



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

June 3, 2016

VIA CERTIFIED MAIL

Northwest Regional Director
Bureau of Indian Affairs
Attention: Environmental Services
911 Northeast 11th Avenue
Portland, OR 97232

RE: Comments on Administrative Draft of the Environmental Impact Statement for the Coquille Indian Tribe's Fee-to-Trust and Gaming Facility Project

Dear Regional Director Speaks:

Jackson County submits the following comments to the Bureau of Indian Affairs ("BIA") on the Administrative Draft of the Environmental Impact Statement ("Administrative Draft") for the Coquille Indian Tribe's ("Coquille") Fee-to-Trust and Gaming Facility Project ("Coquille Project"). Although your letter of April 13, 2016 established a May 9, 2016 deadline for the submission of comments on the Administrative Draft, on June 1, 2016, Dr. Howerton contacted Jackson County to inquire if the County would be submitting comments and that, if we desired to do so, the County could still submit comments despite the expiration of the initial deadline. The May 9, 2016, deadline did not provide adequate time for Jackson County to review the Administrative Draft and develop substantive comments. With the additional time and Dr. Howerton's contact, please consider and use these substantive comments from Jackson County, as a cooperating agency, to the Administrative Draft, to the maximum extent possible.

As an initial matter, we reiterate Jackson County's opposition to the Coquille Project, as explained in Jackson County's April 30, 2013, letter. Jackson County incorporates the comments made in that letter by reference into this letter. The NEPA process is premature. The process should not proceed until and unless the Department of Interior determines the Coquille Project is legal.

In response to the Administrative Draft itself, we believe that the Administrative draft is flawed. As will be discussed in detail below, the Administrative Draft fails to take the required "hard look" at the socioeconomic and environmental consequences that are likely to result from the Coquille Project. *Muckleshoot Indian Tribe v. 11.S. Forest Sen.*, 177 F.3d 800, 814 (9th Cir. 1999) (citing *Robertson v. Methow Valley Citizens Co* 111cil, 490 U.S. 332, 350, (1989)).

I. The Administrative Draft fails to consider the legality of the Coquille Project.

The Administrative Draft fails to look at the legality of the Coquille Project under the Indian Gaming Regulatory Act ("IGRA"). The Administrative Draft states that while the IGRA prohibits gaming on lands acquired in trust by the Secretary after October 17, 1988, the "relevant exception" applicable to the Coquille Project is the "restored lands exception." Administrative Draft, p. i. If the BIA intends to address the "restored lands exception" it should do so correctly. As explained in Jackson County's April 30, 2013, letter expressing opposition to the Coquille Project, Jackson County disagrees that this land satisfies the Restored Lands criteria under the IGRA and its implementing regulations. Indeed, even the authors of Coquille's Restoration Act disagree with the Tribe's position. The Administrative Draft makes no effort to determine the legality of the proposed gaming; rather, it assumes that the restored lands exception applies. The BIA cannot legally continue to put off this legal analysis. But, at the very least, the BIA needs to revise the portions of the Administrative Draft to reflect that the Department of Interior may reject this interpretation of the restoration legislation.

2. The Administrative Draft fails to consider the impact of the Coquille Project on gaming.

Based on the Administrative Draft, it is now evident that Coquille plans to open multiple facilities throughout the State of Oregon. The list of alternatives provided in the Administrative Draft provides an outline of Coquille's expansion plan throughout Jackson County and the State of Oregon in the years to come. The Administrative Draft contemplates multiple "Off-Site Alternatives," including, the construction of facilities in Millersburg, Eugene, Eagle Point, Central Point, and Ashland. Administrative Draft, pp. 2-29 to 2-32. Jackson County is opposed to the proliferation of casinos across Jackson County. The Administrative Draft fails to consider the impact of the Coquille Project on the future of gaming in Oregon.

3. The Administrative Draft fails to consider a range of reasonable alternatives.

The Administrative Draft admits that "Alternative B is identical to Alternative A" except that under Alternative A potable water would be provided by Medford Water Commission ("MWC") and wastewater treatment and disposal would be handled by Rogue Valley Sewer Services ("RVSS") and Alternative B would involve on-site water and wastewater facilities. Administrative Draft, pp. ii, 2-12, and 2-13. If MWC and RVSS are unable or unwilling to provide these services, Alternative A is not a reasonable alternative.

Similarly, Alternative C, the Phoenix Site, requires water services to be extended to the proposed site by MWC. Administrative Draft, p. 2-21. However, the Phoenix Site lies outside the Urban Growth Boundary ("UGB") of the City of Phoenix and MWC "has . . . passed resolution 1058 prohibiting the extension of facilities that are supplied by MWC into areas outside the UGB." Administrative Draft, Appendix B, p. 3-3. Accordingly, MWC cannot provide water services to the Phoenix Site and Alternative C is not a viable alternative.

Further, the Administrative Draft suggests that Alternative B is unworkable. Alternative B would require on-site water and wastewater facilities; however, the Administrative Draft highlights numerous issues. First the Administrative Draft indicates that "soil conditions to be extremely poor for subsurface drainage systems" because "[t]he area is dominated by Coker Clay . . . which severely impacts the soils

ability to drain." Administrative Draft, Appendix B, Appendix B (Technical Memorandum), p. 25. Further, "[o]n-site disposal of wastewater" would "present significant design challenges" because the "proximity of Bear Creek to the northeast also suggests a high groundwater table in the area potentially requiring groundwater pumping and conveyance facilities to create unsaturated zones beneath the subsurface drainage system." *Id.* The Administrative Draft concludes that "[g]iven the proximity to Bear Creek, groundwater diversion may not be possible." *Id.* Accordingly, Alternative B is not a viable alternative.

