.

Can the first speaker please approach the podium.

Jose Brenham. Excuse me. Joe.

Raquel Somers? Okay. She must have left.

Robert Coffan?

ROBERT COFFAN: Hello, Dr. Howerton, and I forgot your names. Excuse me.

My name is Robert Coffan. I am a citizen here in Medford. I am not affiliated with any of the tribes. I also own a water resource consulting firm here that I have practiced for many years, and I am also proud to be a grandpi of a three-year-old and a one-year-old in the valley.

I have three issues I wanted to bring up, not knowing we only had three minutes, and I know they are a bit redundant, but I am compelled to bring up the same three, and I am still going to do that.

The first one by far is the most important to me, the issue of this new precedent setting concerns me greatly, and without going into all the other details that have already been very well brought up, I would just like to mention that I don't see ancestral ways here at all. What I see is avarice.

And setting this precedent does extend much further than our Rogue Valley. It extends throughout the entire country, and I know you have heard that before.

The second issue I have, which is also socioeconomic and environmental, is we will have an indirect loss of lottery dollars, and, as you know,

the state the lottery dollars help buttress the state budget, and that goes to a great deal of the environmental work that needs to be done that can't be done any other way, for example, the Oregon Watershed Enhancement Board, and those will be dimensioned significantly.

The third thing I have, and, again, this was in order of importance, is your images don't really show that this facility is located a stone's throw away from Bear Creek and is probably the most urbanized creek outside of the Portland area in our state, but chum salmon, Pacific lamprey and all kinds of other salmonides still use this not just to swim up but to -- lost my train of thought. Thinking about the fish, I guess.

Anyway, their habitat right in the area.

And the issue here is I understand that some of the land that is being considered for parking lots is not going to be thought of in the EIS.

So my question is, or my suggestion is, that the EIS should take a look at the entire portion of property that is going to be used by the facility. All those impervious surfaces which are going to affect runoff and -- there goes my time.

Thank you very much and thanks for coming down to take care of this.

YELENA HUNT: Hi. My name is Yelena Hunt. I am born in Russia. I live in the United States 18 years. We moved from Montana, Livingston 17 years ago.

I live in Medford because Medford is a family city. People in Medford supporting business. They supporting business like Bear Creek. They supporting businesslike Dutch Brothers.

They supporting lots of business, only business taking local people money and bring crimes and make children homeless. We have in Jackson County almost 2,000 children homeless.

The gambling going to take money from children. We have lots of children right now suffering after 80,000 economic down. We need to bring businesses positive, not with negative. 250 jobs tribes going to bring here, they take one little businesses out from our Medford.

More commercial property is going to be aim here. Our local tribes actually live with local people, peace, back to back, protecting together. They never approach. So bowling idea building, negative business in Medford.

Our local tribes don't need to bring aliens in Medford. We need to talk to locals than outside Medford. That's it.

TODD HUNT: Good evening. My name is Todd Hunt. I am a Medford resident here, and I have no affiliation with any of the Indian tribes.

I think many Americans agree that we owe some debt and compensation to the Indian tribes in America, but I believe that it is a sad commentary that tribes here elected to syphon the hard-earned wages from many local citizens to make their living and often from those who can least afford it.

That being said, we do allow gambling in the State of Oregon. If tribes need to establish and run casinos to fund tribal activities, they should look to their own reservation lands.

Each tribe, not only to speak the territory and needs of neighboring tribes, but to respect the interest of their neighboring nontribal Oregon citizens.

I appreciate the need for tribes to generate revenue for their nations, but we should not have to sacrifice our community for the benefit of the Coquille Tribe.

Statistics show that crime rates increase

10 percent once a casino moves into a city. As the tribe is a sovereign nation, the State of Oregon and the City of Medford have no jurisdiction nor authority to tack or regulate the activities of the tribe, and yet we as a community must be saddled with the cost of the fallout from criminal activities precipitated from their operations.

We are not Las Vegas, and we did not want to be. Please don't let our beautiful city deteriorate into a Potterville.

Thank you.

RYAN SAWYER: Terry Hopkins, Janet Shalda, Rebecca Ripsoul, Laura Grosz, and Diane Lorbee.

Did I really butcher those names, or are those speakers no longer here?

