



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 27 2020

The Honorable Brenda Meade
Chairperson, Coquille Indian Tribe
3050 Tremont Street
North Bend, Oregon 97459

Dear Chairperson Meade:

In November 2012, the Coquille Indian Tribe (Tribe) submitted an application (Application)' to the Department of the Interior (Department) requesting that the Secretary of the Interior (Secretary) accept 2.42 acres of off-reservation land located within the City of Medford, Jackson County, Oregon (Medford Site) into trust pursuant to Indian Reorganization Act (IRA)² and the Coquille Restoration Act (CRA).³

I regret to inform you that after thoroughly reviewing the materials in the record and applying the Department's trust acquisition regulations, I decline the Tribe's application to accept conveyance of the Medford Site into trust. Under the Department's regulations, the Secretary must consider jurisdictional problems that may arise because of the acquisition;⁴ and as the distance between the land and the Tribe's reservation increases, scrutiny of the Tribe's anticipated benefits from the acquisition increases, as does the weight given to state and local governmental concerns.⁵ I find that the Tribe's anticipated benefits do not outweigh the potential jurisdictional problems and other concerns raised by the state, county and municipal governments having regulatory jurisdiction over the Medford Site.

Background

In 1954, Congress terminated federal services to the Tribe via the Western Oregon Indian Termination Act.⁶ In 1989, government-to-government relations with the Tribe were restored

¹ Letter, Coquille Indian Tribe, Chairperson Brenda Meade to Bureau of Indian Affairs Northwest Regional Director Stan Speaks (Nov. 2, 2012) ("Application") (The Tribe submitted significant documentation to supplement its fee-to-trust application. All materials submitted in the context of (1) the request for an IGRA Indian lands determination, (2) compliance and review under NEPA, and (3) the 25 CFR Part 151 fee-to-trust process were considered as part of this determination).

² Act of June 18, 1934, 48 Stat. 984, codified as amended at 25 U.S.C. § 5101 et seq.

³ Pub. L. 101-42, 103 Stat. 91 (formerly codified at 25 U.S.C. §§ 715 - 715g).

⁴ 25 C.F.R. § 151.10(f).

⁵ 25 C.F.R. § 151.11(b).

⁶ See Act of August 13, 1954, 68 Stat. 724; see also S. Rep. No. 101-50 at 1 (1989).

through enactment of the CRA.⁷ Among the rights and privileges the CRA restored to the Tribe was the authority for the Secretary to acquire land into trust for the Tribe, subject to specific conditions in the legislation.⁸ The first sentence of Section 5(a) of the CRA mandates the Secretary accept into trust for the Tribe up to 1,000 acres of real property in Coos and Curry counties. The second sentence of Section 5(a) provides the Secretary discretionary authority to receive additional land into trust for the Tribe if located within a defined five-county service area:

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).⁹

Congress further directed that lands transferred into trust for the Tribe pursuant to Section 5(a) “shall be part of its reservation.”¹⁰ Today, the Tribe's reservation is comprised primarily of two large non-contiguous parcels near the cities of Coos Bay and North Bend, Oregon totaling over 1,000 acres.¹¹ The Tribe's administrative offices are located on a 6.43-acre trust parcel,¹² and its existing gaming facility is located on a 10.66-acre trust parcel directly across from the administrative offices.¹³ The driving distance between the Tribe's administrative offices and the Medford Parcel is approximately 170 miles.¹⁴

The Medford Site is located within the City of Medford, Jackson County, Oregon and is currently owned in fee simple by Southern Oregon Property Holdings, LLC, a wholly-owned subsidiary of the Tribe.¹⁵ The Tribe's Application proposes to renovate an existing bowling alley on the property and convert it to a class II gaming facility.¹⁶

⁷ See *supra* n. 3.

⁸ CRA at § 5.

⁹ *Id.* at § 2(5). The Tribe's five-county service area includes Coos, Curry, Douglas, Jackson and Lane Counties in the State of Oregon.

¹⁰ CRA, § 5(b).

¹¹ See Letter from Brett Kenney, Tribal Attorney, Coquille Indian Tribe, to Paula Hart, Office of Indian Gaming, Exhibit 3 (Map) (Jan. 28, 2013).

¹² *Id.*

¹³ *Id.*

¹⁴ See Google Maps.

¹⁵ Letter from Brett Kenney, Tribal Attorney, Coquille Indian Tribe, to Paula Hart, Office of Indian Gaming (Jan. 23, 2013), Exhibit 1 (2012 Tax Statement) and Exhibit 2 (Warranty Deed Dated August 2, 2012).

¹⁶ Business Plan for Proposed Class II Gaming Facility in Medford, Oregon (Apr. 2013) (“Business Plan”).

