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Bureau of Indian Affairs
Dr. BJ Howerton
Environmental Protection Specialist
Northwest Regional Office
911 NE 11th Avenue
Portland, OR 97232-4169

Re: *Coquille Casino Project - Comments on DEIS administrative draft*

Dear Dr. Howerton:

The City of Medford provides these comments on the Bureau of Indian Affairs' (BIA) administrative draft of the Draft Environmental Impact Statement (DEIS) for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project (Project). BIA has given the City only three weeks to provide comments on the DEIS. That is not a sufficient period of time for the City to review the DEIS. Accordingly, the City reserves the right to provide additional comments on the DEIS.

Although Medford has previously provided comments to BIA regarding the appropriate scope of the DEIS, the Alternatives Evaluation Report, and the proposed trip generation rates for the traffic engineering analysis, the DEIS does not incorporate the City's recommendations. Nor does the DEIS indicate why BIA rejected the City's comments. Accordingly, we incorporate our comments of [DATES] here by reference.

Discussion

The following comments are divided into two categories: (1) generalized comments regarding structural components of the DEIS; and (2) comments on specific issues.

A. Concerns regarding the structural components of the EIS.

1. The consideration of alternatives is inadequate.

In particular, the DEIS fails to identify the regulatory authority under which gaming would be authorized on the Medford site. As the City previously commented, the applicable authority directly affects the consideration of alternatives and must be addressed in the DEIS:

- Under the Indian Gaming Regulatory Act (IGRA), the restored lands exception does not apply to the Medford site. Thus, the only avenue for gaming at the proposed location is the two-part process, which requires a determination that gaming at the proposed location is both in the best interest of the Tribe and its members, and not detrimental to the surrounding community.
 - In order to properly define a reasonable range of alternatives, the Purpose and Need must consider the statutory requirements of a two-part determination, as well as what is required in the implementing regulations.
 - A reasonable range of alternatives must include alternatives (both gaming and non-gaming) outside of the Medford area.
- If BIA were to conclude that restored lands exception applies, that exception does not allow a tribe to maintain more than one gaming facility on restored lands.
 - A reasonable range of alternatives must therefore reflect that only one gaming facility on restored lands is allowed and consider the effects of closure of the Tribe's existing property.
 - It must also include other alternatives located within the Tribe's service area—the area on which the Tribe has predicated its restored lands request.

In addition to these concerns, the DEIS fails to identify a range of reasonable alternatives sufficient to meet NEPA requirements for other reasons.

First, Alternatives A and B differ only with respect to whether the Medford Water Commission (MWC) and Rogue Valley Sewer Services (RVSS) can and will provide potable and waste water services. Under Alternative A, the preferred alternative, MWC and RVSS would provide potable water and wastewater treatment and disposal services to the Medford Site. Under Alternative B, MWC and RVSS would not. If MWC and RVSS will not provide these services, the preferred alternative is not a reasonable alternative.

Similarly, Alternative C (the Phoenix Site) depends on water services being extended to the site by MWC. The Phoenix Site, however, lies outside the Urban Growth Boundary (UGB) of the City of Phoenix. MWC Resolution 1058 prohibits the extension of services outside of the UGB.¹ Therefore, MWC cannot provide water services to the Phoenix Site and it is not a viable/reasonable Alternative.

¹ DEIS App. B (Water and Wastewater Feasibility Study), at 3-3.

If MWC is unable or unwilling to provide services to the Medford Site, and it cannot provide water services to the Phoenix site as a matter of law, the only theoretically viable alternative is Alternative B.² Consideration of a single action alternative violates NEPA.

Furthermore, although BIA treats Alternative B as “technically feasible,” the DEIS suggests that Alternative B is unworkable. Given the extremely poor soil conditions presented by the underlying Coker Clay,³ onsite wastewater disposal by subsurface drainage “would appear to present significant design challenges,” potentially including groundwater diversion (groundwater pumping and discharge to surface waters to create unsaturated zones beneath the subsurface drainage system) and a considerable amount of native soil displacement (replacement of the underlying Coker Clay with more permeable material).⁴ The proximity of Alternative B to Bear Creek, however, suggests that groundwater diversion may not be possible.⁵ If that is correct, onsite wastewater disposal may not be a viable alternative. These issues must be fully evaluated in the DEIS.

