

The Confederated Tribes of the Grand Ronde Community of Oregon

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February 22, 2008

Honorable Dirk Kempthorne
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Honorable Carl Artman
Assistant Secretary, Indian Affairs
1849 C Street, N.W.
Washington, D.C. 20240

Re: Treatment of the Cascade Locks Resort and Casino Site under the Guidance on Taking Off-Reservation Land into Trust for Gaming Purposes

Dear Messrs. Kempthorne and Artman:

I am writing you on behalf of the Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde") regarding the treatment of the Confederated Tribes of Warm Springs' application to take off-reservation land into trust in Cascade Locks, Oregon for a resort and casino ("Cascade Locks Site") under the January 3, 2008, guidance on taking off-reservation land into trust for gaming purposes ("Guidance"). For the reasons stated below, the Cascade Locks Site is beyond a reasonable commutable distance from reservation residents and therefore should be denied under the Guidance.

The Guidance clarifies how the Department interprets 25 CFR Section 151.11 pertaining to off-reservation acquisitions. In particular, the Guidance offers clarity to the Secretary's application of the requirement that he give "greater scrutiny" to the tribe's justification of anticipated benefits from the acquisition as the distance between the tribe's reservation and the land to be acquired increases. Guidance at 1, 3. The Guidance appropriately looks to commutable distance in determining anticipated benefits from the acquisition.¹ "Commutable distance" is defined as

¹ As stated in the Guidance, the policy of the Indian Reorganization Act is to provide a tribal land base on which tribal communities can exist and flourish. Guidance at 2. In addition, the policy of the Indian Gaming Regulatory Act is to promote strong reservation economies. As such, it is appropriate that the Secretary scrutinize off-reservation acquisitions that have limited value in strengthening a tribal land base, a reservation economy, and job opportunities for reservation residents.

“the distance a reservation resident could reasonably commute on a regular basis to work at a tribal gaming facility located off-reservation.” Guidance at 3.

The Guidance recognizes two very obvious negative impacts of placing a casino beyond a commutable distance from the reservation: (1) tribal members will not be able to take advantage of job opportunities and live on the reservation; or (2) tribal members will be forced to move away from the reservation to take advantage of job opportunities. Because both of these impacts would have significant effects on reservation life,² the Guidance states:

[N]o application to take land into trust beyond a commutable distance from the reservation should be granted unless it carefully and comprehensively analyzes the potential negative impacts on reservation life and clearly demonstrates why these are outweighed by the financial benefits of tribal ownership in a distant gaming facility.

Guidance at 4. A casino at the Cascade Locks Site would result in both of these negative impacts.

1. Warm Springs tribal members will not be able to take advantage of job opportunities and live on the reservation.

Warm Springs tribal members will not be able to take advantage of the job opportunities at the Cascade Locks Site and live on the reservation because the Cascade Locks Site is beyond a commutable distance from reservation residents. The distance from the border of the reservation is not the relevant factor in evaluating a “commutable distance” for reservation residents. The relevant factor is whether the proposed casino site is a “commutable distance” from reservation residents who might work at the casino, considering the location of residents and the available road system. The distance from the border of the reservation is especially irrelevant in regards to the Cascade Locks Site. The Site may be within forty miles of the northwest tip of the Warm Springs Reservation “as a crow flies” but, as described below, the distance a reservation resident would have to commute to the Site is significantly greater than that. The Warm Springs Reservation is the largest reservation in Oregon at more than 640,000 acres³ and most of the nearly 4,000 tribal members who reside on the reservation live in the southeast corner of the reservation in or near the town of Warm Springs.⁴ The most direct travel route to the Cascade Locks Site is a curvy and mountainous route plagued with snow and ice during the winter. The attached map illustrates the location of the Warm Springs Reservation, the town of Warm

² The impacts also conflict with the policy of the Indian Reorganization Act and the Indian Gaming Regulatory Act described in footnote 1.

³ 25 CFR Section 151.10(b) requires the Department of the Interior to evaluate a tribe’s need for additional land. Similar to the other off-reservation sites recently rejected by the Department of the Interior, the Cascade Locks Site was not selected to support tribal housing, government infrastructure, or to resolve local land management conflicts. Instead, the Site was selected for its proximity to the Portland/Vancouver gaming market.

⁴ The Confederated Tribes of Warm Springs’ Tribal Community webpage, last accessed on February 22, 2008, at http://www.warmsprings.com/warmsprings/Tribal_Community/.

Springs, and the various routes from Warm Springs to the Cascade Locks Site. The various routes are described in more detail below.

US 26 to OR 35 to I-84 to Cascade Locks (“OR 35 route”).

The OR 35 route is the most direct route from the town of Warm Springs to the Cascade Locks Site in terms of mileage. The route is summarized as follows:

- The distance from the town of Warm Springs to the northwest end of the reservation on US 26 is 32 miles.
- From the northwest end of the reservation to the I-84 entrance ramp east of the town of Hood River via OR 35 is another 57 miles.
- From the I-84 entrance ramp east of Hood River to the town of Cascade Locks is 20 miles.

The combined mileage for this route is 109 miles one way, or a *218-mile daily commute*. Most of the 109 miles is through the mountains in elevated terrain, which reaches an elevation of 4,670 feet at Bennett Pass on OR 35. The estimated travel time for this route in good weather is at least 2 hours one way to the Cascade Locks Site. In rain, light snow, or fog, the travel time may be closer to 2 ½ hours one way.⁵ From November through March, however, winter snow and ice conditions will increase that travel time 50-100% - up to 4 hours one way.

