



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 10 2025

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

Dear Chairperson Meade:

This letter provides my decision, on reconsideration, on the Coquille Indian Tribe's (Tribe) application to the United States Department of the Interior (Department) requesting the acquisition of approximately 2.42 acres of off-reservation land in trust for the benefit of the Tribe within the City of Medford, Jackson County, Oregon (Medford Site) for gaming and other purposes.¹ After careful review of the record before me, I have reconsidered the Department's May 27, 2020 decision² (2020 Decision) and now approve the Tribe's application. I am directing the Bureau of Indian Affairs (BIA) to take the Medford Site into trust based on the reasoning and analysis set forth below.

DESCRIPTION OF THE PROJECT

The Tribe proposes to renovate an existing bowling alley situated on the Medford Site, which currently offers gaming in the form of Oregon State Lottery Video Lottery Terminal machines (VLT), into a Class II gaming facility totally approximately 30,300 square feet. The gaming component of the facility would consist of 650 gaming machines within a 16,700-square-foot gaming floor area. Other facilities within the gaming facility would include a bar/deli and space devoted to gaming support services. The remainder of the Medford Site would remain in fee status and would be used as parking for the Proposed Project.

BACKGROUND

The Coquille were originally known by their native name "Mishikhwutmetunne" which means "people living on the stream called Mishi or Misha."³ The Tribe was one of a group of tribes and bands that occupied permanent villages on the Oregon coast. The Tribe's geographic footprint was focused along

¹ See letter from Brenda Meade, Chairperson, Coquille Tribe, to Stan Speaks, Regional Director, Bureau of Indian Affairs (Nov. 2, 2012). The Tribe submitted additional documents to supplement its fee-to-trust application. See Letters from Brett Kenney, Tribal Attorney, Coquille Indian Tribe, to Paula Hart, Office of Indian Gaming (January 23, 2013); from Brett Kenney, Tribal Attorney, Coquille Indian Tribe, to Sherry Johns, Realty Specialist, Bureau of Indian Affairs (Feb. 5, 2013); 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 (March 22, 2013).

² Principal Deputy Assistant Secretary for Indian Affairs John Tahsuda, Decision Letter on Coquille Tribe Application for Fee-to-Trust Acquisition (May 27, 2020). (2020 Decision).

³ Robert H. Ruby et al., *A Guide to the Indian Tribes of the Pacific Northwest* 103 (University of Oklahoma Press, 3d ed. 2010).

the Coquille River and the streams and sloughs of the Coos Bay region.⁴ The Tribe historically consisted of three geographic units-South Slough, Upper Coquille and Lower Coquille.⁵

In 1855, the Coquille Tribe was party to a treaty with the United States to cede land, receive payment, and to remove themselves and settle on new reservation lands on the coast, the Siletz Reservation.⁶ The 1855 treaty was never ratified.⁷ In 1856, the United States attempted to remove the Coquille tribe to the Siletz Reservation, however, many Coquille members remained in their aboriginal territory and others who had been removed, returned. A separate reservation for the Coquille was never established and most of the Tribe's members did not receive allotments.⁸ Today, the Coquille Tribe is composed of the descendants of those Coquille Indians who stayed in the aboriginal lands or returned to the homelands after removal.⁹

Nearly one hundred years later, in 1954, Congress enacted the Western Oregon Indian Termination Act in which the Tribe lost its recognized status as a sovereign entity, and its members lost access to Federal services.¹⁰

In 1973, the United States began to restore recognition to many tribes. However, it wasn't until 1989 that Congress recognized that: "The Coquille Tribe is the last to seek restoration of the numerous Oregon tribes terminated by the U.S. Government by two acts of Congress in 1954," thus the Coquille Restoration Act (CRA) was enacted. Senate Report 101-50 states: "Restoration of the trust relationship and the government-to-government relationship with the Coquille Tribe of Oregon is the last step in the process in correcting an historic injustice and restoring to a Federal relationship a tribe whose existence and relationship to the United States was specifically extinguished by an Act of Congress."¹¹

Congress, through the CRA, restored the rights and privileges to the Tribe and designated a five-county service area in the Oregon counties of Coos, Curry, Douglas, Jackson, and Lane (Service Area). The Service Area in the CRA allows for the provision of Federal services to members of the Tribe residing within the Service Area in the same manner as if they were residing on a reservation.¹² The CRA expressly made the Indian Reorganization Act of 1934 applicable to the Tribe and its members.¹³ Finally, relevant to this application, Section 5(a) of the CRA provides the Secretary of the Interior (Secretary) both mandatory and discretionary trust land acquisition authority within the Service Area, and Section 5(b) provides lands acquired in trust under the CRA "shall be part of [the Tribe's] reservation."

⁴ See Roberta L. Hall, Ph.D. and Thomas L. Grigsby, Ph.D., History, Language, Culture, and Political Characteristics of the Coquille Indians of Oregon-Coquille Indians in Prehistoric, Pre-Reservation, and Early Reservation Periods, 2 (unpublished)(on file with Coquille Indian Tribe).

⁵ See Roberta L. Hall, Ph.D. and Thomas L. Grigsby, Ph.D., History, Language, Culture, and Political Characteristics of the Coquille Indians of Oregon-Coquille Indians in Prehistoric, Pre-Reservation, and Early Reservation Periods, 2 (unpublished)(on file with Coquille Indian Tribe).

⁶ Treaties with Certain Indians in Oregon, Articles 1 and 2.

⁷ Senate Report 101-50 at 2; Senate Report 101-61 at 3.

⁸ Senate Report 101-50 at 3.

⁹ Senate Report 101-50 at 2.

¹⁰ See Act of August 13, 1954, 68 Stat. 724; see also S. Rep. No. 101-50, at 1 (1989).

¹¹ Senate Report 101-50 at 2.

¹² Coquille Restoration Act §2(5).

¹³ Coquille Restoration Act 3(e).

Procedural History of the Nation's Fee-to-Trust Application

In 2012, the Tribe submitted an application to the BIA requesting that the Secretary transfer into trust approximately 2.42 acres of land located in the City of Medford, Jackson County, Oregon, for gaming and other purposes.¹⁴

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA).¹⁵ The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth procedures for implementing Section 5 of the IRA. Section 151.10(h) requires the Department to consider an application for "[t]he extent to which the applicant has provided information that allows the Secretary to comply with" the National Environmental Policy Act (NEPA). The BIA initiated the preparation of an Environmental Impact Statement (EIS) pursuant to NEPA to analyze the potential environmental consequences of the proposed acquisition. In January 2015,¹⁶ the BIA published in the *Federal Register* a Notice of Intent to prepare an EIS and initiated scoping in February 2015.

In late 2019, the BIA was completing its review of the draft EIS but had not yet issued it for public review and comment. The Principal Deputy Assistant Secretary – Indian Affairs issued the 2020 Denial before the BIA issued the draft EIS. On September 3, 2020, the Assistant Secretary – Indian Affairs issued a Notice of Cancellation of the EIS announcing that the environmental review process had been discontinued.¹⁷ On February 5, 2021, the Tribe requested the withdrawal of the 2020 Denial.¹⁸

On December 22, 2021, I withdrew the 2020 Denial because the Department failed to complete the NEPA process, which had deprived the decision maker of relevant material to make an informed decision and remanded the Tribe's application back to the BIA.¹⁹ As discussed in more detail below, the Department has completed the NEPA process and upon consideration of the full administrative record I now issue a new decision.

GAMING ELIGIBILITY DETERMINATION PURSUANT TO THE INDIAN GAMING REGULATORY ACT

Congress enacted the Indian Gaming Regulatory Act (IGRA) to in part, provide for a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development and self-sufficiency.²⁰ Section 20 of IGRA, codified at 25 U.S.C. § 2719, generally prohibits gaming activities on newly acquired lands held in trust by the United States on behalf of a tribe after October 17, 1988.²¹

¹⁴ Letter from Brenda Meade, Chairperson, Coquille Indian Tribe, to Stan Speaks, Regional Director, Northwest Region, Bureau of Indian Affairs (Nov. 2, 2012).

¹⁵ 25 U.S.C. § 5108.

¹⁶ Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon, 80 Fed. Reg. 2120 (Jan. 15, 2015).

¹⁷ See Notice of Cancellation of Environmental Impact Statement for Proposed Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon, 85 Fed. Reg. 55026, (Sept. 3, 2020).

¹⁸ See Letter from Brenda Meade, Chairperson, Coquille Indian Tribe, to Scott de la Vega, Acting Secretary, U.S. Department of the Interior (Feb. 5, 2021).

¹⁹ See Letter from Bryan Newland, Assistant Secretary Indian Affairs to Brenda Meade, Chairperson, Coquille Indian Tribe (December 22, 2021).

²⁰ 25 U.S.C. § 2702(2).

²¹ The Department's regulations define "newly acquired lands" to mean land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988. 25 C.F.R. § 292.2.

Congress, however, expressly provided in the Restored Lands Exception that lands taken in trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition” are not subject to IGRA’s general prohibition on gaming. 25 U.S.C. § 2719 (b)(1)(B)(iii). The legislative history surrounding this provision shows the intent was to place restored tribes on a level footing as tribes who had not suffered from termination. The courts have read this provision broadly within a framework of restitution for decades of improper treatment as a terminated tribe and compensation for not only what a tribe lost by the act of termination but also for opportunities lost in the interim.²²

The Department’s regulations at 25 C.F.R. Part 292 implement Section 20 of IGRA. Under the criteria set forth in those regulations, a tribe qualifies for the Restored Lands Exception in Section 20 if it meets the “restored tribe” criteria of sections 292.7-10, and if lands acquired in trust meet the “restored lands” criteria of Sections 292.11. Further, given the D.C. District Court’s decision in *Koi Nation*, and later in *Scotts Valley*, the Department’s application of IGRA must be consistent with Congress’s restorative intent.

THE PART 292 REGULATIONS

RESTORED TRIBE CRITERIA, 25 C.F.R. § 292.7

The restored lands exception, 25 C.F.R. § 292.7, allows for gaming on newly acquired lands if the following conditions are met:

- (a) The tribe at one time was Federally recognized, as evidenced by its meetings the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of “restored lands” in § 292.11.

Thus, to qualify as having been restored to Federal recognition, the Tribe must show that (i) it was at one time Federally recognized; (ii) the United States terminated its government-to-government relationship with the Tribe; and (iii) after it lost its government-to-government relationship, it was restored to Federal recognition. As discussed in more detail below the Tribe satisfies the restored Tribe criteria and the restored lands criteria of 25 C.F.R. §§ 292.7-292.11.

²² *Koi Nation of N. Cal v. United States DOI*, 2019 U.S. Dist. LEXIS 7859 at *66, *68, 2019 WL 250670 (D.D.C. Jan. 16, 2019) citing to *City of Roseville*, 348 F.3d at 1027, 1029 (D.C. Cir. Nov. 14, 2003). See also *The Confederated Tribes of the Grand Ronde Community of Oregon v. Jewell*, 75 F. Supp. 3d 378, 411 (D.C. Dist. 2014) affirmed by *Grand Ronde v. Jewell*, 830 F.3d 552 (D.C. Cir. 2016).

25 C.F.R. §292.8 How does a tribe qualify as having been Federally recognized?

For a tribe to qualify as having been at one time Federally recognized for purposes of § 292.7, one of the following must be true:

- (a) The United States at one time entered into treaty negotiations with the tribe;
- (b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
- (c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
- (d) The United States at one time acquired land for the tribe's benefit; or
- (e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.

Here, the Tribe meets the criteria 292.8(a) because in 1855, the United States entered into a treaty with several tribes in Oregon, one of which was the Coquille Tribe. Although only one criterion must be met, the Tribe also meets the criteria in § 292.8(c) because Congress identified the Tribe by name in the Western Oregon Termination Act, which terminated the Tribe's Federal recognition.²³ The termination of Federal recognition, thus, satisfies Section 292.7(a), the tribe was at one time Federally recognized.

25 C.F.R. § 292.9 How does a tribe show that it lost its government-to-government relationship?

For a tribe to qualify as having lost its government-to-government relationship for purposes of § 292.7, it must show that its government-to-government relationship was terminated by one of the following means:

- (a) Legislative termination;
- (b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
- (c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.

Here, the Tribe meets the criteria in § 292.9(a) because in 1954 Congress identified the Tribe as subject to termination in the Western Oregon Termination Act. The record also shows the Tribe satisfies § 292.9(b) because on August 17, 1956, the Secretary, pursuant to Western Oregon Termination Act, stated that the Tribe "shall not be entitled to any services performed by the United States for Indians because of their status as Indians."²⁴ The record further shows, the Tribe satisfies § 292.9(c) because in 1989 the United States restored its government-to-government relationship with the Tribe through the enactment of the Coquille Restoration Act (CRA).²⁵ Although only one criterion of § 292.9 must be met, the Tribe meets all three of the requirements and the Tribe shows it lost its government to government relationship as required by § 292.7(b).

²³ See Act of August 13, 1954, 68 Stat. 724; see also S. Rep. No. 101-50, at 1 (1989).

²⁴ 21 Fed Reg. 6244 (August 18, 1956).

²⁵ Coquille Restoration Act of June 28, 1989, Pub. L. 101-42, 103 Stat. 92.

§ 292.10 How does a tribe qualify as having been restored to Federal recognition?

For a tribe to qualify as having been restored to Federal recognition for purposes of § 292.7, the tribe must show at least one of the following:

- (a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);
- (b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or
- (c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.

Here, the Tribe satisfies the criteria of § 292.10(a) because the Tribe was restored to Federal recognition by the enactment of the CRA by Congress in 1989.²⁶ Through the CRA, the Tribe meets the restored Tribe requirements of 292.7.

§ 292.11 What are “restored lands”?

For newly acquired lands to qualify as “restored lands” for purposes of § 292.7, the tribe acquiring the lands must meet the requirements of paragraph (a), (b), or (c) of this section.

- (a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:
 - (1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
 - (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.
- (b) If the tribe is acknowledged under § 83.8 of this chapter, it must show that it:
 - (1) Meets the requirements of § 292.12; and
 - (2) Does not already have an initial reservation proclaimed after October 17, 1988.
- (c) If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.

Here, the Tribe meets the criteria of § 292.11(a)(1) because section 5(a) of the CRA provides the Secretary of Interior both mandatory and discretionary trust land acquisition authority within the Service Area. Section 2(5) designates the Tribe a five-county service area as the Oregon counties of Coos, Curry, Douglas, Jackson, and Lane County. The Tribe’s application is for trust acquisition of the Medford Site, in Jackson County, as a discretionary trust acquisition under section 5(a). Therefore, I

²⁶ Coquille Restoration Act of June 28, 1989, Pub. L. 101-42, 103 Stat. 92.

conclude that the Medford Site satisfies the restored lands requirements of 25 C.F.R. § 292.11(a)(1). Accordingly, once acquired in trust as a restoration of lands for a restored Tribe, the Tribe is eligible to conduct gaming on the Medford Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii).

TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

The Department's authority for acquiring the land in trust is found in Section 5 of the IRA.²⁷ As noted above, the Coquille Restoration Act makes the IRA applicable for the Tribe. The Department's land acquisition regulations at 25 C.F.R. § 151 sets forth the procedures for implementing Section 5 of the IRA. Pursuant to the law and absent a request from the Tribe, this application has been processed under the regulations that were in effect prior to January 11, 2024.²⁸

25 C.F.R. § 151.3 – Land acquisition policy.

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Although only one factor in Section 151.3 must be met, the Tribe meets both (a)(2) and (a)(3). The Department's review of the Tribe's application found that the Medford Site is owned by the Tribe and acquisition of the Site in trust is also necessary to facilitate Tribal self-determination and economic development. The Tribe currently operates The Mill Casino, Hotel, and RV Park (Mill Casino), a gaming facility in North Bend, Oregon, along U.S. Route 101 (U.S. 101) adjacent to Coos Bay. Historically, the Mill Casino was the leading revenue producer for the Tribe. However, changes in Oregon coast demographics, a declining economy, isolation from the Interstate 5 (I-5) corridor, a growing Tribal population with an increasing need for support services, and the general inflation of program costs have created a situation where revenues from the Mill Casino are no longer able to keep pace with the needs of the Tribe. The failure of economic development efforts in the region have driven job seekers out of the community, contributing to a diminishing population and a lack of financial prospects. This situation was further worsened with the addition of tribal gaming competition within the Mill Casino's limited local market, combined with increasing costs, including those associated with the future impacts of Oregon's minimum wage law. Based on the underlying causes of the Mill Casino's trend of declining revenue, it is unlikely that the Mill Casino, with its current limitations, will

²⁷ Act of June 18, 1934, ch. 576, § 5, 48 Stat. 984 ("IRA") (codified at 25 U.S.C. § 5108) ("The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.").

