

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

Dee Wilson
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 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+

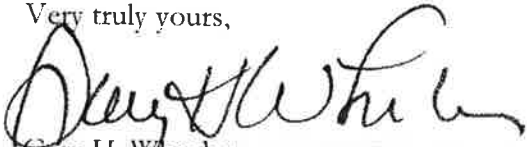
acres of golf course land. For a Class III establishment, the Tribe represented that it did not now have plans for a Class III establishment, but that things may change in the future. The City has received testimony that it is common for Class III establishments to begin as Class II facilities. Based 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 request information as a cooperating agency and that we 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 Huttel, 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

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 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

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

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

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

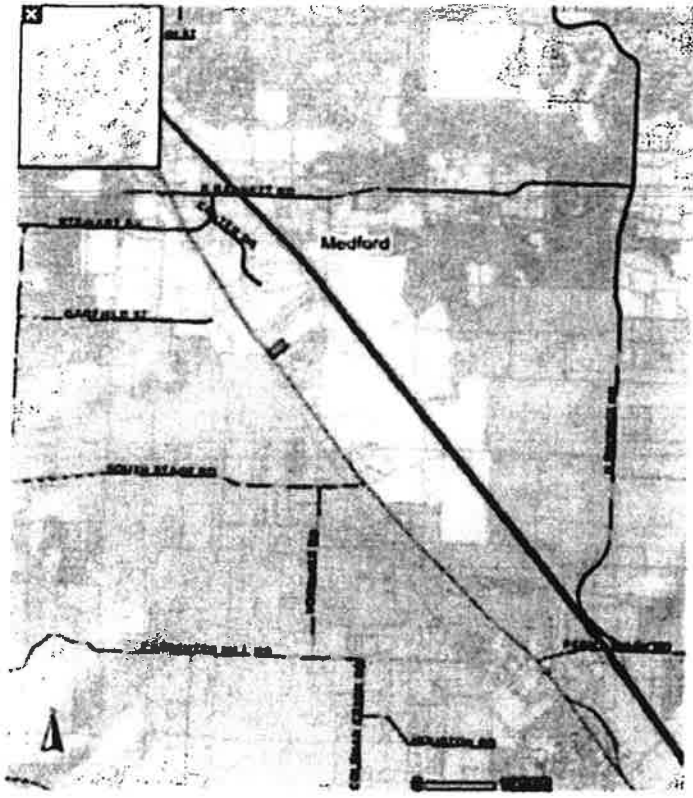
1583 - 013067 - 1830380

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EXHIBIT I

[Home](#)
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Property Data Online

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ASSESSMENT & PLANNING DETAILS

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[Zoom map to this taxlot](#)
[View Google Yahoo](#)

Map & TaxLot	371W37C-4201 pg
Tax Code	4-07
Acres	2.42
Zone	G-8
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	Assessed
Sub Type	INDMNL
Owner	SOUTHERN OREGON PROPERTY HOLDINGS LLC
Site Address	2375 SOUTH PACIFIC HWY PHOENIX-TALENT,COUNTY, OR
Mailing Address	SOUTHERN OREGON PROPERTY HOLDINGS LLC 1159 MIRA MAR AVE MEDFORD OR, 97504
Taxlot Acres	2.42
Building # 1	0 23312 SqFt Bowling Alley

EXHIBIT 2