In addition, the DEIS does not consider the impacts of the discharge of diverted groundwater to surface waters or native soil displacement. Nor does it consider the difference in construction costs between Alternatives A and B. Pursuant to 40 C.F.R. § 1502.22, the DEIS must address the missing information to evaluate Alternative B.

2. The mitigation discussion is inadequate.

The City previously commented that BIA must address the enforceability of proposed mitigation measures and project design parameters before concluding that impacts will be insignificant on the basis of those measures and parameters. The DEIS concludes, for example, that based on mitigation measures, adverse impacts will be less than significant for: Land Use Compatibility; Noise; Aesthetics; Socioeconomic Conditions; Public Services; Indirect and Growth-Inducing Effects; and Cumulative Effects. The DEIS bases those conclusion entirely on mitigation that is unenforceable.

Where there is no enforceable mitigation agreement in place, or where the mitigation enforcement mechanism is uncertain, the DEIS should evaluate the adverse impacts that would result without the recommended mitigation. For example, the DEIS states that crime can be expected to rise, and that increased calls for law enforcement, fire protection, and emergency medical services will result in increased costs for the City, and these effects may be significant. Yet the DEIS concludes that these effects will not be significant with the implementation of proposed mitigation measures, including the recommendation that “the Tribe shall offer to enter into agreements to reimburse [the City]” for the additional demands caused by operation of the casino.

Unless such agreements are negotiated, the DEIS cannot reasonably conclude that the effects will be less than significant. The DEIS must therefore evaluate the impacts that would result if the parties are unable to reach an agreement, including quantifying the increase in service calls and the corresponding costs to the City.

² Alternative D, the Mill Casino Expansion, requires no action by the BIA, and therefore is in reality simply one possible scenario of Alternative E, the No Action Alternative.

³ The Coker Clay dominates the area and lies from 2 to 20 feet below ground surface, severely impacting soil drainage.

⁴ DEIS App. B, App. B (Technical Memorandum), at 25.

⁵ *Id.*

Nor should the DEIS assume that significant impacts will be mitigated under federal laws, such as the Clean Water Act, or what that mitigation might look like. The DEIS, for example, assumes that discharge impacts would be less than significant because they will be subject to the permit requirements imposed by EPA. But the Tribe has not sought discharge permits and BIA cannot dictate what conditions another agency may require. The Cowlitz casino in Washington State is a good example of this issue. The EIS in that case assumed that water impacts would be mitigated to less than significant issues and that mitigation should include the provision of water to the proposed site. BIA approved the trust acquisition. State law prohibited the host city in that case from providing services, with the result that the Tribe is now constructing an underground wastewater injection system above a sole source aquifer—an issue never considered in the EIS. In addition, once the land is in trust, EPA is the permitting authority, not the Department of Environmental Quality. It is unclear whether EPA would apply Oregon’s standards or federal standards, which may be lower.

If permits from other agencies are required for the proposed action, those permits should be sought in conjunction with the proposed trust request in order for BIA to appreciate the full scope of environmental consequences of its actions and the mitigation available to address those concerns *before* making a final decision.

3. The transportation analysis does not address the City’s comments and should be revised.

The Traffic Impact Analysis (TIA) is crucial to the evaluation of transportation impacts, which include noise and air emissions impacts, as well as impacts to traffic flow and circulation. The starting point of the TIA, however, is the selection of trip generation rates for the proposed casino. The proposed trip generation rates are far too low, and recommended a rate for the critical PM peak hour trip generation rate that is three times higher than the rate proposed.