²⁸ 25 C.F.R. § 151.17(a). The revised Part 151 regulations allow Tribes who had applications submitted before their effective date to continue the process under the prior regulations unless they requested that the application be processed under the new revisions.

experience revenue growth in the foreseeable future.²⁹ Acquisition of the Site in trust will facilitate the Tribe's conversion of an existing bowling alley, which currently offers gaming in the form of State Lottery VLTs, into an IGRA based Class II gaming facility totally approximately 30,300-square-feet. The gaming component of the facility would consist of 650 gaming machines within a 16,700-square-foot gaming floor area. Other facilities within the gaming facility would include a bar/deli and space devoted to gaming support services. This secondary gaming facility will provide additional revenue for the Tribe as well as offer economic resiliency should the Mill Casino be forced to shut down due to a tsunami or other similar natural disaster. I note the Mill Casino was under a tsunami warning as recently as December 5, 2024.³⁰ The acquisition of the Site is an essential component of the Tribe's self-determination and broader economic initiatives to establish a long-term revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development.

Accordingly, I find the acquisition of the Medford Site into trust satisfies Section 151.3.

25 C.F.R. § 151.11 – Off-Reservation Acquisition.

We consider the Tribe's application under the off-reservation criteria of Section 151.11 because the Medford Site is located outside of, and noncontiguous to, the Tribe's existing Reservation. The regulations require that the Tribe's application be evaluated under Sections 151.10(a) through (c), (e) through (h), and 151.11(b) through (e), as discussed below.

25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority.

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition, and if such authority exists, to consider any limitations contained in it including the effect, if any, of the decision in *Carcieri v. Salazar*. In *Carcieri*, the United States Supreme Court held that the Secretary's authority to take land into trust for an Indian tribe under the first definition of "Indian" in the IRA extends only to those tribes that were "under federal jurisdiction" on June 18, 1934, when the IRA was enacted.³¹

In this instance Congress, through the CRA expressly applied the IRA to the Tribe. Further, the CRA at section 5(a) provides the Secretary of Interior both mandatory and discretionary authority to acquire land in trust for the Tribe within the Service Area. Section 2(5) designates for the Tribe a five-county service area as the Oregon counties of Coos, Curry, Douglas, Jackson, and Lane County.³² The Medford Site is located in Jackson County, within the Service Area.³³ Further, Congress expressly stated that land acquired under Section 5 of the CRA shall be part of the Coquille Reservation.³⁴ Therefore, the Department is authorized to acquire land in trust for the Tribe within the Service Area.

²⁹ See Final Environmental Impact Statement Section 1.3.

³⁰ <https://www.opb.org/article/2024/12/05/tsunami-warning-southern-oregon-northern-california/> (last visited on Dec. 17, 2024).

³¹ *Carcieri v. Salazar*, 555 U.S. 379 (2009). (*Carcieri*).

³² Coquille Restoration Act Section 5(a).

³³ Coquille Restoration Act Section 2(5).

³⁴ Coquille Restoration Act Section 5(b).

25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land.

Section 151.10(b) provides that the Secretary will consider a tribe's need for additional land when reviewing a tribe's request to have land acquired in trust.

As discussed above, acquisition of the Site in trust will facilitate the Tribe's conversion of an existing bowling alley, which currently offers gaming in the form of State Lottery VLTs, into an IGRA based Class II gaming facility totally approximately 30,300-square-feet. The gaming component of the facility would consist of 650 gaming machines within a 16,700-square-foot gaming floor area. Other facilities within the gaming facility would include a bar/deli and space devoted to gaming support services. This secondary gaming facility will provide additional revenue for the Tribe as well as offer economic resiliency should the Mill Casino be forced to shut down due to a tsunami or other similar natural disaster. I note that the Mill Casino was under a tsunami warning as recently as December 5, 2024.³⁵ The acquisition of the Site is an essential component of the Tribe's self-determination and broader economic initiatives to establish a long-term revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development. Additionally, as discussed above, the CRA provides the Secretary with discretionary land acquisition authority within the Service Area.

The Regional Director found, and I concur, that the Tribe has established a need for additional land, and the acquisition of the Medford Site in trust will help address the Tribe's needs.³⁶

25 C.F.R. § 151.10(c) - The purposes for which the land will be used.

Section 151.10(c) requires the Secretary to consider the purposes for which the land will be used. The Medford Site is zoned for regional commercial and heavy commercial development.³⁷ Current land use of the Medford Site is bowling alley and associated parking lot. The bowling alley is approximately 23,300 square feet and offers gaming in the form of Oregon Video Lottery Terminals.³⁸ The Tribe intends to retrofit and remodel the existing bowling alley into a 30,300-sf gaming facility with 650 Class II gaming machines.³⁹ The purposes for which the land will be used are consistent with current uses and will facilitate tribal self-determination and economic development. The Tribe's Application satisfies the requirements of this section. Maps of the Site are included as Enclosure 1. The legal description of the Site is included as Enclosure 2.

25 C.F.R. § 151.10(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.

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.

³⁵ <https://www.opb.org/article/2024/12/05/tsunami-warning-southern-oregon-northern-california/> (last visited on Dec. 17, 2024).

³⁶ Regional Director's Finding of Fact at 5-6.

³⁷ See Final Environmental Impact Statement § 2.2.1.

³⁸ See Final Environmental Impact Statement § 2.2.1.

³⁹ See Final Environmental Impact Statement § 2.3.

By correspondence dated February 1, 2013,⁴⁰ the BIA solicited comments from the following State and local governments, on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:

- City of Medford
- Jackson County
- Office of the Governor
- Elk Valley Rancheria⁴¹

In response to requests for additional time from the Office of the Governor, the City of Medford, and Jackson County, the Department extended the comment period to from 30 days approximately 90 days.

By correspondence dated September 26, 2017, the BIA initiated a second round of comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments, from State and local governments. The Department again responded to requests for additional time to comment by extending the 30-day comment period to approximately 60-days.

A third Notice of Application letter was sent on November 20, 2024, to the following State, local governments, and interested parties soliciting updated comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments.

- City of Medford
- City of Rogue River
- City of Gold Hill
- City of Talent
- City of Ashland
- Town of Butte Falls
- City of Jacksonville
- City of Central Point
- City of Phoenix
- City of Eagle Point
- City of Shady Cove
- Jackson County
- Josephine County
- Siskiyou County
- Office of the Governor of Oregon
- Elk Valley Rancheria
- Cow Creek Band of Umpqua Tribe of Indians
- Coquille Indian Tribe

⁴⁰ See Regional Director's Finding of Fact at Exhibit 12.

⁴¹ See Regional Director's Finding of Fact at Exhibit 12-B. By letter dated March 11, 2013, Dale A. Miller, Chairman of the Elk Valley Rancheria, California requested that the Northwest Regional Office add the Tribe to the list of interested parties. Based on this request, a Notice of Application was sent to the Elk Valley Rancheria, California on March 13, 2013.

The Department received no direct responses to the November 20, 2024, letter but did receive numerous comments on the Final EIS which was published at the same time. The Department also received comments from the State and local governments and other interested parties during the 2013 and 2017 comment periods. Additionally, the Department notes the record reflects numerous comments received, during formal comment periods and outside of formal comment periods, during the more than 10-year period this application has been under review. This application has received letters of support from private citizens, third party Tribes, and some state and local political officials. Similarly, this application has received letters of opposition from private citizens, third party Tribes, and some state and local political officials. Many of the opposition letters from third party Tribes expressed concern with the Department's application of IGRA's restored lands exception and the plain language of the CRA. Similarly, many of the opposition letter from state and local politicians, including the three Governors who have held office during the decade-long pendency of this application, expressed concern with any further expansion of Tribal gaming within the State of Oregon citing to their "one casino per Tribe" policy.⁴² I will note those three Governors also presided over significant expansions in Oregon State Lottery gaming including into mobile sports betting.⁴³

Tax impacts

The transfer of the approximately 2.42 acres Medford Site into trust would result in a loss of property taxes and businesses taxes from the existing bowling alley with a bar and grill. The State, County, and local property tax for the Medford Site was \$25,189 in 2021.⁴⁴ The Jackson County's Assessment's Office reported on March 20, 2024, that its total tax base for 2023 was \$368,647,212.04.⁴⁵ Therefore, the amount of lost taxes would be approximately 0.006832819% of the overall tax base. The FEIS and Record of Decision (ROD), addressed impacts to state and local governments from the loss of those tax revenues which is expected to be offset by increased revenue from project related indirect and induced activity.⁴⁶ Additionally, the Tribe has entered into a Municipal Services Agreement with the City of Medford which provides a payment for services structure where the City will continue to provide services to the Medford Site and the Tribe will pay the city for those services thereby offsetting potential losses of property tax or business tax revenue.⁴⁷

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise.

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

⁴² See e.g. Letter to Stan Speaks, Northwest Regional Director, from John A. Kitzhaber, M.D., Governor, State of Oregon, dated May 6, 2013; letter to Stan Speaks, Northwest Regional Director, from Kate Brown, Governor, State of Oregon, dated April 13, 2016; letter to Tribal Chairs, Coquille Indian Tribe et al., from Tina Kotek, Governor, State of Oregon, dated April 13, 2023.

⁴³ See <https://www.oregonlottery.org/about/> (last visited Dec. 18, 2024).

⁴⁴ Regional Director's Finding of Fact at 7.

⁴⁵ Regional Director's Finding of Fact at 7.

⁴⁶ FEIS § 4.7.1. ROD at 11.

⁴⁷ See Municipal Services Agreement between the Coquille Indian Tribe and the City of Medford dated September 2023.

As discussed above, the BIA by correspondence dated February 1, 2013, September 26, 2017, and November 20, 2024, requested comments regarding jurisdictional problems and potential conflicts of land use from state and local governments. The Governor of Oregon expressed concerns that the Tribe will convert the Proposed Project into a destination Class III gaming facility once the land is taken into trust, but the Tribe had analyzed the market and decided to pursue a Class II gaming facility.⁴⁸ Additionally, the Tribe has entered into a Municipal Services Agreement with the City of Medford which provides a payment for services structure where the City will continue to provide services to the Medford Site and the Tribe will pay the city for those services reducing potential jurisdictional problems or conflicts of land use.

Land Use

The Medford Site is located in the south part of the City of Medford, Jackson County, Oregon, approximately 167 miles south of the Tribe's Reservation in Coos County and is within the Service Area. The Medford Site is zoned for regional commercial and heavy commercial development.⁴⁹ The current land use of the Medford Site is bowling alley with a bar and grill that offers gaming in the form of State Lottery VLTs and an associated parking lot. As discussed in the FEIS and ROD, converting the bowling alley into a Class II gaming facility would not conflict with current zoning or surrounding land uses.⁵⁰

Jurisdiction

The Tribe entered into an agreement for municipal services with the City of Medford on September 15, 2023. The agreement provides that the City of Medford will provide law enforcement, fire protection, emergency medical services, street maintenance, storm water services, and water services to the Medford Site in exchange for service payments from the Tribe.⁵¹

The Regional Director determined, and I concur, that the acquisition of the Site in trust would not cause conflicts of land use or other jurisdictional problems.⁵²

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Section 151.10(g) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities if the land is acquired in trust.

The Regional Director has determined, and I concur, that the BIA has sufficient resources to assume the additional responsibilities resulting from the acquisition, and that acquiring the Site in trust would not impose any significant additional responsibilities or burdens on the BIA.⁵³

⁴⁸ Regional Director's Finding of Fact at 11.

⁴⁹ See FEIS § 2.2.1.

⁵⁰ FEIS § 3.1.2; ROD at 13.

⁵¹ See Letter from Brenda Meade, Chairperson, Coquille Indian Tribe to Paula Hart, Director, Office of Indian Gaming (September 15, 2023).

⁵² See Regional Director's Finding of Fact at 10-11.

⁵³ Regional Director's Finding of Fact at 12.

25 C.F.R. § 151.10(h) - The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, NEPA Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the NEPA, 42 U.S.C. § 4321 et seq., and a determination on the presence of hazardous substances. The Department must also complete an Environmental Site Assessment (ESA) pursuant to Departmental Manual at 602 DM 2. The Department finalized a Phase 1 ESA in 2012 which identified no Recognized Environmental Concerns,⁵⁴ a limited Phase II ESA in December 2015, and an updated Phase 1 ESA on February 21, 2024. This satisfies the requirements of 602 DM 2.

National Environmental Policy Act

The BIA published a Notice of Intent (NOI) for the EIS in the *Federal Register* on January 15, 2015. The BIA held a public scoping meeting in February 2015 and issued a scoping report in June 2015. On September 3, 2020, a notice of cancellation announcing the discontinuation of the preparation of the EIS was published.⁵⁵ On December 27, 2021, the BIA published a notice of Resumption of Preparation of the EIS.⁵⁶ On February 28, 2022, the BIA published a correction to the notice of resumption to correct certain dates.⁵⁷

On November 25, 2022, a Notice of Availability for the DEIS was published in the *Federal Register* from both BIA and EPA with a 45-day comment period ending on January 9, 2023.⁵⁸ I extended the comment period to February 23, 2023.⁵⁹ Additionally, the NOA was published in the local paper, Medford Mail Tribune, and was mailed to interested parties. The Draft EIS was originally made available for public comment for a 45-day period. However, the BIA extended the public comment period for an additional 45-day period that concluded on February 23, 2023, resulting in a total comment period of 90 days.⁶⁰ Two virtual public hearings were held during the comment period, one on December 15, 2022, and the other on January 31, 2023.

On November 22, 2024, a Notice of Availability for the Final Environmental Impact Statement (FEIS) was published in the *Federal Register* from both BIA and EPA with a 30-day waiting period ending on December 22, 2024.

A copy of the completed documents can be found at: coquille-eis.com.

⁵⁴ Final Environmental Impact Statement, Appendix L.

⁵⁵ 85 Fed. Reg. 55026.

⁵⁶ Notice of Resumption of preparation of an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon, 86 Fed. Reg. 73313 (Dec. 27, 2021).

⁵⁷ 87 Fed. Reg. 11084.

⁵⁸ Notice of Availability of Draft Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon, 87 Fed. Reg. 72505 (Nov. 25, 2022).

⁵⁹ Notice of Extension of Public Comment Period on Draft Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon, 87 Fed. Reg. 77877 (Dec. 20, 2022).

⁶⁰ 87 Fed. Reg. 77877.

The EIS analyzed four alternatives:

- Alternative A consists of the transfer into trust of approximately 2.4 acres of the 7.24-acre Medford Site. The Tribe proposes to renovate an existing bowling alley, which currently offers gaming in the form of State Lottery VLTs, into a Class II gaming facility.
- Alternative B consists of approval of the transfer of approximately 49.34 acres into Federal trust status, and the construction of a gaming facility and surface parking on the Phoenix Site.
- Alternative C consists of expanding the current Mill Casino
- Alternative D consists of none of the alternatives (A, B, or C) would be implemented.

The BIA considered potential impacts from the alternatives in the EIS and determined that potentially significant effects will be adequately addressed by mitigation measures. The enclosed ROD determines that the acquisition of the Medford Site in trust and subsequent implementation of Alternative A will have no significant impact on the quality of the human environment. The ROD is included as Enclosure 3.

25 C.F.R. § 151.11(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation.

The Medford Site is located in the south part of the City of Medford, Jackson County, Oregon, approximately 167 miles south of the Tribe's Reservation in Coos County. The Medford Site is within the Tribe's congressionally-designated Service Area.

25 C.F.R. § 151.11(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.

The Tribe prepared and submitted a business plan to the BIA as part of its application in April 2013 (Business Plan), including a market assessment, analysis of its current operations, and a financial plan with revenue projections.⁶¹ The Tribe's submissions provide adequate support to demonstrate the economic benefits associated with the proposed use. I find the Tribe's application meets the requirements of this section.

25 C.F.R. § 151.11(d) - Contact with State and local governments pursuant to sections 151.10(e) and (f).

As more fully discussed in Sections 151.10(e) and (f) above, the Department sent a notice of application dated February 1, 2013, to State and local governments having regulatory jurisdiction over the land which solicits comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments and again on November 20, 2024, to update tax information and regulatory issues.⁶² The requirement of this section has been met.