Many of the alternatives analyzed by the Administrative Draft are not viable alternatives, or may not be reasonable if the Coquille cannot come to an agreement on water services. Further, the Administrative Draft admits that Alternative A and B are virtually identical. Accordingly, the Administrative Draft fails to consider a range of reasonable alternatives.

4. The Administrative Draft's analysis relies on unenforceable mitigation measures.

The Administrative Draft relies on mitigation measures that are unenforceable. The Administrative Draft concludes that numerous adverse impacts will be less than significant, based on those mitigation measures. For example, the Administrative Draft concludes that 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. However, many of the suggested mitigation measures for these adverse impacts are currently unenforceable. Accordingly, in cases where there is no enforceable mitigation agreement in place, or where the mitigation enforcement mechanism is uncertain, the Administrative Draft must evaluate the adverse impacts that would result without the recommended mitigation measures.

The Administrative Draft states that many of the alternatives would result in a significant impact on Jackson County's Sheriff's Office and Jackson County Fire District, as the alternatives would result in increased crime, fires, and emergency situations. Administrative Draft, p. 4. 10-9. However, it notes that the mitigation measures, which recommend that the Coquille come to an Agreement with Jackson County's Sheriff's Department and Fire District, would make it so the alternatives result in a "less-than-significant effect" Administrative Draft, pp. 4.10--9, 5-11, 5-12. Unless and until such agreements are negotiated, the Administrative Draft cannot reasonably conclude that the impacts to Jackson County will be less than significant. Accordingly, the Administrative Draft must evaluate the impacts that will result if the parties are unable to reach an agreement, including the increase in services and the resulting increase in costs to Jackson County.

5. The Administrative Draft's analysis of the proposed project's socioeconomic impact lacks sufficient detail.

The Administrative Draft alleges that the proposed action will have a positive economic impact on Jackson County. However, the Administrative Draft fails to address many important aspects of the economic impact. For example, the Administrative Draft predicts that Alternative A would decrease the State of Oregon's video lottery terminal ("VLT") market revenue by less than one percent. Administrative Draft, p. 4.7-6. While the Administrative Draft does not calculate the monetary loss to

the State, considering the VLT generated \$742.7 million in revenue in 2014, the potential monetary loss to the State is considerable. Id. And, the revenue from the Oregon Lottery is used to support numerous programs, throughout the State. The Administrative Draft fails to calculate the resulting impact on these lottery-funded programs.

Jackson County relies on many lottery-funded programs. For example, between 2013 and 2015, Jackson County received \$24.9 million in lottery funded grants and loans. Jackson County: 2013-2015 Biennium, Lottery Funding, Oregon Lottery, <http://v.rww.oregonlottery.org/docs/default-source/good-things-by-county/2013-2015/jackson> (last visited May 26, 2016). The funds were used to support local businesses, schools, transportation, and parks. Id. The funds were also used to support the Oregon Watershed Enhancement Board, in order to help the local Soil and Water Conservation District implement the Agricultural Water Quality Management Area Plan. Id. The Administrative Draft's socioeconomic analysis needs to incorporate an analysis of the impact of a decrease in revenue to the Oregon Lottery on Jackson County.

6. The Administrative Draft should also analyze the following additional specific issues.
 - a. The Administrative Draft's purpose and need are unduly restrictive, they focus on meeting the Coquille's economic needs, rather than the needs of Coquille's community; this unnecessarily restricts the range of reasonable alternatives examined by the Administrative Draft.
 - b. The Administrative Draft does not address the Coquille's premature demolition of buildings in an area that the BIA has indicated is a part of the proposed action.
 - c. The Administrative Draft overestimates the potential tax revenue from the proposed action; the Administrative Draft fails to analyze the impact of the Coquille's tax exemptions on the potential tax revenue.
 - d. The Administrative Draft's unmet needs report needs to be updated to reflect the current economic status of the Coquille; the Administrative Draft relies on outdated information on the Coquille's economic status.
 - f. The Administrative Draft concludes that there will be no impact to biological resources or habitats; however, Bear Creek is a known salmon spawning area. The BIA should consult with the National Marine Fisheries Service, also known as the National Oceanic and Atmospheric Administration ("NOAA") Fisheries, to ensure there is no impact to the salmon or their habitat.

The BIA should address the foregoing issues prior to publishing the Draft Environmental Impact Statement. Further, Jackson County reserves the right to make comments on the Draft Environmental Impact Statement, if and when it is released.

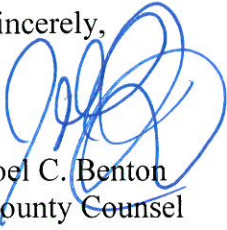
Thank you for your consideration. Please do not hesitate to contact me should you need any additional information or have any questions.

Comments on Administrative Draft of the Environmental Impact Statement for the Coquille Indian
Tribe's Fee-to-Trust and Gaming Facility Project

June 3, 2016

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Sincerely,



Joel C. Benton
County Counsel

JCB:dtm

cc: Commissioner Dyer
Commissioner Roberts
Commissioner Breidenthal
Danny Jordan
Dr. BJ Howerton,(via email to BJ.Howerton@bia.gov)