Trust Acquisition Determination Pursuant to 25 C.F.R. Part 151

The Department's land acquisition regulations at 25 C.F.R. Part 151 (Part 151) set forth the procedures for the Secretary to acquire land in trust. Upon receiving a written request to accept conveyance, the Secretary invites written comments from the state and local governments having regulatory jurisdiction over the land. The Secretary then reviews the record under the Department's trust acquisition regulations. Analysis of every Part 151 factor is not required to render a decision¹⁷ and the Department need not reach a particular conclusion or exhaustively analyze each factor.¹⁸ Here, it is unnecessary to detail extensively all of the findings under the factors because some of the factors were determinative, and as discussed throughout this letter, are sufficient grounds to reach this decision.¹⁹

25 C.F.R. § 151.11 – Criteria for Off-reservation Acquisitions

The Part 151 regulations distinguish between “on-reservation” and “off-reservation” trust acquisitions. The Secretary's discretionary on-reservation authority may only be implemented when the subject lands are located “within or contiguous to an Indian reservation, and the acquisition is not mandated.”²⁰ The regulations subject off-reservation acquisitions to additional scrutiny.²¹

The Tribe asserts that the Medford Site is an on-reservation acquisition.²² In a letter dated July 24, 2019, Chairperson Meade states “[b]ecause the land in question will become part of the Coquille Reservation immediately upon acquisition, the distance from the Tribe's Reservation to the Medford Site is truly irrelevant.”²³ An earlier submission from the Tribe similarly suggests that because land transferred into trust under Section 5(b) of the CRA “shall be part of [the Tribe's] reservation,” any “activities occurring on such lands occur ‘on-reservation.’”²⁴

Section 5(b) of the CRA requires that land *transferred* to the United States in trust becomes part of the Tribe's reservation. Prior to transfer, however the Medford Site is not part of the

¹⁷ See *Johnnie Louis McAlpine v. Muskogee Area Director, Bureau of Indian Affairs*, 19 IBIA 2, 3 (1990).

¹⁸ See *City of Moses Lake, Washington v. Northwest Regional Director, Bureau of Indian Affairs*, 60 IBIA 11 (2015).

¹⁹ The Department reviewed the entire record, however, we do not address every document, assertion, or argument set forth therein.

²⁰ 25 C.F.R. § 151.10.

²¹ Compare 25 C.F.R. § 151.10 with id. § 151.11.

²² See e.g., Coquille Tribe's Formal Response to Comments Submitted to DOI/BIA In May and June 2013 by City of Medford, Jackson County and Oregon Governor Kitzhaber, 23 (Jul. 29, 2013). (“Coquille does not concede the Governor's premise that Part 151.11 applies”).

²³ Letter from Coquille Indian Tribe, Brenda Meade, Chairperson to John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, 3 (Jul. 24, 2019).

²⁴ Letter from Coquille Indian Tribe, Brenda Meade, Chairperson to James Cason, Acting Deputy Secretary, Department of the Interior and Michael Black, Acting Assistant Secretary – Indian Affairs, 2 (Jun. 20, 2017).

reservation. The Medford Site is approximately 170 driving miles from the Tribe's main reservation and administrative offices²⁵ and is non-contiguous to any of the Tribe's trust lands.²⁶ The Tribe's application is therefore considered under the off-reservation criteria of Section 151.11, which includes the factors set forth in Section 151.10 plus two additional requirements.

The relevant criteria found in § 151.10 are:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the ... tribe for additional land;
- (c) The purposes for which the land will be used;
- ...
- (e) 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;
- (f) Jurisdictional problems and potential conflicts of land use which may arise;
- (g) If the land to be acquired is in fee status, whether the [BIA] is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM [Departmental Manual] 6, appendix 4, [the] National Environmental Policy Act (NEPA)²⁷ Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.²⁸

The criteria found in § 151.11 are:

- (a) The criteria listed in § 151.10(a) through (c) and (e) through (h);
- (b) 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.

²⁵ See Google Maps.

²⁶ See Letter from Brett Kenney, Tribal Attorney, Coquille Indian Tribe, to Paula Hart, Office of Indian Gaming, Exhibit 3 (Map) (Jan. 28, 2013).

²⁷ See generally National Environmental Policy Act, 42 U.S.C. § 4332.

²⁸ See generally 25 C.F.R. § 151.10(a)-(c) and (e)-(h). (Section 151.10(d) is applicable only to acquisitions for individual Indians.)