⁶¹ Tribe's Application, Business Plan for Proposed Class II Gaming Facility in Medford, Oregon, April 2013.

⁶² Regional Director's Finding of Fact at 17.

CONCLUSION

Having thoroughly considered the Tribe's application, the IRA, the IGRA, the Department's regulations at 25 C.F.R. Part 151 and Part 292, and all of the documents in the record, I conclude that the Tribe's application meets all of the regulatory requirements. Therefore, the Medford Site will be acquired in trust for the Tribe as a restoration of land for a restored tribe.

DECISION TO APPROVE THE TRIBE'S FEE-TO-TRUST APPLICATION

Pursuant to the CRA and Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Medford Site in trust for the Tribe. Furthermore, I have determined that the Tribe may conduct gaming on the Medford Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii). Consistent with applicable law and the Department's requirements, the Regional Director shall immediately acquire the land in trust. This decision constitutes final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosures:

1. Maps of the Medford Site
2. Legal Description of the Medford Site
3. Record of Decision

Enclosure 1
Maps of the Medford Site



SOURCE: Kennedy Jenks, 2015; DigitalGlobe aerial photograph, 6/29/2018;

Coquille Indian Tribe Fee-to-Trust and Gaming Facility Draft EIS / 212549 ■

Figure 2-6
Alternative A - Site Plan



Figure 2-2
Site and Vicinity

Enclosure 2

Legal Description of the Medford Site

Beginning at the Northeast Corner of Donation Land Claim No. 46, Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence South 00° 02' 40" East along the East line of said Donation Land Claim line 1163.22 feet {record South 1163.80 feet); thence South 51° 15' 00" West, 1338.47 feet to a 5/8 inch iron pin at the Point of Beginning; thence continue South 51° 15' 00" West 468.33 feet to Intersect the Northeasterly Right of Way line of U.S. Highway No. 99 at a 5/8 inch iron pin; thence along said Highway Right of Way line on a spiral curve to the left (the long chord to which bears North 39° 58' 20" West, 33.73 feet) to a 5/8 inch iron pin, said pin being a Point of Spiral Curve {P.S.C.), Station 490+28.72 of said Highway; thence 177.14 feet along said Highway line on an arc of a 5761.16 foot radius curve to the left (the long chord to which bears North 41° 03' 50" West 177.14 feet) to a 5/8 inch iron pin, said point being a P.S.C., Station 492+4.90 of said Highway; thence along said Highway Right of Way Line on a spiral curve to the left {the long chord to which bears North 42° 00' West 12.00 feet) to a 5/8 inch iron pin; thence leaving said Right of Way Line North 51° 15' 00" East, 477.40 feet to a 5/8 inch iron pin; thence South 38° 36' 27" East, 222.70 feet to the Point of Beginning.

Containing 2.42 acres, more or less.

Enclosure 3
Record of Decision

Record of Decision

**Trust Acquisition of the 2.4-Acre Site in Medford, Oregon,
for the Coquille Indian Tribe**

U.S. Department of the Interior

Bureau of Indian Affairs

January 2025

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Record of Decision (ROD) for the Trust Acquisition of the approximately 2.4-acre Medford Site in Medford, Oregon, for the Coquille Indian Tribe (Tribe).

Summary: The Tribe submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) accept trust title to land totaling approximately 2.4 acres in Medford, Oregon (Medford Parcel) for gaming and other purposes (Proposed Action). The Tribe proposes to remodel the existing bowling alley structure on the Medford Site into a 30,300-square-foot gaming facility (Proposed Project). The Proposed Project was analyzed in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act (NEPA), under the direction and supervision of the BIA Northwest Regional Office. The BIA issued the Draft EIS for public review and comment on November 25, 2022. After a comment period, public hearing, and consideration and incorporation of comments received on the Draft EIS, the BIA issued the Final EIS on November 22, 2024. The Draft and Final EIS evaluated a reasonable range of alternatives that would meet the purpose and need for the Proposed Action, analyzed the potential effects of those alternatives, and identified feasible mitigation measures.

With this Record of Decision (ROD), the Department announces that it will acquire the 2.4-acre Medford Site in trust for the Tribe for gaming purposes. The Department has selected Alternative A in the FEIS as the Preferred Alternative as it has determined Alternative A will best meet the purpose and need for the Proposed Action of promoting the long-term economic self-sufficiency, self-determination, and self-governance of the Tribe. The Preferred Alternative will provide the Tribe with the best opportunity for attracting and maintaining a significant, stable, long-term source of governmental revenue. Accordingly, the Preferred Alternative will provide the best prospects for maintaining and expanding tribal governmental programs to provide a wide range of health, education, housing, social, cultural, environmental, and other programs, as well as employment and career development opportunities for its members.

The Department has considered potential effects to the environment, including potential impacts to local governments and other tribes, has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects on the environment will be adequately addressed by mitigation measures, as described in this ROD.

The Department's decision to acquire the Medford Site into trust for the Tribe is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the Draft EIS; the FEIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies, and potentially affected Indian tribes.

For Further Information Contact:

Mr. Tobiah Mogavero
NEPA Coordinator
Bureau of the Indian Affairs, Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232

Record of Decision

TRUST ACQUISITION OF THE MEDFORD SITE IN MEDFORD, OREGON, FOR THE COQUILLE INDIAN TRIBE

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ATTACHMENTS

- Attachment 1 Mitigation Monitoring and Compliance Plan
- Attachment 2 FEIS Notices
- Attachment 3 Supplemental Response to Substantive Comments on the FEIS
- Attachment 4 Tribal Resolution adopting BMPs and Mitigation Measures

1.0 INTRODUCTION

1.1 SUMMARY

The Coquille Indian Tribe (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to acquire approximately 2.4 acres of land located in Medford, Oregon (Medford Parcel) into trust for gaming and other purposes (Proposed Action).

The BIA analyzed the potential environmental impacts of the Proposed Action in an Environmental Impact Statement (EIS). The Draft EIS (DEIS), issued for public review on November 25, 2022, and the Final EIS (FEIS), issued on November 23, 2024, considered various alternatives to meet the stated purpose and need, and analyzed in detail the potential effects of a reasonable range of alternatives. With this Record of Decision (ROD), the Department has determined that Alternative A is the Preferred Alternative to be implemented, which consists of the Department's transfer of the 2.4-acre Medford Parcel from fee to trust status on behalf of the Tribe for gaming purposes and subsequent remodeling by the Tribe of the former 23,300-square-foot Roxy Ann Lanes into a 30,300-square-foot gaming facility with 650 Class II gaming machines and mitigation measures presented in **Section 6.0** of this ROD.

The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Action consistent with its statutory mission and responsibilities to promote the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe. The Department's decision to acquire the Medford Parcel into trust for the Tribe is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the DEIS; the FEIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies, and potentially affected Indian tribes.

1.2 DESCRIPTION OF THE PROPOSED ACTION

The federal Proposed Action is the acquisition of the 2.4-acre Medford Parcel in trust pursuant to the Secretary's authority under the Indian Reorganization Act, 25 United States Code (U.S.C.) 5108 and the Coquille Restoration Act (25 U.S.C. 715). Subsequently, the Tribe proposes to retrofit and remodel the former bowling alley within the Medford Parcel into a 30,300-square-foot gaming facility with 650 Class II gaming machines. The gaming facility would also include a bar/deli and space devoted to gaming support services. A loading dock shielded by 6-foot concrete walls would be located on the east side of the facility. Parking areas would be provided both within the 2.4-acre Medford Parcel, as well on adjacent fee land. The Project Site, as analyzed in the EIS, consists of 7.24 acres, which encompasses both the 2.4-acre Medford Parcel proposed to be acquired into trust, as well as adjacent fee land that would be utilized for parking. The Project Site is located within unincorporated Medford, Oregon, adjacent to the northeastern boundary of Oregon State Highway 99.

1.3 PURPOSE AND NEED

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus, satisfying both the Department's land acquisition policy as articulated in the Department's trust land regulations at 25 CFR Part 151, and the principal goal of the Indian Gaming Regulatory Act (IGRA) as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 CFR §§ 151.10(h) and 151.12.

1.3.1 Background

The Tribe's needs related to facilitation of tribal self-sufficiency, self-determination, and economic development are as follows:

The Tribal government of the Coquille Tribe is responsible for providing essential services to its growing membership and preserving its culture for future generations. These services include housing, health care, employment, social services, educational support, and cultural preservation. The Proposed Action would serve the needs of the Tribe by promoting opportunities for economic development and self-sufficiency for the tribal government and tribal members. In particular, implementation of the Proposed Action would assist the Tribe in meeting the following objectives:

- Provide funding for essential programs and services such as health care, education, housing, social services, elder services, cultural preservation, and environmental protection; and
- Strengthen the socioeconomic status of the Tribe by mitigating the probable risk of natural disasters affecting the Mill Casino and diversifying the Tribe's economic revenue streams.

1.4 AUTHORITIES

Section 5 of the Indian Reorganization Act (IRA) of 1934, 25 U.S.C. § 5108, provides the Secretary of the Interior with general authority to acquire land in trust status for Indian tribes in furtherance of the statute's broad goals of promoting Indian self-government and economic self-sufficiency. If a tribe is seeking to acquire lands in trust, it must apply to the BIA and comply with the regulations in 25 Code of Federal Regulations (CFR) Part 151, which implement the Secretary's trust acquisition authority in Section 5 of the IRA. This ROD records the decision by the Department to acquire in trust the Medford Parcel in Medford, Oregon, for the Tribe.

IGRA was enacted in 1988 to regulate the conduct of Indian gaming and to promote tribal economic development, self-sufficiency and strong tribal governments. IGRA generally prohibits gaming on lands acquired in trust after 1988, unless certain exceptions found in Section 20, 25 U.S.C. § 2719, are met. Here the relevant exception is the "restored lands" exception in Section 20 (b)(1)(B)(iii), which allows gaming on after-acquired lands if the lands are taken in trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." The Section 20 exceptions are implemented through regulations found in 25 CFR Part 292. Therefore, Section 20 of IGRA does not provide the Secretary of the Interior with the authority to acquire land in trust; rather, it authorizes gaming on certain after-acquired lands once those lands are acquired into trust. Because the Tribe has requested that the Project Site be taken in trust for gaming, the Tribe must satisfy one of the IGRA Section 20 exceptions before it may game on the parcel. This Record of Decision (ROD) and the attached Decision Letter, records the Department's determination that the Project Site is eligible for gaming under the "restored lands" exception in IGRA Section 20, 25 U.S.C. § 2719(b)(1)(B)(iii), such that the Tribe may game on the Site once it is acquired in trust.

1.5 PROCEDURAL BACKGROUND

The requested federal Proposed Action requires compliance with the National Environmental Policy Act (NEPA). Accordingly, the BIA published a Notice of Intent (NOI) in the Federal Register on January 15, 2015, (Volume 80, page 2120) describing the Proposed Action, announcing the BIA's intent to prepare an EIS for the Proposed Action and inviting public and agency comments. A newspaper notice announcing the scoping process, and the date and location of the public scoping meeting, was published in the Medford Mail Tribune on January 16 and 18, 2015. On February 19, 2015, notices extending the comment period for an additional 30 days were mailed to interested parties, and a newspaper notice announcing the extension was published in the Medford Mail Tribune on February 24, 2015. The comment period was open until March 19, 2015. A report outlining the results of scoping was issued in June 2015. The scoping report summarized the major issues and concerns from the comments received during the scoping process. Scoping comments were considered by the BIA in developing the project alternatives and analytical methodologies presented in the EIS. During the scoping process, the BIA identified and formally invited the States Environmental Protection Agency (USEPA), Tribe, Oregon

Department of Transportation (ODOT), City of Medford, Jackson County, the National Indian Gaming Commission, and Rogue Valley Sewer Services. Four of these accepted as cooperating agencies for the EIS: (1) the Tribe, (2) ODOT, (3) the City of Medford, and (4) Jackson County.

On September 3, 2020, the BIA published a Notice of Cancellation of the EIS for the Proposed Action in the Federal Register. However, the Notice of Cancellation was subsequently withdrawn with the publication of a notice entitled “Resumption of Preparation of an EIS for the Proposed Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, Medford, Oregon” in the Federal Register on December 21, 2021.

An administrative version of the DEIS was circulated to Cooperating Agencies for review and comment. Comments were taken into consideration and revisions were completed as appropriate prior to public release. On November 25, 2022, the DEIS was made available to federal, Tribal, state, and local agencies and other interested parties for review and comment. The BIA’s Notice of Availability (NOA) for the DEIS was published in the *Federal Register* on November 25, 2022 (Volume 87, page 72505), initiating a 45-day public review period. The NOA was additionally published in the *Medford Mail Tribune* on November 27, 2022, which circulated in the surrounding area. The NOA provided information concerning the proposed project, public comment period, and the time and location of the public hearing to receive comments from the public concerning the DEIS. On December 20, 2022, the BIA published a notice in the *Federal Register*, and in the *Medford Mail Tribune* on December 18, 2022, extending the review period for an additional 45 days and announcing a second public hearing. Virtual public hearings were held on December 15, 2022, and January 31, 2023, and approximately 62 and 98 people attended the public hearings, respectively. The extended public comment period ended on February 23, 2023.

Public and agency comments on the DEIS received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the FEIS. Responses to the comments received were provided in Volume I of the FEIS and relevant information was revised in Volume II of the FEIS as appropriate to address those comments. An administrative version of the FEIS was circulated to Cooperating Agencies in June 2023 for review. All comments received as a result of Cooperating Agency review were considered, and changes to the FEIS were made as appropriate. The NOA for the FEIS was published in the *Federal Register* on November 22, 2024 (Volume 89, page 92712). The NOA for the FEIS was also published in local and regional newspapers, including *Medford Mail Tribune* on November 23, 2024. A separate USEPA NOA for the FEIS (USEPA EIS No. 20240220) was published in the *Federal Register* on November 22, 2024 (Volume 89, page 92713). The 30-day waiting period ended on December 23, 2024. A summary of the substantive comments received during this period that were not previously raised and responded to in the EIS process, and responses thereto are included in **Attachment 3** of this ROD.

2.0 ANALYSIS OF ALTERNATIVES

2.1 ALTERNATIVE SCREENING PROCESS

The BIA considered a range of possible alternatives in the EIS to meet the purpose and need (see **Section 1.3**), including an alternative site, and expansion of the Tribe’s existing casino. Alternatives, other than the required No Action Alternative, were screened based on four criteria 1) extent to which they meet the purpose and need for the Proposed Action, 2) feasibility, 3) ability to provide environmental advantages, and 4) ability to expand the range of alternatives in a way that would promote informed decision-making. Alternatives considered but rejected from detailed analysis are discussed below.

2.2 ALTERNATIVES ELIMINATED FROM DETAILED CONSIDERATION

2.2.1 Reduced Intensity

The Reduced Intensity Alternative would involve a smaller footprint than the Proposed Project at the Medford Parcel. No expansion of the existing structure would occur; construction would include interior renovations to transform the bowling alley into a gaming facility, offering a smaller range of amenities, thus likely attracting fewer customers. Because the Proposed Project is already relatively small and of low intensity, this alternative does not contribute to a reasonable range of alternatives and, thus, was eliminated from detailed consideration.

2.2.2 On-Site Wastewater Facility

This alternative would be similar to the Proposed Project, but it would include the construction of an on-site wastewater treatment facility and disposal of treated wastewater on-site via leach fields of through a direct discharge to area surface waters. Because it is feasible for the project to connect to the RVSS sewer lines and existing off-site wastewater system, it is not necessary to build an on-site wastewater facility. Further, this alternative could result in additional environmental impacts associated with increased construction activities and a greater potential for effects to water quality from disposal of treated wastewater. Therefore, this alternative was eliminated from further consideration.

2.2.3 Pre-Construction Demolition

This alternative would involve demolishing the existing bowling alley on the Medford Parcel and constructing a new gaming facility within the site boundaries. This alternative would result in greater environmental impacts due to the increase in construction activities and demolition waste. Therefore, this alternative was eliminated from further consideration.

2.2.4 Retail Development

This alternative would consist of commercial development on the Medford Parcel. A significant number of parcels zoned commercial and light industrial which neighbor the Medford Parcel are vacant or available for lease, potentially indicating a high rate of market saturation (LoopNet, 2019; City of Medford, 2019). Due to the prevalence of existing retail establishments in the area and potential future competition, it is uncertain that commercial development on the site would be financially viable and able to meet the purpose and need of the Proposed Action. Therefore, this alternative was eliminated from further consideration.