A thorough traffic engineering analysis is vitally important to the evaluation of potential adverse impacts to the surrounding community from the proposed casino, and accurate trip generation rates are essential to a successful traffic impacts analysis. Inaccurately projected traffic analyses can lead to poor decision-making, traffic congestion, safety issues, and unnecessary improvements. Accurate trip generation is essential to any traffic analysis. The report relied on in the DEIS proposed to base the trip generation rate on a “weighted average” of rates from other tribal casinos, based on square footage. This approach is only appropriate if the other tribal casinos are comparable in at least size, type, and location.⁶ The comparisons identified in the report, however, are located in vastly different environments than the Tribe’s proposed casino. Indeed, instead of determining appropriate trip generation rates by comparison to tribal casinos “with *varying* attributes (size, location (urban and rural), and type),” JRH Letter at 1 (June 22, 2015) (emphasis added), the comparison should be to tribal casinos with *similar* attributes.

Medford has a population of over 77,000 people; it is not rural. The proposed casino would be located within the City’s business district. Yet many of the casinos the report considers are located in rural areas, outside of city limits. For instance, the report references a traffic analysis for the 2007

⁶ Other location-specific factors can also affect comparability, such as local demographics and traffic patterns or the nature of the casino complex (e.g., whether the complex includes casino/hotel/restaurants/retail/entertainment venues) and the proximity of competing venues.

Bear River Expansion in Humboldt County, which analyzed a remote casino complex, located 15 miles outside Eureka and 2 miles outside of a town with a population of fewer than 1,000 people. Likewise, the Cowlitz Indian Tribe Casino Project is located in an unincorporated county immediately along the I-5 corridor, a couple miles from a town of 3,000.

Although the report does use traffic studies of casinos in somewhat bigger towns, many of those casinos are located outside of town. The traffic study on the proposed Karuk Casino, for example, analyzed a complex just inside the city limits, but outside of the city center of Yreka, a city of fewer than 8,000 residents. The Samish Tribe's proposal analyzed a casino located off Route 20, the road that leads into Anacortes, a town with just over 15,000 residents. But the casino is not located within city limits. The Osage Hotel and Casino is located across the river from the hub of a 25,000-person city (Ponca City) on I-60. Similarly, the Thunder Valley Casino is located over a mile southeast of downtown Lincoln, a city of 45,000 residents. Most of these towns are substantially smaller than Medford, but even if the towns were comparably sized, the comparison would still be problematic. The location of the casinos to the towns makes them too dissimilar to compare. Here, the Tribe is proposing to build a casino in the heart of Medford. The aforementioned traffic studies analyzed traffic patterns of casinos either outside of or on the edge of towns that are much smaller than Medford.

Only one casino from the seven the report lists is at all similar to the proposed casino in Medford. Like Medford, San Pablo and its surrounding cities make up a more urban environment. Like the proposed casino in Medford, the casino in San Pablo is within a highly-trafficked city, rather than on its outskirts. The size of the San Pablo casino is also the most comparable to the proposed casino in Medford out of the seven considered. The San Pablo casino is therefore a reasonable comparison to the proposed casino in Medford. San Pablo's trip generation rates, however, indicate that the proposed rates are skewed low.

In fact, San Pablo has trip generation rates that are from two to over five times greater than that of the other casinos considered for the PM trip rate, and from almost two to over seven times greater than that of the other casinos for the AM rate. The San Pablo trip generation rates are three times greater than the proposed "weighted average" PM trip generation rate, and over two times greater than the proposed AM rate. The proposed rates are therefore underestimated.

By excluding the San Pablo casino from the analysis of PM rates, the weighted average not only includes casinos that are not really comparable, but excludes the higher rate generated by the most comparable facility. The report excludes both the highest (San Pablo) and lowest trip generation rates, on the grounds that "both of which appear to be outliers." JRH Letter at 2. But treating San Pablo as an outlier makes little sense; San Pablo is actually the only comparable casino.