- (c) 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.
- (d) 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 CFR § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires the Secretary consider whether any jurisdictional problems and potential conflicts of land use may arise. While nothing in Part 151 requires that jurisdictional problems be resolved prior to approval of a trust acquisition, such problems must be considered before deciding whether to approve the acquisition.²⁹ The Bureau of Indian Affairs (BIA) requested comments from the Governor of Oregon (State or Governor), Jackson County Board of Commissioners (County), and the City of Medford (City) in letters dated February 1, 2013.³⁰ Due to the passage of time from the first notice, the BIA again sought comment from the State, County and City in letters dated September 26, 2017.³¹

Jurisdictional Problems

Conveyance of the Medford Site into trust will introduce into the City and County jurisdictional issues that currently do not exist. The City and County assert that the Tribe's proposed gaming facility will result in increased demand for services while at the same time removing the Medford Parcel from the tax base. The Tribe asserts that it is willing to enter into binding and enforceable inter-governmental agreements with the impacted local governments. Although common to help guarantee the stability of local governments and procure needed services for the new reservation land, such agreements do not exist here.

In a letter dated April 30, 2013, the Jackson County Board of Commissioners stated its opposition to the Tribe's application, citing among other objections, financial and administrative

²⁹ *State of New York v. Acting Eastern Regional Director, Bureau of Indian Affairs*, 58 IBIA 323, 346 (2014) (citing *Roberts County, South Dakota v. Acting Great Plains Regional Director, Bureau of Indian Affairs*, 51 IBIA 35, 52 (2009)). See also, *Arizona State Land Dep't et al. v. Western Regional Director, Bureau of Indian Affairs*, 43 IBIA 158, 173 2006.

³⁰ See Letters from Northwest Regional Director to Gary Wheeler, Mayor, City of Medford; Board of Commissioners, Jackson County; John Kitzhaber, Governor (Feb. 1, 2013).

³¹ See Letters from Acting Northwest Regional Director to Gary Wheeler, Mayor, City of Medford; Board of Commissioners, Jackson County; Hon. Kate Brown, Governor (Sept. 26, 2017).

concerns, and adverse impacts to law enforcement and social services.³² The Board, after meeting with the Tribe to discuss these concerns, indicated the 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.”³³ Three years later, following its review of the Administrative Draft of the Environmental Impact Statement, the County found particularly concerning the increased burden on the County Sheriff’s Department and Fire District.³⁴

The City similarly opposed the acquisition based on its jurisdictional problems that have not been resolved.³⁵ Along with their letter, the City provided a copy of Resolution No. 2013-68 stating the City’s opposition to the Tribe’s application.³⁶ Explaining its opposition, the City raised concerns regarding the City’s loss of regulatory jurisdiction, stating that it cannot support the removal of land from city, county, and state jurisdiction when 48% of the land in Jackson County is owned by the federal government.³⁷ The City also expressed its concern regarding the number of calls for law enforcement service that the new facility would generate.³⁸

The Tribe’s asserts that the NEPA process will identify detailed impacts so that the parties can negotiate reasonable provisions through inter-governmental agreements.³⁹ In its response letter dated July 29, 2013, the Tribe stated that it voluntarily reached out to the City and the County to negotiate and execute such agreements requiring the Tribe to pay for local government services, such as police and fire.⁴⁰ The agreements would contractually bind the Tribe to take certain measures to mitigate impacts, and may require that the Tribe construct and operate the project consistent with agreed upon City, County, and State standards regarding environmental and regulatory issues.⁴¹ However, according to the Tribe, the City and County “turned their back on

³² See Letter from Don Skundrick, Chair, John Rachor, Commissioner, and Doug Breidenthal, Commissioner, Jackson County Board of Commissioners, to Stan Speaks, Northwest Regional Director, Bureau of Indian Affairs (April 30, 2013).

³³ Letter, Jackson County Board of Commissioners to Stan Speaks, Northwest Regional Director, Bureau of Indian Affairs 1 (Apr. 30, 2013).

³⁴ See Letter from Joel C. Benton, County Counsel, Jackson County Board of Commissioners to Northwest Regional Director, Bureau of Indian Affairs (Jun. 3, 2016).

³⁵ See Letter from Gary H. Wheeler, Mayor of the City of Medford, Oregon, to Kevin K. Washburn, Assistant Secretary – Indian Affairs, and Stanley Speaks, Regional Director Bureau of Indian Affairs, Northwest Regional Office 1 (May 3, 2013).

³⁶ Resolution No. 2013-68 (May 3, 2013).

³⁷ See Letter from Gary H. Wheeler, Mayor of the City of Medford, Oregon, to Kevin K. Washburn, Assistant Secretary – Indian Affairs, and Stanley Speaks, Regional Director Bureau of Indian Affairs, Northwest Regional Office 5 (May 3, 2013).

³⁸ *Ibid.*

³⁹ Coquille Tribe’s Formal Response to Comments Submitted to DOI/BIA in May and June 2013 by City of Medford, Jackson County and Oregon Governor Kitzhaber 17 (Jul. 29, 2013).