2.2.5 Hotel Resort

This alternative would locate a hotel and supporting facilities on the Medford Parcel. There are 11 hotels within a 1-mile radius of the Medford Parcel, indicating a very competitive business environment, and the small size of the site would limit parking for a larger hotel/resort. Additionally, the Tribe is currently operating a hotel to serve the existing local market on the adjacent property to the south of the Medford Parcel; construction of the hotel was approved by the City of Medford under a local permitting process. Although the proposed Class II gaming facility would not be marketable as a destination facility given its small scale and location, the adjacent hotel would be available to serve patrons of the proposed Class II gaming facility if Alternative A is approved. Further, this alternative would not likely avoid or reduce any of the potentially significant environmental impacts of the Proposed Action. Therefore, this alternative was eliminated from detailed consideration.

2.2.6 Tribal Offices

This alternative would involve remodeling the existing bowling alley into Tribal offices. The environmental effects of construction would be similar to the Proposed Project, and operational effects are expected to be reduced due to reduced traffic generation and demand for public services. However, this alternative would not generate additional revenue for the Tribe, and the costs of implementation would exacerbate the Tribe's projected financial shortfall. Therefore, this alternative was eliminated from detailed consideration as it would not meet the purpose and need for the Proposed Action.

2.3 ALTERNATIVES CONSIDERED IN DETAIL

The DEIS and FEIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail. The below alternatives are described in more detail in FEIS Section 2.

2.3.1 Alternative A – Proposed Project

Alternative A, the Proposed Action, consists of the following components: (1) the transfer of the approximately 2.4-acre Medford Parcel from fee to trust status as part of the restoration of lands for the Tribe by the Secretary in accordance with the Coquille Restoration Act of 1989 (25 U.S.C. 715); (2) the subsequent retrofit and remodel of the bowling alley structure within the proposed trust parcel boundaries into a 30,300-square-foot gaming facility with 650 Class II gaming machines; and (3) utilization of adjacent fee land within the Medford Site as parking for the Alternative A. This alternative, which constitutes the Proposed Action and the BIA's Preferred Alternative, most suitably meets all aspects of the purpose and needs of the Proposed Action by promoting the Tribe's self-governance capability and long-term economic development. Components of Alternative A are summarized below.

Proposed Facilities: Alternative A would result in the development of a portion of the Medford Parcel with a 30,300-square-foot gaming facility, including 650 Class II gaming machines, a bar/deli, and ancillary infrastructure. Approximately 520 parking spaces would be provided throughout the Project Site, with surface parking within the proposed 2.4-acre trust property and additional parking spaces on adjacent fee land. The remainder of the site would remain undeveloped. Proposed facilities would be constructed to meet International Building Code (IBC) requirements.

Site Access: Access to the Project Site would be provided via two existing driveways located along OR 99. Additional site ingress/egress to the proposed parking areas may be provided through future driveways located along Charlotte Ann Road.

Signage, Lighting, and Landscaping: Exterior signage would enhance the architecture of the building and the natural characteristics of the Medford Site by incorporating native materials in combination with architectural trim. Illuminated signs would be designed to blend with the light levels of the building and landscape lighting in both illumination levels and color characteristics. The exterior lighting would be integrated into components of the architecture and would be strategically positioned to minimize off-site lighting and any direct site lines to the public. Light fixtures would not extend above 30 feet in height, and the lighting would be designed to confine direct rays to the premises. Signage would be architecturally compatible with the buildings and of appropriate size and content. The architectural design of the project would be enhanced by landscaping using plants native to the region.

Public Services: The City of Medford would continue to provide law enforcement and fire protection services to the Medford Site. The Tribe plans to compensate the City for public services provided, ensuring sustainable support for public safety operations. The gaming facility will also operate under the Tribe's Responsible Alcoholic Beverage Policy to maintain safety and order on-site.

Water Supply: Potable water for the Proposed Project will continue to be provided by the Medford Water Commission (MWC) through an existing connection to a 16-inch diameter water main located along OR 99. The existing service is sufficient to meet daily potable water demands. To accommodate fire suppression needs, a separate fire protection service connection will be installed. Fire flow requirements will be supported by the 500,000-gallon MWC Barneburg Storage Reservoir, located northeast of the Medford Site. Water conservation measures, such as low-flow fixtures and efficient irrigation systems, to reduce water usage will be implemented.

Wastewater Treatment and Disposal: Wastewater treatment and disposal will be provided by Rogue Valley Sewer Services (RVSS) through the existing sewer main along OR 99. Wastewater from the gaming facility will be conveyed to the Medford Regional Water Reclamation Facility (RWRf) in White City, Oregon.

Grading and Drainage: The Medford Site is already developed, with existing paved areas and minimal grading is anticipated. Construction activities will primarily involve grading and excavation for the gaming facility, parking areas, and stormwater management infrastructure. Grading is expected to balance cut and fill materials on-site, eliminating the need for material import or export. Adequate stormwater conveyance, detention, and treatment would be provided through Low Impact Development (LID) practices, including the installation of either vegetated bioretention swales or a distributed pervious strip system throughout the site. These LID measures are consistent with stormwater management approaches recommended by the U.S. EPA to address non-point pollution in urban areas.

Best Management Practices: Construction and operation of Alternative A would incorporate a variety of industry standard best management practices (BMPs) designed to avoid or minimize potential adverse effects resulting from the development of Alternative A. These are listed in FEIS Table 2-5. The Tribe has committed to the implementation of these measures as a matter of Tribal Law; refer to the tribal resolution provided in **Attachment 4** of this ROD.

2.3.2 Alternative B – Phoenix Site Alternative

Alternative B consists of the following components: (1) the transfer of approximately 49.34 acres (Tax Lots 38 1W-09A-100 and 38-1W-04-500; Phoenix Site) from fee to trust status as part of the restoration of lands for the Tribe by the Secretary; and (2) the construction of a 30,300-square-foot gaming facility and associated parking facilities on the Phoenix Site. Under Alternative B, the gaming facility, ancillary components related to parking – signage, lighting, and landscaping and BMPs are similar to those described under Alternative A. However, under Alternative B, the gaming facility would be constructed as a new facility within an approximately 7.8-acre area within the 49.34-acre Phoenix Site. The 30,300-square foot gaming facility structure would be developed consistent with applicable seismic codes and the Coquille Tribe's Land Development Ordinance, which incorporates IBC standards. A detailed description of Alternative B is provided in Section 2.4 of the FEIS.

2.3.3 Alternative C – Expansion of the Mill Casino Alternative

Alternative C consists of a 5,000-square-foot expansion of the existing 30,000-square-foot Mill Casino owned by the Tribe, located on the 10.95-acre Mill Casino Site. A fee-to-trust acquisition would not be necessary for Alternative C because the Mill Casino Site is on land that is already in federal trust for the Tribe and is authorized for gaming under the IGRA. Operation of the casino facility would be similar to current operations. Under Alternative C, the gaming facility would expand to include 650 additional gaming machines on a 5,000-square-foot gaming floor, located at the north end of the existing building in an area currently used as a parking lot. The expansion would be constructed in accordance with seismic codes and the Coquille Tribe's Land Development Ordinance, which aligns with IBC standards. There would be no changes to site access, signage, lighting, or landscaping for the Mill Casino. A detailed description of Alternative C is provided in Section 2.5 of the FEIS.

2.3.4 Alternative D - No Action/No Development

Under the No Action/No Development Alternative, none of the three development alternatives (Alternatives A, B, and C) considered within this EIS would be implemented. The No Action/No Development Alternative assumes that no parcels within the Medford Site or Phoenix Site would be taken into trust and the Tribe would continue to operate the existing Roxy Ann Lanes bowling alley as it does presently. Under this alternative, the BIA would take no action.

3.0 PREFERRED ALTERNATIVE

For the reasons discussed herein and in the FEIS, the Department has determined that Alternative A is the agency's Preferred Alternative because it best meets the purpose and need for the proposed federal action. BIA's mission is to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian Tribes and Alaska Natives. This mission is reflected in the policies underlying the statutory authorities governing this action, namely, the IRA, which was enacted to promote Indian self-government and economic self-sufficiency, and IGRA, which was enacted to govern Indian gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Of the alternatives evaluated within the EIS, Alternative A would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities to promote the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe. The casino described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the Tribal government. Under such conditions, the Tribal Government would be stable and better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to Tribal members, as well as provide the Tribe, its members, and local communities with greater opportunities for employment and economic growth. Alternative A would also allow the Tribe to implement the highest and best use of the property. Finally, while Alternative A would have greater environmental impacts than the No Action Alternative, that alternative does not meet the purpose and need for the Proposed Action, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

Alternative B, the development of a casino on the Phoenix Site, would be similar in design as Alternative A and have similar economic effects, although the environmental impacts would be greater due to the site currently being undeveloped. As a result, the environmental impacts would be comparatively more significant. Further, the costs of developing this alternative would be greater, resulting in fewer economic benefits to the Tribe.

Alternative C, the expansion of the Tribe's existing Mill Casino, would generate substantially less revenue for the Tribe, and it is unclear if the additional revenue would offset the development costs under this alternative. Further, this site is located in a tsunami inundation zone and, thus, Alternative C would result in exposure of the tribe to greater risk from damage from a tsunami and/or earthquake event. Economic returns would be substantially less than Alternative A and, therefore, this alternative would not be the most efficient means of maintaining a long-term, sustainable revenue stream.

In summary, Alternative A is the alternative that best meets the purposes and needs of the Tribe and the BIA while resulting in no significant impacts after mitigation. Therefore, Alternative A is the Department's Preferred Alternative.

4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

Of the alternatives with development (Alternative A through C), Alternative C would result in the fewest potential environmental impacts than the other development alternatives. Alternative C would not result

in the development of a new facility and associated infrastructure on an undeveloped site as proposed under Alternative B, and it would generate fewer new patrons visits and associated increases in traffic, mobile source air emissions, and traffic related noise as would occur under both Alternatives A and B. Further, Alternative C would significantly reduce substitution effects at local gaming facilities operated by other tribal governments. However, it should be noted that Alternative C would result in potentially detrimental fiscal effects to the Coquille Tribe by investing in facilities that do not generate additional revenue for the tribal government and incur more debt. Additionally, the Mill Casino Site is located in a tsunami inundation zone and, thus, Alternative C would result in exposure of the Coquille Tribe to greater risk from damage from a tsunami and/or earthquake event.

Among all the alternatives, the No Action/Development Alternative (Alternative D) would result in the fewest environmental impacts. Under the No Action/Development Alternative, neither the Medford Site nor the Phoenix Site would be taken into trust, and the Tribe would continue to operate its existing Casino as it does presently. However, the No Action/Development Alternative would not meet the stated purpose and need. Specifically, it would not provide a more stable income source that will enable the tribal government to provide essential social, housing, educational, health, and welfare programs. The No Action/Development Alternative would not promote the economic development and self-sufficiency of the Tribe. The No Action alternative also would likely result in substantially less economic benefits to Jackson County and the City of Medford than any of the development alternatives.

5.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS

5.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN FEIS

A number of specific issues were raised during the EIS scoping process and public and agency comments on the DEIS. Each of the alternatives considered in the FEIS were evaluated relative to these and other issues. The categories of the most substantive issues raised include:

- Geology and Soils
- Water Resources
- Air Quality
- Biological Resources
- Cultural and Paleontological Resources
- Socioeconomics Conditions
- Transportation and Circulation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Aesthetics
- Indirect and Growth-Inducing Effects
- Cumulative Effects

The evaluation of project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the FEIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the FEIS. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues. Section 4 of the FEIS described the environmental effects of Alternatives A through D in detail. The environmental effects of the Preferred Alternative (Alternative A) are summarized below:

5.1.1 Geology and Soils

Topography – No substantial grading would be required for Alternative A, as the site is already developed, and existing slopes would be preserved. Therefore, effects associated with topography resulting from Alternative A would be less than significant, and no mitigation is warranted.

Soils/Geology – The soils at the Medford Site have a slight erosion potential. Construction of Alternative A could potentially impact soils through activities such as clearing, grading, trenching, and backfilling. However, implementation of a Stormwater Pollution Prevention Plan (SWPPP), required under the National Pollutant Discharge Elimination System (NPDES) General Construction permit, would minimize the risk of erosion and sedimentation. Obtaining coverage under the NPDES General Construction Permit and implementation of a SWPPP is included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS. With Mitigation, effects from the implementation of Alternative A on soils and geology would be less than significant.

Seismicity – The Medford Site is located in a seismically active area with potential for ground shaking. However, no known fault traces are mapped as crossing the Medford Site. Therefore, the potential for surface rupturing at the site is low. Alternative A would be built to meet applicable seismic codes and International Building Code (IBC) standards, which would safeguard against structural failures. Therefore, impacts related to seismic hazards would be less than significant and no mitigation is warranted.

Mineral Resources – Alternative A would not adversely affect known or recorded mineral resources. Alteration in the land use would not result in a loss of economically viable aggregate rock or diminish the extraction of important ores or minerals. There are no known mineral resources within the Medford Site. Therefore, development and use of the land would not affect such resources. There are no abandoned mines, shafts, or tailings that would affect development. Impacts to mineral resources under Alternative A would be less than significant, and no mitigation is warranted.

5.1.2 Water Resources

Surface Water – Under Alternative A, water supply would be provided through connections to existing municipal infrastructure, with no impacts to floodplains as the site is located outside both the 100-year and 500-year floodplain zones. Construction activities could lead to temporary erosion and sediment discharge into nearby surface waters during storm events, potentially degrading water quality. Additionally, construction-related pollutants, such as oil, grease, and concrete washings, could further affect water quality if not managed appropriately. Stormwater treatment facilities, including vegetated bioretention swales or distributed pervious strip systems, would be implemented to manage runoff and mitigate water quality impacts. BMPs provided in Section 2.3.3 of the FEIS include the use of source control and treatment methods to further prevent the contamination of surface water and groundwater by polluted stormwater. With adherence to SWPPP requirements included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS and compliance with the Rogue Valley Stormwater Quality Design Manual, impacts from stormwater runoff under Alternative A would be less than significant.

Groundwater – Alternative A would not require the use of on-site groundwater supplies, as water would be sourced from municipal infrastructure. Although the project would introduce additional impervious surfaces, stormwater management features, including vegetated swales or pervious systems, would enable groundwater recharge. The depth to groundwater in the vicinity is between 60 and 190 feet, and the natural soil infiltration process, combined with stormwater treatment measures, would ensure minimal effects on groundwater levels or quality. Therefore, impacts related to groundwater would be less than significant and no mitigation is warranted.

5.1.3 Air Quality

Construction Emissions – Construction activities for Alternative A would emit criteria pollutants, including PM₁₀, NO_x, SO₂, CO, VOC, and greenhouse gases (GHGs), primarily due to diesel-fueled equipment and minor grading activities. These emissions could increase concentrations of diesel particulate matter (DPM) near the site, potentially affecting air quality within 500 feet of the construction area. Best Management Practices (BMPs) described in Section 2.3.3 of the FEIS, such as dust suppression measures and equipment upgrades, would reduce DPM emissions by approximately 85%, ensuring that construction impacts remain less than significant. The Medford Site is located in a region designated as maintenance for CO and PM₁₀, but estimated emissions would not exceed de minimis levels and, therefore, would not violate National Ambient Air Quality Standards (NAAQS). Construction of Alternative A would not result in significant adverse effects associated with the regional air quality environment; therefore, no mitigation is warranted.

Operational Emissions – Operation of Alternative A would generate emissions from mobile sources, including patron, employee, and delivery vehicles, as well as stationary sources like natural gas combustion for boilers, stoves, and heating units. BMPs provided in Section 2.3.3 of the FEIS would further minimize operation related emissions of criteria pollutants, including CO and PM₁₀. Total operational emissions would not exceed de minimis levels and, therefore, would not violate NAAQS and is not subject to a conformity determination. Operation of Alternative A would not result in significant adverse effects associated with the regional air quality environment. Therefore, no mitigation is warranted.

5.1.4 Biological Resources

Habitats and Federally Listed Species – The Medford Site consists entirely of ruderal, previously disturbed habitat that provides minimal value for terrestrial wildlife and no suitable habitat for federally listed terrestrial species. However, the site is hydrologically connected to Bear Creek, located 1,400 feet to the east, which is designated as critical habitat for Chinook salmon and coho salmon and is designated Essential Fish Habitat (EFH). Construction activities could result in sedimentation or pollutant runoff reaching Bear Creek, potentially degrading water quality and impacting these aquatic species. Implementation of a SWPPP included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS and LID features, such as vegetated swales, would minimize sedimentation and pollutant transport, ensuring that impacts to both critical habitat and federally listed species are less than significant.