Using the OR 35 route, *the daily commute for a reservation resident to the Cascade Locks Site would total 218 miles at 4-5 hours a day in the summer and up to 8 hours a day in the winter*. This is not a distance a reservation resident could reasonably commute on a regular basis to work.

US 97 to US 197 to I-84 to Cascade Locks (“US 197 route”).

An alternative route is the US 197 route. Although the US 197 route requires some travel in the opposite direction of the Cascade Locks Site, this is the route most used for travel from the Warm Springs area to the Columbia River and westward to Cascade Locks and Portland. This route is preferred by reservation residents due to the high terrain, curvy road, and poor winter conditions of the OR 35 route described above. This route is summarized as follows:

- The distance from the town of Warm Springs to US 97 at the town of Madras is 15 miles.
- The distance from the town of Madras to the I-84 entrance ramp east of the town of The Dalles via US 97 and US 197 is 89 miles. This segment passes through the towns of Willowdale, Maupin, Tygh Valley, and Dufur. This segment also crosses the Criterion Summit at 3,360 feet and the Tygh Grade Summit at 2,697 feet.

⁵ There have also been a number of closures on OR 35 due to washouts. White River washouts have closed the OR 35 bridge five times in recent years – November 2005, October 2005, October 2002, October 2000, and September 1998.

- From the I-84 entrance ramp east of The Dalles to the town of Cascade Locks is 43 miles.

The combined mileage for this route is 147 miles one way, or a *294-mile daily commute*. It also requires going over high terrain and passing through reduced speed limits of four towns. Using the US 197 route, the estimated travel time to the Cascade Locks Site in good weather is close to 3 hours one way and much longer in bad weather. Using this route, *the daily commute for a reservation resident to the Cascade Locks Site would total 294 miles at about 6 hours a day in the summer and more in the winter*. This is also not a distance a reservation resident could reasonably commute on a regular basis to work.⁶

The lack of job opportunities for reservation residents at the Cascade Locks Site is exacerbated by the loss of reservation jobs that will result from the closure of Warm Springs' on-reservation casino at Kah-Nee-Ta. In accordance with the State of Oregon's current "one-casino-per-tribe" policy, and as required in the proposed Compact between Warm Springs and the State of Oregon, once Warm Springs commences gaming at the Cascade Locks Site, Warm Springs must close its casino on the Warm Springs Reservation.⁷ In the end, any meaningful employment opportunities for reservation residents resulting from the Cascade Locks Site must be considered against the loss of on-reservation jobs – the result of which could be an increase in unemployment on the reservation.⁸

2. Warm Springs tribal members will be forced to move away from the reservation to take advantage of the job opportunities at the Cascade Locks Site.

Because Warm Springs tribal members are not within a commutable distance of the Cascade Locks Site, they will be forced to move away from the reservation to take advantage of job opportunities there. As recognized in the Guidance, the departure of a significant number of Warm Springs tribal members from the reservation could have serious and far-reaching implications for the remaining tribal community and its continuity and cohesiveness as a community. Guidance at 4.

⁶ The distance of the Cascade Locks Site from Warm Springs Reservation residents by either the OR 35 route or the US 197 route is in the range of other off-reservation sites recently rejected by the Department of the Interior as being beyond a reasonable commuting distance (e.g., Los Coyotes Band/Barstow parcel (115 miles), Chemehuevi Indian Tribe/Barstow parcel (135 miles), Mississippi Band of Choctaw Indians/Jackson County parcels (175 miles)).

⁷ Tribal-State Compact for the Cascade Locks Resort and Casino, April 6, 2005, Article V, Section C (disapproved by the Secretary of the Interior on May 20, 2005). The proposed Compact provides that the Tribe may conduct bingo and other Class II gaming on the Warm Springs Reservation, provided that such gaming does not involve patron play on electronic or electro-mechanical machines that are substantially similar in appearance or operation to slot machines.

⁸ Because the Cascade Locks Site would not increase job opportunities for reservation residents, and actually could result in a loss of job opportunities, the anticipated benefits to Warm Springs from the Site are not any greater (and perhaps worse) than the other off-reservation sites recently rejected by the Department of the Interior as being beyond a reasonable commuting distance.

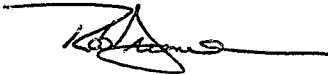
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The Cascade Locks Site is beyond a reasonable commutable distance from residents of the Warm Springs Reservation. As described above, a tribal member would have to commute at least 4 hours a day in good weather and up to 8 hours a day in winter conditions. Because of the distance, tribal members would be forced to leave the reservation in order to take advantage of job opportunities at the Site. Either of these situations is contrary to the purposes of the Indian Reorganization Act and the Indian Gaming Regulatory Act to encourage strong tribal communities and job opportunities for reservation residents. Thus, the Cascade Locks Site must be rejected under the Guidance.

Thank you for your consideration of Grand Ronde's comments. Please contact me at (503) 879-2270 with any questions.

Very truly yours,



Rob Greene
Tribal Attorney

Enclosure

cc: Grand Ronde Tribal Council
House Natural Resources Committee
Michael Bogert, Department of the Interior
George T. Skibine, Department of the Interior
Stanley Speaks, Northwest Region, Bureau of Indian Affairs