⁴⁰ Coquille Tribe’s Formal Response to Comments Submitted to DOI/BIA In May and June 2013 by City of Medford, Jackson County and Oregon Governor Kitzhaber 16 (Jul. 29, 2013).

⁴¹ *Id.*

the Tribe's offer to negotiate a binding and enforceable agreement to mitigate impacts of the gaming facility."⁴²

Memoranda of agreement between tribes and the counties or municipalities that share the same geography of their fee-to-trust acquisitions are relatively common to address jurisdictional problems resulting from new reservation lands.⁴³ Courts have mentioned such memoranda of agreement as supportive of the Secretary's conclusion regarding the § 151.10(f) criterion.⁴⁴ Thus, a signed memorandum of agreement is a factor that may weigh in favor of approval, but is absent here.

Although the Tribe has provided evidence of attempts to establish such agreements, the fact remains no agreements exist. The failure of the parties to reach such an agreement is significant and is an indication that the jurisdictional problems contemplated under this Section would not subside easily. The Tribe's ability to provide services such as police or fire protection to the Medford Site property is complicated by the 170-mile distance from their administrative headquarters. The City and County must nonetheless maintain those services as a matter of public health and safety. Without an agreement, the City and County receive no additional funds in lieu of the lost tax revenue resulting from the Tribe's project. The absence of an agreement to address these jurisdictional issues weighs heavily against approval, and the voluntary resolution of future disputes is unlikely based on the failure to reach an agreement to date.

25 CFR § 151.11(b) – Location of the Land Relative to State Boundaries and its Distance from the Boundaries of the Tribe's Reservation

The Part 151 regulations provide that “[u]nless another definition is required by the act of Congress authorizing a particular trust acquisition, *Indian reservation* means that area of land

⁴² *Id.*

⁴³ For instance, the Santa Ynez Chumash Band of Indians completed a memorandum of agreement with the County of Santa Barbara, California and the Lytton Rancheria of California entered into a memorandum of agreement with the County of Sonoma, both of which Congress cited as supportive of its legislative transfer of title. *See* National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, tit. XXVIII, §§ 2868(b) (1), 2869(a) (18).

⁴⁴ *See, e.g., South Dakota v. United States Dep't of Interior*, 401 F.Supp.2d 1000, 1009 (D.S.D. 2005), *aff'd*, 475 F.3d 993 (8th Cir. 2007) (Department reasonably considered potential jurisdictional problems and conflicts of land use which might arise, by noting that tribe and city entered into an agreement for provision of law enforcement services and fire protection, and by finding that no future zoning conflicts would develop); *No Casino in Plymouth v. Jewell*, 136 F.Supp.3d 1166 (E.D. Cal. Sep. 30, 2015), *vacated on other grounds*, 698 Fed.Appx. 531 (9th Cir. 2017) (Secretary adequately considered jurisdictional problems and possible conflicts of land use where record of decision stated that through incorporation of prior municipal services agreement, tribe had agreed to address all major jurisdictional issues, including, but not limited to compensation of county sheriff's department, prosecutor's office, courts, and schools that would provide public services on trust lands).

over which the tribe is recognized by the United States as having governmental jurisdiction.”⁴⁵ The Tribe’s trust lands consist of numerous parcels;⁴⁶ however, the Tribe’s main reservation, tribal administrative offices and existing gaming facility are located near the cities of Coos Bay and North Bend, Oregon.⁴⁷ The driving distance from the Tribe’s administrative offices to the Medford Site is approximately 170 miles.⁴⁸ The Medford Site is located approximately 28 miles north of the California State border and approximately 255 miles south of the Washington State border.⁴⁹

The three-hour drive from the Tribe’s reservation to the Medford Site raises significant concerns. While the distance does not categorically disqualify the Medford Site from being acquired, the distance must be considered. This Section requires that the Secretary give greater scrutiny to the Tribe’s justification of anticipated benefits from an acquisition as the distance between the Tribe’s reservation and the land to be acquired increases, and give greater weight to the concerns raised by the state and local governments having regulatory jurisdiction over the land to be acquired in trust.⁵⁰

The Tribe’s Justification of Anticipated Benefits

When scrutinizing the Tribe’s justification of anticipated benefits, the financial benefits are moderate, but positive for the Tribe. The Tribe submitted a business plan to the BIA as part of its application in April 2013 (Business Plan). As part of the Business Plan, the Tribe projects a budgetary shortfall in excess of \$13 million annually by 2022, and a cumulative deficit of \$74 million that same year to sustain its current level of services.⁵¹ When taking account of the need for critical enhancements to existing programs, required investments in infrastructure, and new

⁴⁵ 25 C.F.R. § 151.2(f). *See also, County of San Diego, California v. Pacific Regional Director, Bureau of Indian Affairs*, 58 IBIA 11, 29 (2013); *Aitkin County, Minnesota v. Acting Midwest Regional Director, Bureau of Indian Affairs*, 47 IBIA 99, 104-07 (2008).