Migratory Birds and Other Birds of Prey – Construction activities associated with Alternative A could potentially affect migratory birds if vegetation removal or loud noise occurs during the nesting season. Implementation of mitigation measures presented in **Section 6** of this ROD and Section 5 of the FEIS, including pre-construction surveys, noise buffers, and silt fencing, would reduce potential impacts to migratory birds during construction to less-than-significant levels. Operation of Alternative A would increase the level of lighting on the Medford Site; however, BMPs identified in Section 2.3.3 of the FEIS would reduce any potentially significant nighttime lighting impacts on migrating bird populations to a less than significant level.

Waters of the U.S. (WOTUS) – There is one potential WOTUS consisting of a channelized ditch that runs northeast from OR 99 across the Medford Site. Alternative A would not directly alter or impact this drainage facility. However, if not properly controlled, erosion as well as sediment and stormwater runoff from Alternative A could impact water quality within the ditch, which discharges to Bear Creek. Implementation of mitigation measures presented in **Section 6** of this ROD and Section 5.0 of the FEIS, would ensure that construction and operation activities associated with the development of Alternative A would not result in significant adverse effects to WOTUS.

5.1.5 Cultural and Paleontological Resources

Cultural Resources – A 2015 archaeological investigation and a 2022 supplemental archaeological research report revealed no cultural or archaeological resources on the Medford Site. In 2020, the Oregon State Historic Preservation Office (SHPO) concurred with the determination of “No Potential to Effect” historic properties but recommended additional research or archaeological monitoring during ground disturbances. Mitigation measures presented in **Section 6** of this ROD and Section 5 of the FEIS include monitoring of excavation activities deeper than two feet and treatment and avoidance measures that will be implemented in the event of unanticipated archaeological discoveries. Implementation of these measures would reduce any effects to unknown cultural resources to less-than-significant levels.

Paleontological Resources – No paleontological resources have been reported or observed on or near the Medford Site. However, ground-disturbing activities under Alternatives A could result in the unanticipated discovery of paleontological resources. Mitigation measures presented in **Section 6** of this ROD and Section 5 of the FEIS address the treatment and documentation of such discoveries. Implementation of these measures would reduce any effects on previously unknown paleontological resources to less-than-significant levels.

5.1.6 Socioeconomic Conditions

Economic Effects – Alternative A would provide economic benefits to the local economy through construction and operation activities. Construction would generate direct, indirect, and induced economic output, benefiting local businesses and creating employment opportunities. Operation would similarly increase revenues for businesses across multiple sectors, including entertainment, recreation, and food services. No mitigation is warranted.

Substitution Effects - The operation of Alternative A would cause substitution effects, particularly among competing tribal gaming facilities and state-run video lottery terminals (VLTs). The effects on tribal gaming facilities are expected to stabilize after the first year of operation and would not threaten the viability of affected facilities or their ability to provide essential services to tribal members. The VLT market in the State of Oregon would experience less than a 1% decrease as a result of Alternative A. This potential loss is likely to be at least partially if not fully mitigated by normal growth in lottery revenues within a one-year time period. Therefore, Alternative A would not have a significant adverse impact on the State’s ability to fund lottery-funded programs. Non-gaming substitution effects on local businesses would be minimal, as the development alternatives primarily attract customers for gaming-related activities. Environmental impacts associated with substitution effects would be less than significant and no mitigation is warranted.

Fiscal Effects - Construction and operation of Alternative A would generate significant tax revenues for federal, state, and local governments, offsetting losses associated with transferring land to federal trust. No mitigation is warranted.

Employment and Housing – Construction and operation of Alternative A would create employment opportunities. For example, Alternative A would generate an estimated 183 construction-related jobs and 360 permanent operational jobs, with wages contributing to increased economic activity in Jackson County and resulting in a beneficial effect. The housing market in Jackson County has sufficient vacancy to accommodate any employees relocating to the area to work at the proposed facilities. Given the anticipated reliance on the local workforce, impacts on regional housing development would be less than significant. Additionally, given the location of the Medford Site in a commercially zoned area, any effect of Alternative A on housing values will be less than significant. No mitigation is warranted.

Social Effects – Problem gambling and crime are potential social concerns associated with Alternative A. There would be no anticipated significant increase to problem gambling rates in the local area because

of the relatively large number of existing casinos in the greater Pacific Northwest area, as well as the presence of VLTs in the area. BMPs, including implementing problem gambling policies consistent with those already in place at the Mill Casino, are presented in Section 2.3.3 of the FEIS would further reduce potential increase in problem gambling rates. Consequently, potential impacts associated with an increase in problem gambling as a result of Alternative A would be less than significant.

Increased law enforcement demand, resulting from higher visitation levels, would be mitigated through financial contributions or agreements with local agencies as presented in **Section 6** of this ROD and Section 5 of the FEIS. As a result, social effects related to gambling and crime would be less than significant with mitigation. Community impacts to schools, libraries, and parks would be negligible due to the limited number of employees expected to relocate. Additionally, revenue from new residents and businesses could offset any increased demand on these services. No mitigation warranted.

Environmental Justice – Increased employment opportunities and economic development from Alternative A would positively affect low-income communities near the Medford Site. Alternative A would not disproportionately expose minority or low-income communities to environmental risks, as potential impacts that could result as a result of Alternative A would be mitigated to less-than-significant levels with the implementation of mitigation in **Section 6** of this ROD and Section 5 of the FEIS. For the Coquille Tribe, Alternative A would provide significant benefits by generating revenue to fund essential services, such as healthcare, education, housing, and cultural preservation. This revenue would improve the Tribe's quality of life and enhance its self-sufficiency. The project would also create employment opportunities for tribal members, reducing unemployment rates, which currently exceed state averages. Competing tribal casinos are expected to experience substitution effects. The effects on tribal gaming facilities are expected to stabilize after the first year of operation and would not threaten the viability of affected facilities or their ability to provide essential services to tribal members.

5.1.7 Transportation and Circulation

Traffic Conditions – Construction activities would include truck trips as well as daily trips by construction workers. These impacts would primarily occur during off-peak hours and would be concentrated near the Medford Site. Since construction traffic would be temporary and significantly less than operational traffic, no significant adverse effects would occur, and no mitigation is warranted.

Operational traffic generated by Alternative A would impact traffic flow at certain intersections, resulting in levels of service exceeding acceptable thresholds. To address these impacts, mitigation measures identified in **Section 6** of this ROD and Section 5 of the FEIS include site access improvements, intersection reconfigurations, and roadway upgrades. With these improvements, traffic impacts would be reduced to less-than-significant levels.

Crash Analysis – The crash analysis conducted for Alternative A indicated that no significant increase in crash rates would occur at any study intersections. Therefore, no mitigation is warranted.

Transit, Bicycle, and Pedestrian Facilities – Bicycle and pedestrian facilities would remain unaffected under Alternative A due to sufficient parking and the limited demand for these modes of travel. Public transit impacts would also be minimal, with no significant capacity issues anticipated. Therefore, a less-than-significant effect to public transit facilities would occur and no mitigation is warranted.

5.1.8 Land Use

Land Use Plans – Alternative A would transfer 2.4 acres of the Medford Site into federal trust, removing it from the jurisdiction of the City of Medford's land use regulations. However, the gaming facility is consistent with the existing regional and heavy commercial zoning designations and complies with local standards for parking, lighting, signage, and aesthetics. Therefore, the development of Alternative A

would be generally consistent with regional land use planning and would not result in significant adverse effects and no mitigation is warranted.

Land Use Compatibility – Alternative A would be compatible with surrounding commercial development, as it aligns with existing uses at the Medford Site. Potential impacts to sensitive receptors, such as air quality, noise, and traffic, would be mitigated to less-than-significant levels with the implementation of measures in **Section 6** of this ROD and Section 5 of the FEIS. Therefore, Alternative A would not disrupt neighboring land uses or restrict access to adjacent parcels.

Agriculture – The Medford Site is located in an urban area and does not contain any farming operations or infrastructure that would support land cultivation. Therefore, no farmland would be converted, and no effect to agricultural resources would occur under Alternative A.

5.1.9 Public Services

Water Supply – Alternative A would rely on the Medford Water Commission (MWC) for potable water, with average daily demands accounting for less than 0.3% of available capacity. In addition to the potable water demand, Alternative A will require fire suppression flows to supply the automatic sprinkler system within the building. To meet fire flow delivery requirements, Alternative A would construct a separate standby fire protection service connection from the 16-inch water line along OR 99 to the building. With the construction of the standby fire protection service connection, existing MWC treatment, conveyance, and distribution systems are capable of conveying both potable water demand and fire suppression flow requirements to Alternative A. With the continued payment of monthly service fees by the Tribe, the impact on water supply infrastructure and service from the operation of Alternative A is less than significant, and no mitigation is warranted.

Wastewater Service – Alternative A would direct wastewater to the Medford Regional Water Reclamation Facility (RWRF), with flows representing less than 1% of the facility's available capacity. Existing conveyance systems are sufficient for Alternative A. With the continued payment of monthly service fees by the Tribe, the impact on wastewater treatment infrastructure and service from the operation of Alternative A would be less than significant and no mitigation is warranted.

Solid Waste Service – The solid waste generated by Alternative A would be equal to approximately 0.04% of the current daily acceptance rate for the landfill. BMPs included in Section 2.3.3 of the FEIS would further reduce the amount of solid waste disposed of at the landfill. Therefore, operation of Alternative A would result in less-than-significant effects on solid waste services, and no mitigation is warranted.

Law Enforcement – Alternative A would result in increased demands for law enforcement services. BMPs included in Section 2.3.3 of the FEIS would minimize the number of calls through on-site security measures. Regardless, the Medford Police Department would experience an estimated 294 annual calls and 26 arrests. Mitigation measures in **Section 6** of this ROD and Section 5 of the FEIS would reduce impacts to less-than-significant levels.

Fire Protection and Emergency Medical Services – Under Alternative A, the gaming facility would be constructed to meet IBC design requirement, and the facilities would be constructed to meet adequate fire flow requirements. BMPs included in Section 2.3.3 of the FEIS would minimize the number of calls through implementation of safety measures during construction and providing medical and fire training to staff. Regardless, Alternative A would increase calls for fire protection and emergency medical services. Mitigation measures in **Section 6** of this ROD and Section 5 of the FEIS would reduce impacts to less-than-significant levels.

Electricity and Natural Gas – The electrical and natural gas demand of Alternative A would not be significantly greater than the current electrical demand of the Medford Site and BMPs included in Section 2.3.3 of the FEIS would minimize the electrical and natural gas demand through installation of energy-efficient equipment and lighting. Therefore, Alternative A would not result in significant effects on energy services and no mitigation is warranted.

5.1.10 Noise

Noise – Construction noise caused by Alternative A would be temporary and intermittent and could be caused by construction traffic or by activities such as earthmoving, paving, and equipment operation generating elevated noise levels near the construction site. Construction traffic would access the Medford Site via OR 99, which is a common truck route, and the noise resulting from construction traffic would be barely perceivable and would not result in a significant adverse effect to the ambient noise level. Paving activities on the Medford Site would cause significant short-term noise impacts near sensitive receptors. Noise-reduction measures are included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS including limiting construction hours, requiring mufflers, and minimizing idling times. After implementation of these mitigation measures, Alternative A construction noise would exceed the FHWA standard of 85 dBA at the nearest sensitive receptor for a short time; therefore, this is considered a short-term significant impact.

Operation of Alternative A would result in minor increases in traffic-related noise, operation of HVAC equipment, and other site activities, such as parking lot use and deliveries. Traffic noise, parking lot use, and deliveries resulting from Alternative A would not result in significant adverse effects associated with the ambient noise environment. However, the operation of HVAC equipment under Alternative A could result in a significant noise impact. Therefore, mitigation measures require that HVAC equipment would be roof-mounted and shielded to reduce this impact, which are included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS. With mitigation, operational noise impacts are less than significant.

Vibration – Construction activities under Alternative A could produce temporary vibration levels noticeable to nearby residents during paving activities, which would be a significant impact. Mitigation measures, such as limiting construction hours, are included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS. These measures would reduce but not eliminate short-term vibration impacts. During operation, Alternative A would not include sources of perceptible vibration, and therefore, no operational impacts would occur. Operation of Alternative A would not result in significant adverse effects associated with vibration release. Therefore, no mitigation is warranted.

5.1.11 Hazardous Materials

Contaminated Soil – A Supplemental Investigation confirmed elevated arsenic levels in native soils below the fill layer at the Medford Site, and, therefore, construction of Alternative A presents potential significant health risks to construction workers if exposed. These risks are minimized by the presence of compacted non-native fill, which limits soil disturbance, and can be further mitigated through the use of personal protective equipment (PPE), decontamination procedures, and measures that are included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS. Additionally, if unanticipated contaminated soil is discovered during construction, protocols outlined in Section 2.3.3 of the FEIS require appropriate handling and response measures to ensure that such discoveries do not pose significant risks to workers or the environment. With mitigation, potential impacts from the implementation of Alternative A due to contaminated soils would be less than significant.

Construction Activities – Construction activities for Alternative A involve typical risks associated with hazardous materials such as fuels, solvents, and lubricants used during equipment operation and maintenance. Accidental spills or leaks could pose risks to human health and the environment. Typical

construction BMPs outlined in Section 2.3.3 of the FEIS, including containment protocols, proper storage, and spill response plans, would ensure that these risks remain less than significant. Additionally, demolition activities under Alternative A could encounter materials such as asbestos, lead paint, or PCBs. Compliance with federal regulations, such as the National Emissions Standard for Hazardous Air Pollutants (NESHAP), and BMPs outlined in Section 2.3.3 of the FEIS, including testing and safe disposal, would reduce these risks to less-than-significant levels. Construction of Alternative A would not result in significant adverse effects associated with hazardous materials release. Therefore, no mitigation is warranted.

Operation Activities – Operational activities present distinct risks associated with arsenic and lead due to the existing conditions at the Medford Site. Arsenic in soils at the site poses potential health risks through direct exposure (e.g., ingestion, dermal contact, or inhalation). Since the site will be paved, occupational workers would not have direct exposure to contaminated soils. Risks associated with lead contamination would occur due to lead leaching into groundwater which is then ingested. Because Alternative A would rely on municipal water from the Medford Water Commission (MWC), and there are no groundwater wells on the site or nearby, this would be a less than significant effect. Alternative A would use and store small amounts of hazardous materials, such as motor oil, solvents, and paints, in compliance with state, federal, and manufacturer guidelines. Therefore, operation of Alternative A would not result in significant adverse effects associated with hazardous materials, and no mitigation is warranted.

5.1.12 Aesthetics

Overall Visual Compatibility – Alternative A would result in development that is visually compatible with the surrounding land uses. Alternative A involves retrofitting and remodeling the existing building into a gaming facility with surface parking, maintaining a similar height and appearance to the current structure. The area surrounding the Medford Site is already dominated by commercial and industrial development. Therefore, Alternative A blends with the existing character of the area. Alternative A would not significantly impact aesthetic resources, and no mitigation is warranted.

Effects on Viewsheds – At the Medford Site, views from nearby vantage points, including OR 99 and residences along Charlotte Ann Road, would remain dominated by commercial and industrial features, with only minor changes such as additional parking resulting from Alternative A. This would not result in significant changes to viewsheds, and no mitigation is warranted.

Shadow, Light, and Glare – Shadows cast by Alternative A would remain consistent with existing conditions, as the proposed structures would match the height of current buildings. Alternative A is located in an area already illuminated by significant commercial and industrial lighting, and new lighting would not create substantial additional impacts. BMPs provided in Section 2.3.3 of the FEIS include the use of shielding and directional lighting to further minimize potential light and glare effects. There would be no significant impacts due to shadow, light, or glare, and no mitigation is warranted.

5.1.13 Indirect and Growth-Inducing Effects

Indirect Effects from Off-Site Traffic Mitigation Improvements – Under Alternative A, off-site traffic mitigation measures, including the construction of a narrow median on OR 99, would involve grading and minor construction activities. These activities could have potential effects on geology and soils, water resources, air quality, biological resources, cultural resources, noise, and hazardous materials. However, all activities would occur within existing paved roadways or developed areas, and standard construction practices, BMPs, and regulatory compliance would minimize these effects to less-than-significant levels. Therefore, there are no significant indirect effects due to implementation of Alternative A.