I will try it again, Terry Hopkins, Janet Shalda, Rebecca Ripsoul, Laura Grosz and Diane Lorbee.

Okay. Next five speakers.

Roger Kelm, Kaitlyn Lee. Gordan Challstrom, Elana Hammer.

ROGER KELM: Is there anybody here from the Takelma tribe?

My name is Roger Kelm. I am a U.S. Navy veteran, and since nobody here from the Takelma

Tribe is represented, I will speak for them.

I am a friend of the lower Klamath, the Umpqua, the Shasta, the upper Klamath.

This land was originally settled many eons ago by the Takelma Tribe, the Takelma of the lower Rogue, the Takelma of the middle Rogue and the Umatilla of the headwaters of the Rogue.

Okay? Titan Nokua was known as Table Rock, and in 1827 the Hudson Bay Company led by Peter Skenogdon came to this area to trade for pelts. In the 1850s gold seekers come to the Josephine/Jackson County area, just Southern Oregon.

And 1851 wars between the natives and the gold seekers ensued, and at that time the Oregon Volunteer Army suppressed the war, and the result was the Takelma Tribe was given a reservation on their own ancestral land at what was then ancestral hold. We know it as Rogue River today.

So what I am saying is from Smith Hill down to the Siskiyous, from the headwaters of the Rogue River to the ocean was Takelma Tribe area. Okay?

The Umpquas have been enemies of the Takelmas for a long time, ever since the 1851 wars and the breaking of the treaty when the Oregon

California railroad came through the reservation, and the Takelmas stood up. They were suppressed. They were assembled at Table Rock and marched through Grand Ronde where they fought with the other tribes, and then they were marched to Siletz.

This is not Umpqua land. This is not Coquille land. We are friends with the Shastas, with the Klamaths. This is not right. It's not right. One casino per reservation.

The reservation is Takelma, and it's -- and Rogue River and just because the white broke the treaty they were suppressed. The facts are the 27 tribes of Siletz and holds us. The Umpqua Joe was a scout.

RYAN SAWYER: Sir, can you please observe the time limit and wrap up your comments.

ROGER KELM: He was given a very small portion of land on the lower Rogue.

Thank you.

KAITLYN LEE: Sorry. I am a little sick, if I cough.

But my name is Kaitlyn Lee, and I am a Cow Creek Band of Umpqua Indian tribal member. I have been a resident of the Rogue Valley my whole life, and I am currently a student of Southern Oregon

University. I have been as SOU three years, and this coming spring I plan on graduating, and I plan to continue my education to become a social worker.

I have been told that the Coquille Indian Tribe wants to put a casino in Medford, Oregon, and that's why we are here to discuss that today.

I ask you today to please consider how the Coquille casino will impact the services my tribe provides to its members. My tribe provides many essential services to our elders, to our youth, and to our general membership.

I am one of the several tribal members who have benefitted greatly from the educational support and services that my tribe provides through many programs, a few of the many such as the youth education program, higher education and college and universities and vocational education.

Our experts have said that the Coquille Medford casino would reduce the revenue to Seven Feathers, our facility in Canyonville, by 50 percent which other people spoke upon. This reduction in revenue will severely reduce the benefits allowed or provided. This will also cut jobs to our casino. My tribe currently employs over 1,070 tribal and nontribal individuals.

Almost 500 of these people will be at risk of losing their jobs if you allow the Coquille to build a casino in Medford. Students like myself will also encounter significant hardships as the tribe reduces its funding to educational services.

The reduction in services will impact more than just myself. My communities here in the Rogue Valley will also suffer economically because students like me will no longer be able to pay as much for housing, food, transportation and other services that are an important part of our economy here in Rogue Valley. So I ask you today to disapprove of the Medford casino.

Thank you guys so much.

ELANA HAMMER: Good evening. My name is Elana Hammer. I am a local Jackson County resident, more importantly an American. My credentials are as follows: A Bachelor's in criminal law, a Master's in criminal law, and I am currently working on my doctorate.

I ask you to really consider what floodgates you are doing and opening if you allow this to happen, and it's not just in consideration to tribes, but federal law.

Consider what could happen if foreign

investors operate off the same premise that the tribe wants to operate off of. It could also become a national security issue.

I don't have a bunch of fancy figures to give you except that I am a private citizen that really cares about where I live. So please consider where you may be going with this.