⁴⁶ The United States also holds fourteen forest parcels in trust for the Tribe *See, Coquille Forest Act*, Pub. L. 104-208, div. B, tit. V, *codified as amended at* 25 U.S.C. 715c (Sept. 30, 1996). Correspondence from the Tribe indicates that some of the trust parcels may be as close as 74 air miles to the Medford Site. *See Letter from Coquille Indian Tribe, Chairperson Brenda Meade to Principal Deputy Assistant Secretary – Indian Affairs John Tahsuda*, 1 (Jun. 17, 2019). I note that my determination remains the same irrespective of the difference in distance to the Tribe’s forest trust lands or the Tribe’s main reservation and administrative offices.

⁴⁷ Letter from Brett Kenney, Tribal Attorney, Coquille Indian Tribe, to Paula Hart, Office of Indian Gaming Exhibit 3 (Map) (Jan. 28, 2013).

⁴⁸ Distance between Medford, OR and Cole, CA. *Google Maps*, maps.google.com.

⁴⁹ Distance between Medford, OR and Portland, OR. *Google Maps*, maps.google.com.

⁵⁰ 25 C.F.R § 151.11(b), § 151.11(d).

⁵¹ Business Plan at 2; Letter from Brenda Meade, Chairperson, Coquille Tribal Council, to Stanley M. Speaks, Regional Director, Northwest Regional Office, and Paula L. Hart, Director, Office of Indian Gaming 3 (Mar. 22, 2013).

programs for future generations, the Tribe's Business Plan projects a cumulative deficit exceeding \$300 million by the end of 2022.⁵²

The Tribe developed the Business Plan to address those shortfalls through the operation of a Class II gaming facility at the Medford Site.⁵³ The Business Plan projects a stabilized performance from the gaming facility at the Medford Site beginning in the 24th month of operations with the annual gross revenue projected to be \$32 million.⁵⁴ The Earnings Before Interest, Taxes, Depreciation and Amortization are projected to be \$15.8 million, and the net cash flow is projected to be \$11 million.⁵⁵ The Business Plan projects that net revenues from a class II gaming facility in Medford will generate \$7.5 million in the first year and increase to \$18.5 million annually by the seventh year of operation.⁵⁶

The Tribe's projection of \$18.5 million annually by the seventh year of operation will certainly benefit the Tribe, but as indicated in the Tribe's materials, it will only alleviate a small portion of the Tribe's anticipated budget needs.⁵⁷ Giving greater scrutiny to the Tribe's justification of anticipated benefits from the proposed acquisition, as I must under 25 C.F.R. § 151.11(b), I conclude that the Tribe has not provided sufficient information that demonstrates how acquisition of the Medford Site would provide such a significant economic benefit to the Tribe, in light of its anticipated financial need.

Since the Tribe's materials clearly demonstrate that its need for additional revenue is not solved by the project, considerations of additional economic benefits could potentially bolster the Tribe's arguments. However, given that the Medford Site is located 170 miles from the Tribe's main reservation, the overall economic benefits to the Tribe will be muted. Any associated business and employment opportunities will be within the Jackson County area, and of limited benefit to the Tribe's primary reservation community. The Tribe has not provided sufficient information that demonstrates how acquisition of the Medford Site would provide a significant financial benefit to the Tribe in light of its substantial financial need, or even ancillary economic benefits.

⁵² Business Plan at 2; Letter from Brenda Meade, Chairperson, Coquille Tribal Council, to Stanley M. Speaks, Regional Director, Northwest Regional Office, and Paula L. Hart, Director, Office of Indian Gaming 4-5 (Mar. 22, 2013).

⁵³ Business Plan.

⁵⁴ Business Plan at 7.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Letter from Brenda Meade, Chairperson, Coquille Tribal Council, to Stanley M. Speaks, Regional Director, Northwest Regional Office, and Paula L. Hart, Director, Office of Indian Gaming 3 (Mar. 22, 2013).

Concerns of State and Local Governments Having Regulatory Jurisdiction

Tax Impact

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls. The Medford City Attorney provided tax and special assessment information, identify a tax of \$8,015.05 for tax year 2017.⁵⁸ The loss of the tax assessment is minimal; however, the impact to the Oregon Lottery, a significant source of revenue for the State, is considerable.