The analysis also errs in calculating a "weighted average" of the rates for the casinos included in the analysis. The rates from the biggest casinos were given the most weight in the analysis, and the rates from the smallest casinos were given the least. This might make sense (assuming the casinos are otherwise comparable) if the proposed casino were similar in size to the biggest casinos—the most similar comparisons would thus be given more weight, comparing apples to apples to the extent possible. But the proposed Medford casino is not similar in size to the biggest casinos. The proposed casino, at 29,340 square feet (sf), is more than 100,000 sf smaller than the biggest casino considered, but only approximately 17,000 sf bigger than the smallest casino. Thus, the methodology used gives *more* weight to the *most dissimilar* casinos, and *less* weight to the *least dissimilar*

casinos. And the most comparably sized casino (San Pablo) was entirely excluded from the PM analysis.

Compounding the error, the biggest casino considered in each analysis (AM and PM) had one of the lowest trip generation rates, and the smallest casino considered had one of the highest AM rates and the highest PM rate of any casino considered. Thus, the analysis assigns the lowest rates the most weight, and the highest rates the least weight, which systematically skews the proposed rates to artificially low rates of trip generation.⁷

Because the proposed trip generation rates are based on inappropriate comparisons and inappropriate weighting, the City cannot approve the rates that are proposed. Traffic impacts will be systematically underestimated by a wide margin, and the costs of mitigation will be severely underestimated. Accordingly, the proposed trip generation rates, and the methodology and data used to determine them, are not acceptable and must be reconsidered in their entirety.

The City recommends that JRH use comparable facilities to determine appropriate rates. The trip generation rates for San Pablo are acceptable to the City: San Pablo is comparable in size and location, and its trip generation rates are similar to the ITE *Trip Generation Manual* (9th ed.) standard rate for Casino/Video Lottery Establishments (ITE Code 473).

The TIA is based on the previously proposed trip generation rates, and therefore drastically underestimates transportation impacts. The DEIS should include the results of the TIA using Medford's proposed rates as a measure of the range of foreseeable impacts. This information is essential to a reasoned choice among alternatives, and must be analyzed as such under 40 C.F.R. § 1502.22 (incomplete or unavailable information).

4. The discussion of socioeconomic conditions is too generalized.

The DEIS concludes that the proposed casino would have beneficial economic and fiscal effects in Jackson County. The analysis, however, does not address many important questions regarding those effects, including the effects on the City of Medford in particular. For example, although the DEIS concludes that Alternative A would decrease the State's Video Lottery Terminal (VLT) revenue by just under one percent, such a decrease is nonetheless a very significant amount. The DEIS, however, neither calculates the total amount of revenue loss, nor evaluates the corresponding loss of funding for state programs in the Medford area.

Given that Alternatives A and B are located within City limits, and the Medford market segment is projected to drive close to 90% of total patronage, the DEIS should provide this missing Medford-specific analysis, as required by 40 C.F.R. § 1502.22. And as Medford has previously explained in detailed comments, under the two-part test, the proposed casino must not result in detriment to the surrounding community. Thus, if the surrounding community is Jackson County, the DEIS does not include a reasonable range of alternatives, since all action alternatives are located in Jackson County. If, however, BIA assumes the surrounding community is only the City of Medford, a community-specific evaluation of costs and benefits is essential to a reasoned choice among alternatives. The incomplete information is therefore required under 40 C.F.R. § 1502.22.

⁷ In addition, the proposed "weighted average" AM rate is arithmetically incorrect: even applying JRH's flawed methodology, the correct AM rate would be 3.2, not 3.1.

Indeed, because state, county, and municipal effects are lumped together, it is not possible to determine from the analysis whether Medford would experience beneficial or detrimental effects. Furthermore, even considering just the loss of local property and business tax revenues directly from the Medford site, the potential loss of VLT revenues to state programs in the Medford area, and the reimbursement levels in the Tribe's municipal services agreement for its similarly-sized casino in North Bend, the fiscal impact to the City could easily exceed the combined state and local taxes projected to result during the operations phase. If so, the proposed casino would result in detriment to the surrounding community, violating the two-part test. This analysis is therefore critical to a reasoned choice among alternatives, yet the DEIS fails to include such an analysis.