Thank you.

GORDON CHALLSTROM: Good evening. My name is Gordon Challstrom. I have been a resident of Medford for 21 years. I also lived in Reno, Nevada for 21 years. I have seen the damage that casinos have done.

I want to speak more here on the economic issues. The folks at Jackson County have been under great stress and strain for the past 30 years because of the dysfunctional federal government and their management of 70 percent of Jackson County.

Medford and Jackson County residents have seen the latest Coquille Indian tribes media campaign: Medford wins. Already the city and county have lost revenue related to property taxes. Tribes do not pay property taxes or income taxes, and their land is seated to the tribal nation.

This casino will create over 200 low-wage

jobs that will further burden taxpayers and more safety net expenditures like food stamps and welfare. Taxpayers will foot the bill for increased crime drawn to casinos and rehabilitation costs for gambling addiction. According to state figures, Oregon has approximately 80,000 citizens with gambling problems.

Let's be clear here. The real winner will be the Coquille Indian Tribe at the expense of Jackson County taxpayers. Who will be footing the bill to pay for the infrastructure costs associated with the casino, which include traffic upgrades, sewer plant upgrades and the social costs I just listed. Think hard and long about this. I don't think this county can afford it.

Thank you.

RYAN SAWYER: Are there any additional people in the crowd that would like to speak that have not yet given a comment?

Are there any people that would like to expand on their initial comment and be given a second opportunity?

Did I see a hand?

ROGER KELM: I would like to expand on what I said.

The native people of the United States were not even citizens until 1927 with the Citizenship Act, and with the Native Determination Act of 1988 it states that only the casinos that they build for the natives are to be on reservation land.

The Umpqua has theirs. The Cow Creek the Coquilles have theirs in North Bend. The Takelmas are entitled to have theirs in Rogue River.

If we start breaking the rules now, where does it end? How many casinos can a tribe have? The Umpqua is sending money to Jackson and Josephine County. The Umpqua, the native citizens program I haven't seen anything from the Coquilles.

How much helps the dependents of Gold Beach? How much helps the Takelma people of the middle Rogue and upper Rogue? None, none that I see. I see lies. I have had this age and eagle feather ceremony. So I am speaking the truth.

Consider what you are setting a precedent for. If you let them establish more than one casino, how many do you have? How many more?

I was married to a Choctaw. My children are quarter Choctaw. Consider the injustice that has been done and consider the injustice that it

would have. Thank you.

RYAN SAWYER: Is there anyone else wishing to expand on their comment?

I think this wraps up the hearing tonight. Would you like any closing comments?

DR. HOWERTON: BJ Howerton.

I just want to thank everybody for staying and providing comments. Appreciate your time, and we appreciate your time to sit here and let everybody speak and respect everybody. We appreciate that.

Thank you.

RYAN SAWYER: Thank you.

(The hearing concluded at 7:44 p.m.)

CERTIFICATE

I, Michele J. Lucas, certify that the foregoing was reported and reduced to written form; that the transcript prepared by me or under my direction, is a true and accurate record of same to the best of my knowledge and ability; that there is no relation nor employment by any attorney or counsel employed by the parties hereto, nor financial or otherwise interest in the action filed or outcome.

IN WITNESS HEREOF, I have hereunto set my hand this 12th day of February , 2015 .

Professional Court Reporter

APPENDIX F

COOPERATING AGENCY CORRESPONDENCE

COOPERATING AGENCY INVITATION LETTERS

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

Honorable Chairperson, Ms. Brenda Meade
Coquille Indian Tribe
3050 Tremont Street
North Bend, OR 97459

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Ms. Meade:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the Coquille Indian Tribe to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

City of Medford
Attn: Eric Swanson, City Manager
411 West 8th St.
Medford, OR 97501

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. Swanson:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the City of Medford to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

U.S. Environmental Protection Agency - Region 10
Attn: Dennis McLerran, Regional Administrator
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. McLerran:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the U.S. Environmental Protection Agency to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

Board of Commissioners of Jackson County
Attn: Doug Breidenthal, Chair
Jackson County Courthouse Room 214
10 South Oakdale
Medford, OR 97501

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. Breidenthal:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the Board of Commissioners of Jackson County to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