Revenue from the Oregon Lottery is significant to the State and its political subdivisions. Lottery revenues are second only to state income taxes in revenues for the State.⁵⁹ A decrease to the State of Oregon's video lottery terminal (VLT) market revenue, even if less than one percent is significant considering the VLT in 2014 generated \$742.7 million dollars.⁶⁰ The County indicated that it relies on many lottery-funded programs. Between 2013 and 2015, Jackson County received \$24.9 million in lottery-funded grants and loans to support local businesses, schools, transportation and parks. The decrease in revenue from the Oregon Lottery represents a significant threat to the County and its provision of services.

The City indicated the impact on state lottery revenues would adversely affect the ability to provide critical services. The City also cited the impact to local school districts would similarly suffer as a beneficiary of state lottery revenues.⁶¹

Overall, the City and County are concerned that the project represents an increased burden on resources and services while at the same time resulting in an overall decrease in the funds available to provide those services. We find that the potential impact to the Oregon Lottery and funding to the City and County is significant and weighs heavily against approval of the acquisition.

Community Impact

The City made specific efforts to meet with the Coquille Tribe, community members and nearby tribes to garner input on the proposed project.⁶² Tribes and tribal groups attended the City's

⁵⁸ Letter from Lori Cooper, City Attorney, City of Medford, to Stanley Speaks, Regional Director, Northwest Regional Office, Exhibit 1. (Nov. 17, 2017).

⁵⁹ Letter, Coquille Indian Tribe, Chairperson Brenda Meade to Principal Deputy Assistant Secretary – Indian Affairs John Tahsuda, 1 (Jun. 17, 2019) (citing *Willamette Week*, May 26, 2019)).

⁶⁰ See Letter from Joel C. Benton, County Counsel, Jackson County Board of Commissioners to Northwest Regional Director, Bureau of Indian Affairs (Jun. 3, 2016).

⁶¹ Letter from Gary H. Wheeler, Mayor of the City of Medford, Oregon, to Kevin K. Washburn, Assistant Secretary – Indian Affairs, and Stanley Speaks, Regional Director Bureau of Indian Affairs, Northwest Regional Office , 5 (May 3, 2013).

⁶² *Ibid.*

public town hall meeting to express their objections.⁶³ Persons identifying as Shasta Indians and members of the Cow Creek Band of the Umpqua explained that “their ancestors fought and died and were buried in Medford and Jackson County”⁶⁴ and 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 recognition.” The City found it hard to support the Tribe’s project, when members of the Medford community, including other Tribes and tribal members are so strongly opposed to the development.⁶⁵

Compounding this source of opposition was the fact that the Medford Site lies outside the Tribe’s historic territory. As part of its analysis of the proposed acquisition, the City’s legal counsel elaborated on these concerns in a letter dated June 4, 2013.⁶⁶ The City stresses that the Medford Site lies outside the Tribe’s historic territory as established by the United States Court of Claims (Court of Claims) in *Alcea Band of Tillamooks v. United States*,⁶⁷ which held that the Tribe’s historic area of exclusive use and occupation did not include Medford.

The Tribe asserts that the CRA identifies Jackson County as part of its service area⁶⁸ and that the “Rogue River Valley in Jackson County houses a major concentration of tribal members outside of Coos County.”⁶⁹ The Tribe also provides evidence of its presence in the area, asserting that a cluster of its members live in Jackson County⁷⁰ and that it has maintained a presence in the area for over 100 years.⁷¹ The Tribe also points to its Medford governmental office adjacent to the Medford Site from which it offers a variety of governmental services.⁷² The Tribe also outlined its historical connection to the Rogue River Valley stating, “Coquille people did not exclusively occupy the Medford area, but they were an integral part of the Indian community and network in the region.”⁷³

The fact that the Parcel lies outside the Tribe’s historical territory and faces opposition from other Tribes and tribal members in the area does not foreclose the acquisition. The CRA provides the Secretary with discretionary authority to approve or disapprove acquisitions within the Tribe’s five-county service area. The Part 151 regulations make clear, however, that in

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Letter from Perkins Coie, Legal Counsel for the City of Medford to Kevin K. Washburn, Assistant Secretary – Indian Affairs, and Paula L. Hart, Director, Office of Indian Gaming (Jun. 4, 2013).

⁶⁷ *Alcea Band of Tillamooks v. United States*, 103 Ct. Cl. 494 (1945). The Court of Claims adjudicated land claims from a number of Oregon tribes. The Coquille asserted that they were unlawfully and without compensation deprived of lands guaranteed for their occupation under the unratified August 11, 1855 treaty. After finding the Tribe was entitled to recover, the Court of Claims adopted as part of its ruling several maps setting forth the adjudicated land claims to define the scope of the taking and associated damages.

⁶⁸ CRA at Sec. 3(c) (“In the case of Federal services available to members of federally recognized tribes residing on a reservation, Members of the Tribe in the Tribe’s service area shall be deemed to be residing on a reservation.”)