Growth-Inducing Effects – Alternative A would result in temporary construction-related employment and long-term operational employment opportunities, including direct, indirect, and induced economic activity. These activities would generate approximately 360 permanent jobs, primarily filled by local residents, avoiding the need for significant new housing development. Economic activity from Alternative A may generate minor commercial growth, but this would be distributed across the region, remaining consistent with local planning constraints. As such, significant regional commercial growth-inducing impacts would not be anticipated to occur under Alternative A.

5.1.14 Cumulative Effects

Geology and Soils – Cumulative effects to geology and soils would not occur under Alternative A due to compliance with NPDES Construction General Permit BMPs, which is included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS, and local permitting requirements. These local permitting requirements would address potential erosion, geotechnical hazards, and soil stability issues that could arise from other regional past, present, and reasonably foreseeable future actions. Topographic changes and soil loss would be minimized through erosion control practices during construction, and no significant impacts to cumulative topographic changes or soil loss would occur.

Water Resources – Cumulative effects to water resources would result from buildout of Jackson County and City of Medford Comprehensive Plans in combination with development of Alternative A due to increased impermeable surfaces and stormwater runoff. However, Alternative A would involve a minimal increase in the amount of impermeable surfaces on the site that could affect surface runoff, water quality, or groundwater recharge. With adherence to SWPPP requirements included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS and compliance with the Rogue Valley Stormwater Quality Design Manual, impacts from stormwater runoff under Alternative A would be less than significant. Proposed cumulative projects listed in Section 4.15.2 of the FEIS would also comply with ODEQ regulations, including NPDES permit requirements and BMPs, such as LID practices and stormwater management systems. These measures would ensure surface water quality is maintained and groundwater recharge is not significantly affected. Therefore, cumulative effects to water resources would not be significant.

Air Quality and Climate Change – Past, present, and future development projects contribute to a region’s air quality conditions on a cumulative basis. Therefore, by its very nature, air pollution is largely a cumulative impact. Cumulative air quality impacts under Alternative A would be minimized through implementation of BMPs during construction, such as dust control and equipment maintenance, and operational measures to reduce emissions. Alternative A would remain within regulatory thresholds for criteria pollutants, including de minimis levels for CO and PM10. Because the individual emissions of Alternative A do not contribute toward exceedance of the NAAQS, then the cumulative impact on air quality would be less than significant, and no mitigation is warranted.

Alternative A would result in some GHG emissions during construction and operation, although direct and indirect GHG emissions of Alternative A are not substantial. BMPs provided in Section 2.3.3 of the FEIS would reduce potential emissions include energy-efficient building systems, vehicle idling reduction, and electric vehicle (EV) infrastructure. These measures align with SO 3399’s strategies for reducing emissions and mitigating climate change impacts. Therefore, implementation of Alternative A would have a less-than-significant cumulative adverse effects associated with climate change.

Biological Resources – Cumulative effects to biological resources would occur if Alternative A, in conjunction with buildout of projects listed in Section 4.15.2 of the Final EIR, resulted in significant impacts to sensitive habitats, listed species, or regional conservation goals. Alternative A would occur in previously disturbed areas or low-quality habitats, which offer limited ecological value, and would not contribute to significant cumulative impacts to wildlife and habitats. While no federally listed

species occur on the Medford Site or surrounding developed areas, there is a hydrological connection between the Medford Site and the Bear Creek, which is an anadromous-bearing stream that supports listed salmonid species. Alternative A would adhere to SWPPP requirements included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS, which would reduce potential indirect impacts to Bear Creek to less than significant. Proposed cumulative projects listed in Section 4.15.2 of the FEIS would also comply with ODEQ regulations, including NPDES permit requirements and BMPs, and therefore cumulative impacts to Bear Creek would not be significant. Alternative A would likely not result in significant cumulative effects to nesting migratory birds given the minimal number of trees present within the Medford Site that have the potential to provide nest sites and preconstruction surveys included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS. Alternative A would not result in significant cumulative effects to nesting migratory birds. Alternative A would not result in direct impacts to wetlands or waters of the U.S., and cumulative development projects would have to comply with the requirements of Section 404 of the CWA and ODEQ regulations. Therefore, cumulative effects to biological resources, including wetlands and listed species, would not be significant.

Cultural Resources – Potential impacts to cultural resources under Alternative A would be mitigated by adherence to federal, state, and local regulations, including mitigation measures for inadvertent discoveries during construction included as mitigation in **Section 6** of this ROD and Section 5.0 of the FEIS. As a result, cumulative effects to cultural resources would be less than significant for Alternative A.

Socioeconomic Conditions – Alternative A in combination with buildout of Jackson County and City of Medford Comprehensive Plans could result in cumulative socioeconomic effects, such as impacts to the labor market, housing, and public services. Alternative A would contribute to regional economic growth but would not significantly strain housing or public services. Potential socioeconomic effects of Alternative A would be lessened through implementation of the BMPs described in Section 2.3.3 of the FEIS. As a result, cumulative effects to socioeconomic conditions would be less than significant for Alternative A.

Transportation – Development of Alternative A in combination with 2042 background plus pipeline projects traffic volumes would contribute additional vehicle trips to area intersections. The increase in traffic generated by Alternative A in the cumulative year 2042 would contribute to unacceptable traffic operations at the intersections of Garfield Street at S. Pacific Highway and Charlotte Ann Road at S. Pacific Highway.

Without mitigation, the project would contribute to unacceptable traffic operations at these intersections in the cumulative year 2042; however, implementation of mitigation measures provided in **Section 6** of this ROD and Section 5.0 of the FEIS would restore the intersections to acceptable or pre-development conditions. Therefore, with mitigation, development of Alternative A would not contribute towards significant cumulative effects on traffic and circulation.

Land Use – Cumulative effects to land use could result from buildout of Jackson County and City of Medford Comprehensive Plans in combination with development of Alternative A. Development within the City of Medford and Jackson County will be consistent with applicable planning documents and policies, which prevent disorderly growth and incompatible land uses. While Alternative A would not be subject to local land use policies, with the mitigation provided in **Section 6** of this ROD and Section 5.0 of the FEIS, Alternative A would not disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise conflict with neighboring land uses. Alternative A would not contribute to significant cumulative land use effects.

Public Services – Cumulative impacts to public services could occur to the water, wastewater, solid waste, law enforcement, fire protection, and emergency medical services. Alternative A would receive

domestic water supply from connection to the MWC via Duff WTP and Big Butte Springs. Duff WTP is currently undergoing a multiphase expansion which would allow it to meet the future average daily demand, but additional improvements may be necessary to serve the future maximum daily demand. Buildout of cumulative projects approved for connection to the system would pay the appropriate water capital connection charges and monthly service fees, allowing MWC to maintain or expand its water supply infrastructure. Alternative A includes mitigation measures outlined in **Section 6** of this ROD and Section 5.0 of the FEIS to ensure that the additional 0.04 MGD maximum daily demand from Alternative A would not result in significant cumulative effects to water supply systems.

Alternative A in the cumulative year of 2030 would generate wastewater in excess of projected flows at the Medford RWRf. Potential future upgrades to and expansion of infrastructure, when warranted due to cumulative projects listed in Section 4.15.2 of the FEIS, would be funded through rates charged to customers, and contributions paid by developers. Alternative A includes mitigation included in **Section 6** of this ROD and Section 5.0 of the FEIS to ensure that the additional wastewater generated by Alternative A would not result in significant cumulative effects to wastewater collection and treatment systems.

Law enforcement services for Alternative A would be provided by the Medford Police Department. Due to existing staffing levels, the Medford Police Department may need additional facilities and equipment to meet the increased need for services due to cumulative growth in the region, including Alternative A. With implementation of the on-site security measures and mitigation outlined in **Section 6** of this ROD and Section 5.0 of the FEIS requiring a service agreement between the Tribe and the City, payments by the Tribe would compensate the City for costs of impacts associated with increased law enforcement services at the Medford Site. Similarly, fire protection and emergency medical services for Alternative A would be provided by Medford Fire-Rescue. With implementation of the mitigation outlined in **Section 6** of this ROD and Section 5.0 of the FEIS requiring a service agreement between the Tribe and Medford Fire-Rescue, payments by the Tribe would compensate the City for costs of impacts associated with increased fire protection services at the Medford Site. It is anticipated that future developments would also be required to off-set costs for services through development impact fees and other funding mechanisms imposed by the City as conditions of project approvals. Therefore, with mitigation, Alternative A would result in a less-than-significant cumulative effect on public law enforcement, fire protection, and emergency medical services.

Alternative A in combination with growth resulting from buildout of the projects listed in Section 4.15.2 of the FEIS, would increase disposal of solid waste to the Dry Creek Landfill. Projected solid waste generation for Alternative A is a small contribution to the waste stream and would not significantly decrease the life expectancy of the landfill. Therefore, Alternative A would not result in significant cumulative effects to solid waste services.

Alternative A in combination with individual projects, including all of the projects listed within Section 4.15.2 of the FEIS, would result in an increase in electrical or natural gas service. All projects, including Alternative A, would be responsible for paying development or user fees to receive electrical or natural gas services. Since potential future cumulative developments would require consultation with these service providers and occur according to planned land uses, capacity would be made available for the projects. Individual projects would be responsible for paying development or user fees to receive electrical, natural gas, cable, and telephone services. Thus, the cumulative effects would be less than significant.

Noise – Cumulative noise impacts due to traffic increases under Alternative A would not be significant because the project would not audibly increase the ambient noise level at sensitive receptor locations or exceed existing levels by greater than 10 dBA. The cumulative increase in traffic noise levels would not result in a perceptible increase in ambient noise, and therefore Alternative A would not contribute to

significant effects to sensitive receptors located in the vicinity of the Medford Site. Operation of HVAC and other on-site equipment at the adjacent hotel in combination with Alternative A would contribute to a significant cumulative increase in ambient noise levels at adjacent sensitive receptors. Alternative A has been designed to include 6-foot walls to shield the loading dock and attenuate noise, as shown in Figure 2-6 of the FEIS. With project design and noise shielding mitigation included in **Section 6** of this ROD and Section 5.0 of the FEIS, Alternative A would not result in adverse cumulative effects to the ambient noise environment.

Hazardous Materials – Potential cumulative impacts associated with hazardous materials under Alternative A would be minimized by adherence to BMPs described in Section 2.3.3 of the FEIS, including proper storage, handling, and disposal of hazardous materials. Spill prevention measures during construction and refueling in designated areas would further reduce risks. Buildout of cumulative projects would be required to follow applicable federal and state regulations concerning hazardous materials management. Alternative A would not result in adverse cumulative impacts due to hazardous materials, and no mitigation is warranted.

Aesthetics – Cumulative effects to aesthetics and visual resources would result from regional urbanization but would be less than significant under Alternative A. Alternative A would incorporate landscaping and design features to enhance compatibility with surrounding commercial and industrial uses and would be visually compatible with land uses currently existing onsite and in the immediate vicinity of the Medford Site. Therefore, potential cumulative effects to visual resources would be less than significant.

5.1.15 Unavoidable Adverse Effects

I. The FEIS found that Alternative A would result in short-term significant adverse impacts related to noise and vibration during construction as impacts cannot be fully mitigated to less-than-significant levels despite implementation of mitigation measures provided in **Section 6** of this ROD and Section 5 of the FEIS. All other potential adverse effects can be mitigated with measures outlined in **Section 6** of this ROD.

5.2 COMMENTS ON THE FEIS AND RESPONSES

During the 30-day waiting period following the publication of the NOA of the FEIS in the federal register on November 22, 2024, the BIA received numerous comment letters from agencies and interested parties. The BIA reviewed and considered all comment letters on the FEIS during the decision-making process for the Proposed Action, and all comments are included within the administrative record for the project. Substantive comments received during this period that were not previously raised and responded to in the FEIS process are summarized and responded to in **Attachment 3** of this ROD. All other comments were determined to either not raise substantive environmental issues or were previously responded to in the FEIS.

6.0 MITIGATION MEASURES

All practicable means to avoid or minimize environmental harm from the Proposed Action have been identified and adopted. Mitigation measures recommended within the FEIS that are specifically applicable to Alternative A are listed in **Table 1** and are adopted as a part of this decision. The Tribe has committed to the implementation of these mitigation measures as a matter of Tribal Law; refer to the tribal resolution provided in **Attachment 4** of this ROD. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific mitigation measures adopted pursuant to this decision are set forth below and included within the Mitigation Monitoring and Compliance Plan (MMCP) (see **Attachment 1** of this ROD).

Table 1: Adopted Mitigation Measures

FEIS Mitigation Number and Resource Area	Mitigation Measure
<p>MM 5.2 Geology and Soils</p>	<p>The following mitigation measure shall be implemented in accordance with federal regulatory requirements for Alternative A:</p> <p>A. The Tribe shall obtain coverage under the USEPA General Construction NPDES permit under the federal requirements of the CWA. As required by the NPDES General Construction Permit, a SWPPP shall be prepared that addresses potential water quality impacts associated with construction of the project alternatives. The SWPPP shall make provisions for erosion prevention and sediment control and control of other potential pollutants.</p> <p>The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to assure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP</p> <p>To minimize the potential for erosion to occur on the site, the following items shall be addressed in the SWPPP and implemented pursuant to the NPDES General Construction Permit.</p> <ol style="list-style-type: none"> 1. Stripped areas shall be stabilized through temporary seeding using dryland grasses. 2. Conveyance channels and severe erosion channels shall be mulched or matted to prevent excessive erosion. 3. Exposed stockpiled soils shall be covered with plastic covering to prevent wind and rain erosion. 4. The construction entrance shall be stabilized by the use of rip-rap, crushed gravel, or other such material to prevent the track-out of dirt and mud. 5. Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap. 6. Filter fences shall be erected at all on-site stormwater exit points and along the edge of graded areas to stabilized non-graded areas and control siltation of onsite stormwater. 7. Dust suppression measures included in FEIS Section 2.3.3 shall be implemented to control the production of fugitive dust and prevent wind erosion of bare and stockpiled soils. 8. Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans. This can be done using construction fences or by creating buffer zones. 9. Construction traffic shall be limited in its access to the site to a single entrance if possible. Haul roads and staging areas shall be developed to control impacts to on-site soil. All access points, haul roads, and staging areas shall be stabilized with crushed rock. Any sediment shall be removed daily and the road structure maintained. 10. Downstream waterways and properties shall be protected during construction from increased flow rates due to the higher impervious nature of the site. During construction, detention ponds can be combined with sedimentation ponds as long as the detention volume is not impacted by a buildup of sediment. 11. Concentrated flows create high potential for erosion. Therefore, any slopes shall be protected from concentration flow. This can be done by using gradient terraces, interceptor dikes, and swales, and by installing pipe slope drains or level spreaders. Inlets need to be protected to provide an initial filtering of stormwater runoff; however, any sediment buildup shall be removed so the inlet does not become blocked. 12. The SWPPP shall address maintenance and repair of heavy equipment on the site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant.