National Indian Gaming Commission, Portland Regional Office
Attn: Mark Philips, Region Director
Gus Solomon Building, Suite 212
620 SW Main Street
Portland, OR 97205

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. Philips:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the National Indian Gaming Commission to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

Oregon State Department of Transportation
Attn: Matthew Garrett, Director
355 Capitol Street NE, MS 11
Salem, OR 97301-3871

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. Garrett:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the Oregon State Department of Transportation to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

02/26/2015

In Reply Refer To:
Division of Environmental Services

Rogue Valley Sewer Agency
Attn: Robert Dunn, Chairman
138 West Vilas Road
Central Point, OR 97502

Subject: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS

Dear Mr. Dunn:

The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. The proposed 2.4-acre project site is located within the City of Medford, Oregon adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane. The proposed project would transfer approximately 2.4 acres of land from fee to trust status, upon which the Tribe would renovate an existing bowling alley to convert it into a gaming facility with a bar/deli and other supporting facilities. Adjacent fee land would be used for parking.

The BIA is serving as the Lead Agency for NEPA compliance. At this time we are extending an invitation to the Rogue Valley Sewer Agency to participate in the EIS process as a Cooperating Agency. Please inform this office by March 20, 2015 of your willingness to accept this role.

If you have any questions or need additional information, please contact Dr. B.J. Howerton, Environmental Protection Specialist, at (503) 231-6749.

Sincerely,

Stanley Speaks
Regional Director

COOPERATING AGENCY RESPONSES

JACKSON COUNTY
Oregon

Board of Commissioners

Rick Dyer (541) 774-6118
Doug Breidenthal (541) 774-6119
Colleen Roberts (541) 774-6117
Fax: (541) 774-6705

10 South Oakdale, Room 214
Medford, Oregon 97501

March 11, 2015

Stanley Speaks, Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, OR 97232-4169

Re: National Environmental Policy Act (NEPA) Cooperating Agency Invitation – Coquille Fee-to Trust and Gaming Facility Environmental Impact Study (EIS)

Dear Mr. Speaks,

In response to your letter, Jackson County wishes to accept your invitation to serve as a Cooperating Agency in the Environmental Impact Study (EIS) process for the above referenced project.

Please forward a copy of the proposed Cooperating Agency Agreement applicable to this project. Jackson County looks forward to its cooperation with the Bureau of Indian Affairs during the process for this project.

Sincerely,

Doug Breidenthal, Chair
Board of Commissioners

DB/ld

cc: Dr. B.J. Howerton, Environmental Protection Specialist

I:\Boc\Correspondence\2015_03_11_BIA.Docx

OFFICE OF
THE CITY MAYOR

CITY OF MEDFORD
411 WEST 8TH STREET
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2000
FAX: (541) 618-1700
E-mail: mayor@ci.medford.or.us

March 12, 2015

VIA OVERNIGHT MAIL

Stanley Speaks
Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, OR 97232-4169

Re: **NEPA Cooperating Agency Invitation -- Coquille Fee-to-Trust and Gaming Facility EIS**

Dear Mr. Speaks:

In response to BIA's February 26, 2015 invitation extended to the City of Medford to participate in the EIS process as a Cooperating Agency, the City of Medford accepts this role and would be pleased to participate in this process.

Thank you for inviting the City to participate.

Very truly yours,

Gary H. Wheeler
Mayor, City of Medford

March 13, 2015

United States Department of Interior
Bureau of Indian Affairs
Attn: Mr. Stanley Speaks
911 NE 11th Avenue
Portland, Oregon 97232-4169

Subject: NEPA Cooperating Agency Invitation

Dear Mr. Speaks,

I have received your invitation for the National Indian Gaming Commission (NIGC) to participate as a cooperating agency in the Coquille Tribe Fee-to-Trust and Gaming Facility EIS process.

After review of 40 C.F.R. §1508.5, the NIGC believes it does not meet the definition of a "Cooperating Agency". Gaming is not currently occurring on the proposed land. Also, the Coquille Tribe has not notified the NIGC of its intent to open a gaming operation at the proposed location nor does NIGC have a management contract under review relating to the proposed facility. The Indian Gaming Regulatory Act (IGRA) does not grant NIGC authority over any decisions to take land into trust. Therefore, NIGC declines to participate in the Coquille Tribe Fee-to-Trust and Gaming Facility EIS process as a cooperating agency.