⁶⁹ Letter, Coquille Indian Tribe, Brenda Meade, Chairperson to John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs 4 (Jul. 24, 2019).

⁷⁰ *Id.* at 6.

⁷¹ *Id.* at 17-19.

⁷² *Id.* at 7-16.

⁷³ *Id.* at 18.

exercising his discretion the Secretary should take into consideration the concerns from entities having regulatory jurisdiction over the land.

In this instance, the entities having regulatory jurisdiction have raised significant concerns about the Tribe operating a gaming facility within their community – not simply because they oppose gaming, but because the acquisition is opposed by neighboring tribes and tribal members who have long been part of the Medford and Jackson County community. Furthermore, the site lies outside the Tribe’s historic territory as established by the Court of Claims. We do not endeavor to resolve the conflicting claims over aboriginal territory here. We must however consider the City’s concerns. Through their comments, the City has made clear that the objections raised by the Cow Creek Tribe and tribal members within the community as well the Tribe’s lack of a historic connection to the Medford Site give the City pause in supporting the Tribe’s application. These concerns weigh heavily against approval of the Tribe’s application.

Balancing Gaming in Oregon

In 2013, then-Governor Kitzhaber urged denial of the Tribe’s application.⁷⁴ The Governor expressed concerns about the expansion of gaming throughout the State, and stated his opposition to the Tribe’s application. Governor Brown later reasserted the State’s strong opposition to the Tribe’s application⁷⁵ by referring to her letter dated April 13, 2016, in which she stated:

... [I do] not believe that an expansion in the number of casinos sited in Oregon is in the best interest of the State or her people. I know that this project is relatively modest in scale, and that it is proposed only as a Class II facility. But I believe that the State should as a matter of policy resist the building of additional casinos because State support for even a single, modest, additional casino is likely to lead to significant efforts to expand gaming across Oregon to the detriment of the public welfare. In essence, I believe it essential that the State ‘hold the line’ on the number of casinos within her borders whenever possible.⁷⁶

In 2013, U.S. Senators Wyden and Merkley expressed their opposition to the Tribe’s application stating that the precedent of a second significant gaming facility for any one tribe would have serious implications for further expansion by other tribes.⁷⁷ They further stated that Oregon’s

⁷⁴ Letter from John A. Kitzhaber, Governor, to Stan Speaks, Northwest Regional Director, Bureau of Indian Affairs (May 6, 2013).

⁷⁵ See Letter from Misha Isaak, General Counsel, Office of Governor Kate Brown, to Northwest Regional Director, Bureau of Indian Affairs (Oct. 24, 2017).

⁷⁶ Letter from Kate Brown, Governor, to Stan Speaks, Northwest Regional Director Bureau of Indian Affairs (Apr. 13, 2016.)

⁷⁷ Letter from Senators Ron Wyden and Jeff Merkley, U.S. Senate, to Kevin K. Washburn, Assistant Secretary – Indian Affairs 1 (Oct. 21, 2013).

careful balance between producing gaming revenue and the State's focus on the public good of its citizens could be seriously compromised.⁷⁸ In comments dated May 12, 2016, Representatives Bonamici, Blumenauer, and Schrader of the U.S. House of Representatives expressed concern about the expansion of casino gaming, noting that many Oregonians have raised legitimate questions about the expansion of casino gaming in the state.⁷⁹ Representative Paul Cook expressed his strong opposition to the project as well.⁸⁰

The Tribe's application also faces overwhelming opposition from Oregon state legislators. In 2013, State Representative Esquivel and others stated their opposition to the Tribe's application due to concerns about the loss of regulatory jurisdiction of city land, loss of city control over the land, impacts on the city, and the potential for future expansion of gaming.⁸¹ In 2013, State Senator Rosenbaum, and State Representative Hoyle also expressed their strong opposition to expansion of gaming in the state.⁸²

The Tribe responded that these concerns represent the State's effort to "bridle tribal gaming with a baseless double standard."⁸³ The Tribe questions the State's concern regarding the detrimental effects of gaming citing anticipated expansion of the Lottery.⁸⁴

Maintaining a careful balance between producing gaming revenue and the public good is a legitimate State concern, as is preserving the balance between gaming interests. We recognize the Tribe's skepticism considering the State's reliance on Lottery revenues; however, considering the distance between the Medford Site and the Tribe's reservation these concerns weigh heavily against approval.

Summary

A trust acquisition decision involves the exercise of discretion that considers, collectively, all of the applicable factors in §§151.10 and 151.11.⁸⁵ When evaluating tribal applications for trust

⁷⁸ *Ibid.*

⁷⁹ Letter from Reps. Suzanne Bonamici, Earl Blumenauer, and Kurt Schrader, U.S. House of Representatives, to Sally Jewell, Secretary, U.S. Department of the Interior (May 12, 2016); *See also* Letter from Rep. Earl Blumenauer, U.S. House of Representatives, to Sally Jewell, Secretary, U.S. Department of the Interior (Sept. 11, 2013).