The DEIS also fails to give any estimate of the possible range of increases in societal problems that may result from the proposed casino, including divorce, suicide, crime, prostitution, bankruptcy, and demand for social services. It is appropriate to acknowledge and discuss the uncertainties regarding the effect of gaming facilities on these problems, but simply "putting social costs in perspective" when compared to other social problems is not sufficient—the DEIS must make at least some attempt to address what the proposed casino would mean specifically for Medford. In particular, the conclusion that problem gambling rates will not increase with the introduction of a casino into the local community is unrealistic. The DEIS should therefore provide at least some evaluation of the possible range of social costs that would be imposed on the local community. In addition, the uncertainties that contribute to that range of estimates should be analyzed pursuant to 40 C.F.R. § 1502.22 (incomplete or unavailable information).

5. The cumulative effects discussion should be revised, in light of the mitigation concerns identified above.

As the DEIS acknowledges, the cumulative effects analysis is based on "the assumed enforcement of federal, State, and local regulations, including the implementation of the policies outlined in the relevant planning documents."⁸ As previously noted, many of those regulations and policies are not enforceable once land is taken into trust, and the cumulative effects analysis pervasively relies on the assumption that proposed mitigation measures and project parameters are enforceable. The cumulative effects analysis also depends on the accuracy of specific impact evaluations. In short, the cumulative effects analysis is only as accurate as the assumptions and evaluations that go into it. Thus, it is imperative that the issues identified in the City's comments be addressed before the cumulative effects of the proposed casino can be reliably evaluated.

B. The DEIS should address the following specific issues:

1. The DEIS fails to evaluate the precedential effect of allowing the Tribe to invoke the restored lands exception anywhere within its statutory service area, as well as allowing the Tribe to maintain more than one gaming facility on restored lands. Establishing this precedent would make it more likely that the Tribe and other similarly situated tribes will pursue such developments in the future.

2. The DEIS fails to evaluate the likelihood and foreseeable consequences of additional trust acquisition requests by the Tribe in the Medford area, and the expansion of the proposed casino to Class III gaming.
3. Inclusion of additional portions of the Medford Site in the trust acquisition request for Alternative B does not change the nature of Alternatives A and B as simply variations of what is fundamentally the same alternative.
4. Tsunami risk to the Mill Casino is included as a factor driving the Purpose and Need of the DEIS. The DEIS should therefore describe this potential risk and its consequences, for all alternatives.
5. The DEIS fails to evaluate the potential impacts to chinook and coho salmon in Bear Creek from stormwater runoff and onsite wastewater disposal.
6. The DEIS fails to evaluate potential impacts to the local water table from onsite wastewater disposal in Alternative B.
7. The DEIS fails to estimate the additional construction costs of Alternative B. Given the significant design challenges presented by local soil conditions, cost may be prove prohibitive.
8. Adverse substitution effects on the Cow Creek Band of Umpqua Indians are only cursorily addressed. The Cow Creek Band is an important member of the Medford community, and Medford is necessarily also affected by those impacts.
9. The Socioeconomic Impact Study fails to address labor substitution effects.
10. The Land Use analysis for Alternative C emphasizes that the site is not currently used for agriculture, even though it has been used for grazing in the past. This is contrary to BIA practice in other trust acquisition analyses, where historic usage, even decades prior, is considered.⁹
11. The Land Use assessment criteria should consider that adverse impacts would occur if development is incompatible with existing local and regional land use regulations and plans (but not simply recommendations for modifications to those plans, which may never be adopted), thereby impeding local and regional planning efforts, not just if development is incompatible with adjacent designated uses, or existing adjacent land uses.
12. Medford requests a copy of the Cultural Resources Report for its review.

⁹ See, e.g., Walker Parcel Supplemental EA and FONSI, Response to Comment D-01 (historic irrigation), available at: <http://www.walkerparcelea.com/>.

Conclusion

The City appreciates this opportunity to comment on the administrative draft of the DEIS. The City intends to look more closely at some of the technical issues identified and provide additional comments, as needed. Medford looks forward to continuing to contribute to this end in its role as a cooperating agency in this important effort.

Sincerely,

/s/

Lori J. Cooper

City Attorney