Thank-you for considering NIGC as a cooperating agency and for providing notification of the pending EIS.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Mark D. Phillips
Portland Region Director

15RD-0379
RECEIVED
MAR 18 2015
BUREAU OF INDIAN AFFAIRS
NORTHWEST REGIONAL OFFICE
OFFICE OF THE REGIONAL DIRECTOR

CC: Douglas Hatfield, NIGC Director of Compliance
Christinia Thomas, NIGC Acting Chief of Staff

Oregon Department of Transportation
Region 3, District 8
100 Antelope Road
White City, OR 97503
(541) 774-6316
FAX (541 774-6397

Oregon

Kate Brown, Governor

March 20, 2015

BJ HOWERTON, ENVIRONMENTAL SERVICES MANAGER
BUREAU OF INDIAN AFFAIRS
NORTHWEST REGIONAL OFFICE
911 NE 11TH AVENUE
PORTLAND, OR 97232-4169

Re: NEPA Cooperating Agency Invitation – Coquille Fee-to-Trust and Gaming Facility EIS.

Dear Mr. Howerton,

Thank you for the invitation to participate as a Cooperating Agency in the process to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to analyze the environmental consequences of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4 acre fee-to-trust transfer and gaming facility project and reasonable range of alternatives. ODOT would like to accept this invitation.

You may contact me at 541-774-6399 if you have any further questions or require additional information.
Thank you,

Don Morehouse
Senior Transportation Planner, Development Review

Cc: Mike Baker

From: Howerton, B [mailto:bj.howerton@bia.gov]
Sent: Tuesday, March 24, 2015 8:17 AM
To: Carl Tappert
Cc: Ryan Lee Sawyer; David Zweig, P.E.; Bibiana Alvarez
Subject: Re: FW: NEPA Cooperating Agency Invitation

Mr. Tappert,

Thank you for considering BIA's request.

Although Rogue Valley Sewer Services will not be a Cooperating Agency, BIA will continue to keep you informed about the proposed project.

If you have any questions please give me a call at (503) 231-6749.

Best Regards,

BJ Howerton

On Tue, Mar 24, 2015 at 7:42 AM, Carl Tappert <ctappert@rvss.us> wrote:

From: Carl Tappert
Sent: Tuesday, March 24, 2015 7:20 AM
To: 'bjhowerton@bia.gov'
Subject: FW: NEPA Cooperating Agency Invitation

Rogue Valley Sewer Services has declined the invitation to participate in the EIS process for the Coquille Fee-to Trust and Gaming Facility EIS.

Carl Tappert, PE

District Manager

Rogue Valley Sewer Services

138 West Vilas Road

Central Point, OR 97502

541-664-6300

--
Dr. BJ Howerton, MBA
Northwest Regional Office
Environmental Services Mgr.
911 N.E. 11th Avenue
Portland, OR 97232-4169

Telephone: (503) 231-6749
Fax: (503) 231-2275

E-mail: bj.howerton@bia.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

March 25, 2015

Mr. Stanley Speaks, Regional Director
DOI Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

Dear Mr. Speaks:

Thank you for extending an invitation to the Environmental Protection Agency, Region 10 on February 26, 2015, to become a cooperating agency for the proposed 2.4-acre fee-to-trust transfer and gaming facility project proposed by the Coquille Indian Tribe (EPA Project Number 15-008-BIA). The EPA declines to participate as a formal cooperating agency for this project. For the EPA, participation as a formal cooperating agency generally commands a high priority and commitment of Regional program staff resources, which are above and beyond early and routine involvement. In this case, we do not have sufficient resources to support a higher level of involvement. However, we will comment at the appropriate times during EIS development and review. We sent scoping comments on February 17, 2015, and we will keep an eye out for the EIS when it is ready for review.

Thank you for the opportunity to participate. Please feel free to contact me at 206-553-1601 or reichgott.christine@epa.gov if you have questions.

Sincerely,

Christine B. Reichgott

Christine B. Reichgott, Manager
Environmental Review and Sediment Management Unit

15RD-0413
RECEIVED
MAR 27 2015
BUREAU OF INDIAN AFFAIRS
NORTHWEST REGIONAL OFFICE
OFFICE OF THE REGIONAL DIRECTOR