⁸⁰ Letter from Col. Paul Cook (Ret.), Member of Congress to David L. Bernhardt, Acting Secretary Department of the Interior (Mar. 25, 2019).

⁸¹ Letter from 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, and Rep. Tim Freeman, Oregon Legislature, to Kevin K. Washburn, Assistant Secretary – Indian Affairs, and Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs (May 8, 2013).

⁸² Letter from Senator Diane Rosenbaum and Representative Val Hoyle, Oregon Legislative Assembly, to Sally Jewell, Secretary, U.S. Department of the Interior (November 19, 2013).

⁸³ Letter, Coquille Indian Tribe, Brenda Meade, Chairperson to John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs 3 (Jul. 24, 2019).

⁸⁴ *Ibid.*

⁸⁵ *County of Sauk, Wisconsin v. BIA Midwest Regional Director, Bureau of Indian Affairs*, 45 IBIA 201, 208 (2007).

acquisitions the record must show that the criteria set forth in the Departmental regulation were considered, but “there is no requirement that the BIA reach a particular conclusion with respect to each factor.”⁸⁶ The factors need not be “weighed or balanced in any particular way or exhaustively analyzed.”⁸⁷ The Secretary generally has broad discretion to approve or deny a discretionary trust acquisition, so long as the decision is supported by good reason, and after consideration of relevant regulatory factors at Part 151.⁸⁸ And, while the regulatory factors must be considered, they do not limit the Secretary’s authority to decide whether to acquire land in trust.⁸⁹

The additional scrutiny called for in 151.11(b) establishes a paradigm in which the likelihood of accepting off-reservation land into trust decreases with the distance from the Tribe’s established administrative center. In this case, governments having regulatory jurisdiction are uniformly opposed to the acquisition. Not only must the Secretary give greater weight to these concerns pursuant to 151.11(b), as a practical consideration, the further the tribal political base is from the concerned governments, there becomes greater difficulty in achieving resolution of these issues.

When compared to the significant jurisdictional concerns identified by elected officials, the disruption of the well-established balance of the number of casinos in Oregon, and the potential for the expansion of gaming against the wishes of the State and its elected officials, the Tribe has not made a convincing case that its projected benefits outweigh these significant concerns. Accordingly, exercising the discretion of the Secretary, I hereby deny the Tribe’s application.

I note that the Tribe does have another potential legal avenue to pursue gaming on the identified property pursuant to the Indian Gaming Regulatory Act. The so-called “two part determination” provisions in 25 U.S.C. §2719(b) (1) (A) provide a process whereby concerns of the state can be addressed, and the Department can take off-reservation land into trust for the purposes of gaming.

⁸⁶ *Shawano Cnty.*, 53 IBIA at 68-69; *Arizona State Land Dep’t*, 43 IBIA at 160.

⁸⁷ *Shawano Cnty.*, 53 IBIA at 69; see *Cnty. of Sauk, Wis. v. Midwest Reg’l Dir., Bureau of Indian Affairs*, 45 IBIA 201, 206-07 (2007), *aff’d sub nom. Sauk Cnty. v. U.S. Dep’t of the Interior*, No. 07-543, 2008 WL 2225680 (W.D. Wis. May 29, 2008).

⁸⁸ See *Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1261 (10th Cir. 2001) (“Generally speaking, the Secretary has broad discretion under the Indian Reorganization Act of 1934 . . . to decide whether to acquire land in trust on behalf of Indian tribes.”).

⁸⁹ See, e.g., *State of Florida v. United States Dep’t of the Interior*, 768 F.2d 1248, 1252-53 (11th Cir. 1985), *abrogated on other grounds by Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 567 U.S. 209 (2012); see also *McAlpine v. United States*, 112 F.3d 1429, 1434 (10th Cir. 1997) (“While the regulation does not provide guidance on how the Secretary is to ‘weigh’ or ‘balance’ the factors, it does provide a list of objective criteria that the decisionmaker is required to consider in evaluating trust land acquisition requests.”).

Conclusion

Based on the foregoing analysis, and pursuant to the discretion committed to the Secretary, I respectfully decline the Tribe's request to acquire approximately 2.42 acres of land in trust within the City of Medford, Jackson County, Oregon, for the Coquille Indian Tribe for gaming purposes. I recognize this decision represents a setback for the Tribe; however, I believe the tribe deserves a decision and urge the Tribe to continue to pursue opportunities that will significantly benefit its economic development programs.

Sincerely,



John Tahsuda
Principal Deputy Assistant Secretary -
Indian Affairs