FEIS Mitigation Number and Resource Area	Mitigation Measure
	<ol style="list-style-type: none"> 13. Staging areas and haul roads shall be constructed to minimize future over-excavation of deteriorated sub-grade soil. 14. If construction occurs during wet periods, sub-grade stabilization shall be required. Mulching or netting may be needed for wet-weather construction. 15. Temporary erosion control measures (such as silt fence, gravel filter berms, straw wattles, sediment/grease traps, mulching of disturbed soil, construction stormwater chemical treatment, and construction stormwater filtration) shall be employed for disturbed areas. 16. Exposed and unworked soils shall be stabilized by the application of effective BMPs. These include, but are not limited to, temporary or permanent seeding, mulching, nets and blankets, plastic covering, sodding, and gradient terraces. 17. The SWPPP shall address the maintenance of both temporary and permanent erosion and sediment control BMPs.
<p>MM 5.3 Water Resources</p>	<p>Construction Impacts The following mitigation measure shall be implemented in accordance with federal regulatory requirements for Alternatives A:</p> <ol style="list-style-type: none"> A. As described under MM 5.2 (A), prior to construction, an NPDES General Construction permit from the USEPA shall be complied with and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above. B. In accordance with the NPDES General Construction Permit, a sampling and monitoring program shall be developed and implemented to assess the quality of surface water entering and leaving the site. At a minimum, sampling sites shall include a location above all proposed development and a location downstream of all development. Analyses shall include total suspended solids (TSS), oils, and greases.
<p>MM 5.5 Biological Resources</p>	<p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements (MBTA and ESA) for Alternative A:</p> <ol style="list-style-type: none"> A. In accordance with the MBTA, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the site for active nests should construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15). In addition, and in accordance with the Bald and Golden Eagle Act, a qualified biologist will conduct at least two preconstruction surveys for bald and golden eagles should construction activities commence during the nesting season for eagles (between January 1 and August 31). Following the preconstruction nesting bird surveys, if any active nests of migratory birds are located within 100 feet of the Action Area, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. Following the preconstruction survey for nesting bald and golden eagles, if any active eagle nests are located within 330 feet of the Action Area, a no-disturbance buffer zone shall be established around the nests and nesting resources must also be protected (perching and fledging trees, replacement nest trees, and forested area around the nest tree) to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer for either migratory birds or eagles shall be determined by the biologist in coordination with the USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delimit the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted in August or September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results. B. Trees anticipated for removal will be removed between September 15 and December 31, prior to the nesting season. If trees are anticipated to be removed during the nesting season, a preconstruction survey will be conducted by a qualified biologist. If the survey shows that there is no evidence of active nests, then the tree will be removed within 10 days following the survey. If active nests are located within trees identified for removal,

FEIS Mitigation Number and Resource Area	Mitigation Measure
	<p>a species-specific buffer will be installed around the tree and additional measures outlined in section A above shall be implemented.</p> <p>C. As described under MM 5.2 (A), prior to construction, the project shall obtain coverage under the NPDES General Construction permit from the USEPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.</p> <p>D. The site shall incorporate BMPs for stormwater runoff, including sedimentation basins, vegetated swales, and runoff infiltration devices, if necessary, to ensure that the water quality of on-site or nearby waters does not degrade. Stormwater runoff from the site shall be monitored according to BMPs to assess the quality of water leaving the site.</p> <p>E. All equipment refueling and maintenance shall occur in an approved staging area and an agency-approved spill prevention plan will be implemented by the contractor.</p>
<p>MM 5.6 Cultural and Paleontological Resources</p>	<p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternative A:</p> <p>A. All earth disturbing activities involving excavation greater than 2 feet in depth shall be monitored by a qualified archaeologist. If intact archaeological deposits and/or cultural features including human remains are discovered during project construction and monitoring activities, the following measures will apply.</p> <p>B. In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist can assess the significance of the find. If any find is determined to be significant by the archaeologist, then representatives of the Tribe shall meet with the archaeologist to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist according to current professional standards.</p> <p>C. If human remains are discovered during ground-disturbing activities on Tribal lands, the Tribal Official and BIA representative shall be contacted immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.</p> <p>D. In the event of accidental discovery of paleontological materials during ground-disturbing activities, a qualified paleontologist shall be contacted to evaluate the significance of the find and collect the materials for curation as appropriate.</p> <p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternative B.</p> <p>E. Prior to approval of Alternative B, a comprehensive cultural resources survey will be required, utilizing shovel tests or similar subsurface testing as surface soil visibility is very poor. If any cultural resources are detected during the shovel testing program, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Specifically, sufficient subsurface exploration, evaluation, and/or research in the case of historic-era finds shall be performed to allow an evaluation of the finds for NRHP eligibility. If sites are found and are eligible to the NRHP, a Treatment Plan will be prepared and implemented in order to mitigate project impacts. Appropriate treatment may include site sampling, testing, data recovery, documentation, or a combination of measures. Any recommended treatment shall be completed prior to project construction.</p>
<p>MM 5.8 Transportation/ Circulation</p>	<p>Opening Year 2022</p> <p>To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following mitigation measures shall be</p>

FEIS Mitigation Number and Resource Area	Mitigation Measure
	<p>implemented for Alternative A, with paragraph A below subject to specific negotiations between the Tribe and ODOT:</p> <p>A. In accordance with OAR 734 -051 (Division 51) the Tribe shall enter into discussions with ODOT regarding the two accesses along Hwy 99 and the applicability of the “moving in the direction” criteria. The collaboration may conclude with issuance of access permits. Improvements to the existing accesses as a result of this collaboration may include but may not be limited to.</p> <ol style="list-style-type: none"> 1. Install a narrow median island on Hwy 99 to limit the access to the northern driveway (South Pacific Highway/Human Bean Driveway) to right-in, right-out movements. 2. Restripe the southern driveway on Hwy 99 (South Pacific Highway / Roxy Ann Lanes) with one entry lane and separated right turn and left turn exit lanes. 3. Design truck access locations to accommodate vehicles with a wheel base of 67 feet (WB-67 vehicles). <p>Cumulative Year 2042</p> <p>To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the Tribe shall offer to implement and pay a fair share contribution to the following mitigation measure for Alternative A.</p> <p>B. <u>South Pacific Highway and Garfield Street</u>: Restripe the westbound right-turn lane to a shared through-right and making appropriate changes to the signal head, controller and signage. Proportionate fair share of 2%.</p> <p>C. <u>South Pacific Highway and Charlotte Ann Road</u>: Access management via turn movement restrictions. Right-out only of the private driveway and striping the westbound movements to be separate movements. Proportionate fair share of 3%.</p>
<p>MM 5.10 Public Services</p>	<p>Law Enforcement</p> <p>The following mitigation measure is recommended for Alternative A.</p> <p>C. Prior to operation, the Tribe shall offer to enter into agreements to reimburse the Medford Police Department for direct and indirect costs incurred in conjunction with providing law enforcement services. The agreement shall include a provision requiring the Tribe to meet with the City of Medford at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project. In addition, the Tribe shall offer to enter into an agreement with Jackson County to reimburse law enforcement costs associated with the increase in demand for the District Attorney, jail, and Community Justice Department services as a result of Alternative A.</p> <p>Fire Protection and Emergency Medical Services</p> <p>Implementation of the mitigation measures below would minimize potential impacts related to fire protection and emergency services. The following measure is recommended for Alternative A.</p> <p>E. Prior to operation, the Tribe shall offer to enter into an agreement to reimburse the Medford Fire Department for additional demands caused by the operation of the facilities on trust property. The agreement shall address any required conditions and standards for emergency access and fire protection system.</p>
<p>MM 5.11 Noise</p>	<p>The following mitigation measures shall be implemented during construction for Alternative A to prevent violation of federal noise abatement criteria standards.</p> <p>A. Construction shall not be conducted between the hours of 6:00 p.m. and 7:00 a.m. Additionally, the following measures shall be used to minimize impacts from noise during work hours (7:00 a.m. to 6:00 p.m.):</p> <ol style="list-style-type: none"> 1. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds, in accordance with manufacturers’ specifications. 2. Haul trucks shall be operated in accordance with posted speed limits. 3. Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible. To the extent feasible, existing barrier features (structures) shall be used to block sound transmission between noise sources and noise sensitive land uses. 4. Equipment shall not be left idling for more than 5 minutes.

FEIS Mitigation Number and Resource Area	Mitigation Measure
	<p>5. All diesel engine generator sets shall be provided with enclosures.</p> <p>6. The Tribe shall monitor construction noise and will designate a disturbance coordinator (such as an employee of the general contractor or the project manager for the Tribe), post the coordinator’s contact telephone number conspicuously around the project site, and provide the number to nearby sensitive receptors. The disturbance coordinator shall receive all public complaints, be responsible for determining the cause of the complaints, and implement any feasible measures to alleviate the problem.</p> <p>The following mitigation measures shall be implemented during operation for Alternative A to prevent violation of federal noise abatement criteria standards.</p> <p>B. HVAC systems for the gaming facility will be roof mounted and shielded to minimize noise.</p>
<p>MM 5.12 Hazardous Materials</p>	<p>The following mitigation measure is recommended during construction of Alternative A:</p> <p>A. The Tribe shall ensure, through the enforcement of contractual obligations, that all contractors require construction personnel to wear appropriate personal protective equipment (PPE) and follow proper decontamination procedures subsequent to working in areas where native soils have been disturbed.</p>

6.1 MITIGATION MEASURES THAT ARE NOT ADOPTED

Council on Environmental Quality (CEQ)¹ NEPA regulations 40 CFR § 1505.2(c) call for identification in the ROD of any mitigation measures specifically mentioned in the FEIS that are not adopted. Because Alternative A has been selected by BIA in this ROD, mitigation measures for other alternatives in the FEIS are not adopted.

7.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

With this ROD, the Department announces that it will implement Alternative A as the Preferred Alternative. Of the alternatives evaluated in the EIS, Alternative A would best meet the purpose and need by promoting the long-term economic vitality and self-sufficiency, self-determination, and self-governance of the Tribe. Alternative A would provide the Tribe the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its government. This would enable the tribal government to establish, fund and maintain programs vital to tribal members, as well as provide greater opportunities for employment and economic growth.

The development of Alternative A would meet the purpose and need of the Proposed Action better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives B, C, and D (as described in Section 2.8 of the FEIS. While Alternative A would have greater environmental impacts than Alternatives C (Expansion of Mill Casino) and D (No Action/Development Alternative), those alternatives do not meet the purpose and need for the Proposed Action, and the BMPs and mitigation measures adopted in this ROD adequately address the environmental impacts of the Preferred Alternative. Accordingly, the Department will implement the

¹ The BIA is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations at 40 CFR Parts 1500– 1508, in addition to the Department of the Interior’s procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook (59 Indian Affairs Manual 3-H) to meet the agency’s obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

Preferred Alternative subject to implementation of the applicable BMPs and mitigation measures listed in Section 6.0 of this ROD.

7.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS

The Preferred Alternative is reasonably expected to result in beneficial effects for the Tribe and its members, as well as residents of Jackson County. Key beneficial effects include:

- Establishment of a land base for the Tribe to establish a viable business enterprise. Revenues from the operation of the casino would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for Tribal members, and provide employment opportunities for its members.
- Allow the Tribe to achieve Tribal self-sufficiency, self-determination, and a strong, stable Tribal government by mitigating the probable risk of natural disasters affecting the Mill Casino and diversifying the Tribe's economic revenue streams.
- Generation of approximately 183 jobs within Jackson County during the construction period, with total wages of \$8.4 million. These amounts include indirect and induced wages, which are estimated to total \$2.8 million.
- During the first full year of operations, operational activities are estimated to create 360 new jobs in Jackson County. Total annual wages from operations that would accrue to residents of Jackson County are estimated at \$14.4 million.
- One-time Federal, State, County, and local taxes resulting from construction activities are estimated at approximately \$2.8 million.
- Federal, State, County, and local taxes resulting from operating activities are estimated at approximately \$4.3 million per year.

7.2 ALTERNATIVES B RESULT IN FEWER BENEFICIAL EFFECTS AND GREATER ENVIRONMENTAL EFFECTS

Alternative B would generate employment, economic growth, and demand for goods and services comparable to Alternative A; however, its economic benefits to the Tribe would be reduced, and environmental impacts would be greater. The Phoenix Site is undeveloped and designated for agricultural use, requiring significant grading, drainage changes, and utility extensions, which would lead to higher costs and greater environmental disturbances than the Medford Site. Additionally, the upfront expenses for land acquisition and new facility construction would reduce the Tribe's potential economic returns compared to Alternative A, which leverages existing infrastructure and minimizes development costs. While Alternative B would support the Tribe's goals of economic self-sufficiency and self-determination, it would do so to a lesser extent than Alternative A, which better aligns with the purpose and need of the Proposed Action by maximizing revenue potential while minimizing environmental impacts.

7.3 EXPANSION OF THE TRIBE'S EXISTING CASINO (ALTERNATIVE C) WOULD NOT GENERATE SUBSTANTIAL REVENUE

The expansion of the Tribe's existing Mill Casino (Alternative C) would potentially generate some additional revenue for the Tribe, but it would not produce a substantial additional revenue stream to fund essential governmental, social, and other services. It is unclear if the additional revenue would offset the development costs under Alternative C.

7.4 NO ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED

The No Action Alternative (Alternative D) would not meet the stated purpose and need. Specifically, it would not provide a land base for the Tribe and a source of net income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong Tribal government. This alternative also would likely result in substantially less economic benefits to local governments than the development alternatives.

8.0 SIGNATURE

By my signature, I indicate my decision to implement the Preferred Alternative and acquire the Medford property in trust for the Coquille Indian Tribe.

Date: January 10, 2025



Bryan Newland
Assistant Secretary – Indian Affairs

Attachments

Attachment 1
Mitigation Monitoring and Compliance Plan

Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Mitigation Monitoring and Compliance Plan

The purpose of this Mitigation Monitoring and Compliance Plan (MMCP) is to guide compliance and implementation of mitigation measures associated with the Coquille Indian Tribe (Tribe) Fee-to-Trust and Gaming Facility Project (Project). The mitigation measures listed in **Table 1** were identified within the Final Environmental Impact Statement (EIS) dated November 2024 and the Record of Decision (ROD). This MMCP has been prepared consistent with the requirements of 40 CFR § 1501.6(d) and 1505.3 (c) and includes descriptions of the following:

- The mitigation measures identified within the EIS;
- The parties responsible for monitoring and implementing the mitigation measures;
- The anticipated timeframe for implementing and completing the mitigation measures; and
- Compliance standards and entities responsible for the enforcement of the mitigation measures.

Mitigation measures detailed in **Table 1** were included in Section 5 of the EIS and will be implemented to reduce potentially significant impacts to land and water resources, air quality, biological resources, cultural and paleontological resources, transportation and circulation, public services, noise, hazardous materials, and aesthetics. The Tribe will be the primary agency responsible for funding, monitoring, and/or implementing the mitigation measures. Implementation of the mitigation measures will occur either during the planning phase, prior to beginning construction-related activities (pre-construction), during construction, or during operation. Where applicable, the mitigation measures will be monitored and enforced pursuant to federal and/or tribal law. Non-compliance could result in the suspension of construction and/or regulatory fines.

Table 1: Mitigation Monitoring and Compliance

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
Geology and Soils (MM 5.2)				
Erosion Control				
<p>A. The Tribe shall obtain coverage under the U.S. Environmental Protection Agency (USEPA) General Construction National Pollutant Discharge Elimination System (NPDES) permit under the federal requirements of the Clean Water Act. As required by the NPDES Construction General Permit, a SWPPP shall be prepared that addresses potential water quality impacts associated with construction of the project alternatives. The Stormwater Pollution Prevention Plan (SWPPP) shall make provisions for erosion prevention and sediment control and control of other potential pollutants. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to assure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP. To minimize the potential for erosion to occur on the site, the following items shall be addressed in the SWPPP and implemented pursuant to the NPDES Construction General Permit.</p> <ol style="list-style-type: none"> 1. Stripped areas shall be stabilized through temporary seeding using dryland grasses. 2. Conveyance channels and severe erosion channels shall be mulched or matted to prevent excessive erosion. 3. Exposed stockpiled soils shall be covered with plastic covering to prevent wind and rain erosion. 4. The construction entrance shall be stabilized by the use of rip-rap, crushed gravel, or other such material to prevent the track-out of dirt and mud. 5. Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap. 6. Filter fences shall be erected at all on-site stormwater exit points and along the edge of graded areas to stabilized non-graded areas and control siltation of onsite stormwater. 7. Dust suppression measures included in FEIS Section 2.3.3 shall be implemented to control the production of fugitive dust and prevent wind erosion of bare and stockpiled soils. 8. Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans. This can be done using construction fences or by creating buffer zones. 9. Construction traffic shall be limited in its access to the site to a single entrance if possible. Haul roads and staging areas shall be developed to control impacts to on-site soil. All access points, haul roads, and staging areas shall be stabilized with crushed rock. Any sediment shall be removed daily and the road structure maintained. 10. Downstream waterways and properties shall be protected during construction from increased flow rates due to the higher impervious nature of the site. During construction, detention ponds can be combined with sedimentation ponds as long as the detention volume is not impacted by 	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ U.S. Environmental Protection Agency, Tribe ▪ Clean Water Act Sections 401 and 404 ▪ Coquille Tribal Resolution 	<p>A Notice of Intent requesting coverage under the Construction General Permit shall be filed with USEPA and the USEPA shall confirm that the coverage is granted prior to the initiation of earth disturbing activities. The measures identified in the SWPPP shall be implemented and monitored.</p>

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
<p>a buildup of sediment.</p> <p>11. Concentrated flows create high potential for erosion; therefore, any slopes shall be protected from concentration flow. This can be done by using gradient terraces, interceptor dikes, and swales, and by installing pipe slope drains or level spreaders. Inlets need to be protected to provide an initial filtering of stormwater runoff; however, any sediment buildup shall be removed so the inlet does not become blocked.</p> <p>12. The SWPPP shall address maintenance and repair of heavy equipment on the site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant.</p> <p>13. Staging areas and haul roads shall be constructed to minimize future over-excavation of deteriorated sub-grade soil.</p> <p>14. If construction occurs during wet periods, sub-grade stabilization shall be required. Mulching or netting may be needed for wet-weather construction.</p> <p>15. Temporary erosion control measures (such as silt fence, gravel filter berms, straw wattles, sediment/grease traps, mulching of disturbed soil, construction stormwater chemical treatment, and construction stormwater filtration) shall be employed for disturbed areas.</p> <p>16. Exposed and unworked soils shall be stabilized by the application of effective BMPs. These include, but are not limited to, temporary or permanent seeding, mulching, nets and blankets, plastic covering, sodding, and gradient terraces.</p> <p>17. The SWPPP shall address the maintenance of both temporary and permanent erosion and sediment control BMPs.</p>				
Water Resources (MM 5.3)				
Construction Impacts				
<p>A. As described under MM 5.2 (A), prior to construction, an NPDES Construction General Permit from the USEPA shall be complied with and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.</p> <p>B. In accordance with the NPDES Construction General Permit, a sampling and monitoring program shall be developed and implemented to assess the quality of surface water entering and leaving the site. At a minimum, sampling sites shall include a location above all proposed development and a location downstream of all development. Analyses shall include total suspended solids (TSS), oils, and greases</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ U.S. Environmental Protection Agency, Tribe ▪ Clean Water Act Sections 401 and 404 ▪ Coquille Tribal Resolution 	A Notice of Intent requesting coverage under the Construction General Permit shall be filed with USEPA and the USSEPA shall confirm that the coverage is granted prior to the initiation of earth disturbing activities. The measures identified in the SWPPP shall be implemented and monitored.
Biological Resources (MM 5.5)				
Migratory Birds and Birds of Prey				
<p>A. In accordance with the MBTA, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the site for active nests should construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15).</p>	Tribe	Pre-Construction Phase and Construction	<ul style="list-style-type: none"> ▪ USFWS, Tribe ▪ Migratory Bird Treaty Act ▪ Coquille Tribal Resolution 	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
<p>In addition, and in accordance with the Bald and Golden Eagle Act, a qualified biologist will conduct at least two preconstruction surveys for bald and golden eagles should construction activities commence during the nesting season for eagles (between January 1 and August 31). Following the preconstruction nesting bird surveys, if any active nests of migratory birds are located within 100 feet of the Action Area, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. Following the preconstruction survey for nesting bald and golden eagles, if any active eagle nests are located within 330 feet of the Action Area, a no-disturbance buffer zone shall be established around the nests and nesting resources must also be protected (perching and fledging trees, replacement nest trees, and forested area around the nest tree) to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer for either migratory birds or eagles shall be determined by the biologist in coordination with the USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delimit the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted in August or September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.</p> <p>B. Trees anticipated for removal will be removed between September 15 and December 31, prior to the nesting season. If trees are anticipated to be removed during the nesting season, a preconstruction survey will be conducted by a qualified biologist. If the survey shows that there is no evidence of active nests, then the tree will be removed within 10 days following the survey. If active nests are located within trees identified for removal, a species-specific buffer will be installed around the tree and additional measures outlined in section A above shall be implemented.</p>		Phase		report shall be prepared by a qualified biologist documenting compliance.
Stormwater				
<p>C. As described under MM 5.2 (A), prior to construction, the project shall obtain coverage under the NPDES Construction General Permit from the USEPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.</p> <p>D. The site shall incorporate BMPs for stormwater runoff, including sedimentation basins, vegetated swales, and runoff infiltration devices if necessary, to ensure that the water quality of on-site or nearby waters does not degrade. Stormwater runoff from the site shall be monitored according to BMPs to assess the quality of water leaving the site.</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> ▪ U.S. Environmental Protection Agency, Tribe ▪ Clean Water Act Sections 401 and 404 ▪ Coquille Tribal Resolution 	A Notice of Intent requesting coverage under the Construction General Permit shall be filed with USEPA and the USEPA shall confirm that the coverage is granted prior to the initiation of earth disturbing activities. The measures identified in the SWPPP shall be implemented and monitored.
Construction				
<p>E. All equipment refueling and maintenance shall occur in an approved staging area and an agency-approved spill prevention plan will be implemented by the contractor.</p>	Tribe	Construction Phase	<ul style="list-style-type: none"> ▪ Coquille Tribal Resolution 	Requirements shall be identified in construction contracts.

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
Cultural and Paleontological Resources (MM 5.6)				
<p>A. All earth disturbing activities involving excavation greater than 2 feet in depth shall be monitored by a qualified archaeologist. If intact archaeological deposits and/or cultural features including human remains are discovered during project construction and monitoring activities, the following measures will apply.</p> <p>B. In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist can assess the significance of the find. If any find is determined to be significant by the archaeologist, then representatives of the Tribe shall meet with the archaeologist to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist according to current professional standards.</p> <p>C. If human remains are discovered during ground-disturbing activities on Tribal lands, the Tribal Official and BIA representative shall be contacted immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.</p> <p>D. In the event of accidental discovery of paleontological materials during ground-disturbing activities, a qualified paleontologist shall be contacted to evaluate the significance of the find and collect the materials for curation as appropriate.</p>	<p>Tribe BIA as needed</p>	<p>Construction Phase</p>	<ul style="list-style-type: none"> ▪ BIA ▪ Section 106 of the National Historic Preservation Act ▪ Coquille Tribal Resolution 	<p>Requirements shall be identified in construction contracts. Documentation for inadvertent discoveries shall be prepared in accordance with NHPA and must be approved by the SHPO.</p>
Transportation and Circulation (MM 5.8)				
Opening Year 2022				
<p>To prevent violation of federal, state and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following mitigation measures shall be implemented, with paragraph A below subject with specific negotiations between the Tribe and ODOT:</p> <p>A. In accordance with OAR 734 -051 (Division 51) the Tribe shall enter into discussions with ODOT regarding the two accesses along Hwy 99 and the applicability of the “moving in the direction” criteria. The collaboration may conclude with issuance of access permits. Improvements to the existing accesses as a result of this collaboration may include, but may not be limited to.</p> <ol style="list-style-type: none"> 1. Install a narrow median island on Hwy 99 to limit the access to the northern driveway (South Pacific Highway/Human Bean Driveway) to right-in, right-out movements. 2. Restripe the southern driveway on Hwy 99 (South Pacific Highway / Roxy Ann Lanes) with one entry lane and separated right turn and left turn exit lanes. 3. Design truck access locations to accommodate vehicles with a wheel base of 67 feet (WB-67 	<p>Tribe</p>	<p>Pre-Construction Phase and Construction Phase</p>	<ul style="list-style-type: none"> ▪ Oregon Department of Transportation (ODOT)/Conditions of access permit(s) and encroachment permits for work within ODOT right-of-way ▪ Coquille Tribal Resolution 	<p>Requirements shall be identified in construction contracts. Design plans must be submitted to ODOT for review and approval. Access approvals and encroachment permits will be obtained prior to construction of improvements.</p>

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
vehicles).				
Cumulative Year 2042				
<p>To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the Tribe shall offer to implement and pay a fair share contribution to the following mitigation measures:</p> <p>D. <u>South Pacific Highway and Garfield Street</u>: Restripe the westbound right-turn lane to a shared through-right and making appropriate changes to the signal head, controller and signage. Proportionate fair share of 2%.</p> <p>E. <u>South Pacific Highway and Charlotte Ann Road</u>: Access management via turn movement restrictions. Right-out only of the private driveway and striping the westbound movements to be separate movements. Proportionate fair share of 3%.</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> Oregon Department of Transportation (ODOT)/Conditions of access permit(s) and encroachment permits for work within ODOT right-of-way Coquille Tribal Resolution 	Payment of applicable fair share fee at time of improvements.
Land Use (MM 5.9)				
MM 5.8 and MM 5.11 and BMPs in Section 2.3.3 will reduce incompatibilities with neighboring land uses due to air quality, traffic, noise, and aesthetic impacts.	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> See MM 5.8 and MM 5.11 Coquille Tribal Resolution 	See MM 5.8 and MM 5.11
Public Services (MM 5.10)				
Law Enforcement				
<p>C. Prior to operation, the Tribe shall offer to enter into agreements to reimburse the Medford Police Department for direct and indirect costs incurred in conjunction with providing law enforcement services. The agreement shall include a provision requiring the Tribe to meet with the City of Medford at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project. In addition, the Tribe shall offer to enter into an agreement with Jackson County to reimburse law enforcement costs associated with the increase in demand for the District Attorney, jail, and Community Justice Department services as a result of Alternative A.</p>	Tribe	Planning Phase	<ul style="list-style-type: none"> City of Medford/Tribe Intergovernmental Service Agreement between the Tribe and the City of Medford and Jackson County Coquille Tribal Resolution 	A service agreement shall be negotiated between the Tribe the Medford Police Department for compensation for law enforcement services. The Tribe shall offer to enter into an agreement with Jackson County to reimburse law enforcement costs associated with the increase in demand for the District Attorney, jail, and Community Justice Department services.
Fire Protection and Emergency Medical Services				
<p>E. Prior to operation, the Tribe shall offer to enter into an agreement to reimburse the Medford Fire Department for additional demands caused by the operation of the facilities on trust property. The agreement shall address any required conditions and standards for emergency access and fire protection system.</p>	Tribe	Planning Phase	<ul style="list-style-type: none"> City of Medford/Tribe Intergovernmental Service Agreement between the Tribe and the City of 	A service agreement shall be negotiated between the Tribe the Medford Fire Department for compensation for fire protection

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation	Standard for Determining Compliance
			<ul style="list-style-type: none"> Medford ▪ Coquille Tribal Resolution 	and emergency medical services.
Noise (MM 5.11)				
Construction				
<p>The following mitigation measures shall be implemented during construction to prevent violation of federal noise abatement criteria standards:</p> <p>A. Construction shall not be conducted between the hours of 6:00 p.m. and 7:00 a.m. Additionally, the following measures shall be used to minimize impacts from noise during work hours (7:00 a.m. to 6:00 p.m.):</p> <ol style="list-style-type: none"> 1. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds, in accordance with manufacturers' specifications. 2. Haul trucks shall be operated in accordance with posted speed limits. 3. Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible. To the extent feasible, existing barrier features (structures) shall be used to block sound transmission between noise sources and noise sensitive land uses. 4. Equipment shall not be left idling for more than 5 minutes. 5. All diesel engine generator sets shall be provided with enclosures. 6. The Tribe shall monitor construction noise and will designate a disturbance coordinator (such as an employee of the general contractor or the project manager for the Tribe), post the coordinator's contact telephone number conspicuously around the project site, and provide the number to nearby sensitive receptors. The disturbance coordinator shall receive all public complaints, be responsible for determining the cause of the complaints, and implement any feasible measures to alleviate the problem. 	Tribe	Construction Phase	<ul style="list-style-type: none"> ▪ Coquille Tribal Resolution 	Requirements shall be identified in construction contracts.
Heating, Ventilation, and Air Conditioning				
B. HVAC systems for the gaming facility will be roof mounted and shielded to minimize noise	Tribe	Construction Phase and Operation Phase	<ul style="list-style-type: none"> ▪ Coquille Tribal Resolution 	Requirements shall be identified on design plans and in construction contracts.
Hazardous Materials (MM 5.12)				
A. The Tribe shall ensure, through the enforcement of contractual obligations, that all contractors require construction personnel to wear appropriate personal protective equipment (PPE) and follow proper decontamination procedures subsequent to working in areas where native soils have been disturbed.	Tribe	Construction Phase	<ul style="list-style-type: none"> ▪ Coquille Tribal Resolution 	Requirements shall be identified in construction contracts.

Attachment 2
FEIS Notices

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to 25 CFR part 162.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or 25 CFR part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Bay Mills Indian Community, Michigan.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2024–27401 Filed 11–21–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/
A0A501010.999900]

Final Environmental Impact Statement for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the Coquille Indian Tribe (Tribe), City of Medford (City), Jackson County (County), and the Oregon Department of Transportation (ODOT) serving as cooperating agencies, intends to file a Final Environmental

Impact Statement (FEIS) with the U.S. Environmental Protection Agency (EPA) in connection with the Tribe's application to transfer into trust approximately 2.4 acres for gaming purposes in the City of Medford, Jackson County, Oregon (Medford Site).

DATES: The Record of Decision for the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. The BIA must receive any comments on the FEIS before that date.

ADDRESSES: By mail or hand delivery to: Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Region, 911 NE 11th Avenue, Portland, Oregon 97232. Please include your name, return address, and "FEIS Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project" on the first page of your written comments.

By email to: Tobiah Mogavero, NEPA Coordinator, Bureau of Indian Affairs, at: tobiah.mogavero@bia.gov, using "FEIS Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project" as the subject of your email.

FOR FURTHER INFORMATION CONTACT: Mr. Tobiah Mogavero, NEPA Coordinator, Bureau of Indian Affairs, Northwest Region, (435) 210–0509, tobiah.mogavero@bia.gov. Information is also available online at <https://coquille-eis.com>.

SUPPLEMENTARY INFORMATION: The Notice of Availability (NOA) of the Draft EIS was published by the BIA (87 FR 72505) and EPA (87 FR 72482) in the **Federal Register** on November 25, 2022. The Draft EIS was originally made available for public comment for a 45-day period. However, the BIA extended the public comment period for an additional 45-day period that concluded on February 23, 2023, resulting in a total comment period of 90 days. Virtual public hearings were held on December 15, 2022, and January 31, 2023, to collect verbal comments on the Draft EIS.

Background

The following alternatives are considered in the FEIS: (1) Proposed Project; (2) Phoenix Site; (3) Expansion of the Mill Casino; and (4) and No Action/No Development Alternative. The BIA has selected Alternative 1, the Proposed Project, as the Preferred Alternative as discussed in the FEIS.

Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice),

transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, will assist the Department in its review of the issues presented in the Tribe's application. Selection of the Preferred Alternative does not indicate the Department's final decision because the Department must complete its review process. The Department's review process consists of (1) issuing the notice of availability of the FEIS; (2) issuing a Record of Decision no sooner than 30 days following publication of a Notice of Availability of the FEIS by the EPA in the **Federal Register**; and (3) transfer of the Medford Site in to trust under the Coquille Restoration Act of 1989, 25 U.S.C. 715 *et. seq.*

Locations where the FEIS is Available for Review: The FEIS is available for review at <https://coquille-eis.com>. Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be included as part of the administrative record and responses to comments on the Final EIS. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR part 1500 through 1508) and section 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with 40 CFR 93.155, which provides reporting

requirements for conformity determinations.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024-27409 Filed 11-21-24; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of a Final Environmental Impact Statement and Final Conformity Determination for the Koi Nation of Northern California's Proposed Shiloh Resort and Casino Project, Sonoma County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the National Indian Gaming Commission (NIGC) and United States Environmental Protection Agency (EPA) serving as cooperating agencies, has filed a Final Environmental Impact Statement (FEIS) with the EPA in connection with the Koi Nation of Northern California's (Koi Nation) application for acquisition in trust by the United States of approximately 68.60 acres adjacent to the Town of Windsor, Sonoma County, California for gaming and other purposes.

DATES: The Record of Decision for the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. The BIA must receive any comments on the FEIS before that date.

ADDRESSES: You may send written comments by any of the following methods:

- *Mail or hand-delivery:* Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and "FEIS Comments, Shiloh Resort and Casino Project" on the first page of your written comments.

- *Email:* Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, at chad.broussard@bia.gov using "FEIS Comments, Shiloh Resort and Casino Project" as the subject of your email.

FOR FURTHER INFORMATION CONTACT: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Room W-2820, Sacramento, California 95825;

telephone: (916) 978-6165; email: chad.broussard@bia.gov. Information is also available online at <https://www.shilohresortenvironmental.com/>.

SUPPLEMENTARY INFORMATION: The BIA previously prepared an EA that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments from September 12, 2023, through November 13, 2023, providing for a total of 60 days to submit comments on the EA. Upon consideration of the public and agency comments received, the BIA decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** and *The Press Democrat* on March 8, 2024. A Notice of Availability (NOA) was published in the **Federal Register** by the BIA on July 8, 2024 (89 FR 55968) and the EPA on July 12, 2024 (89 FR 57150). The Draft EIS was made available for a 45-day public comment period beginning July 12, 2024, and ending on August 26, 2024. A public meeting was held July 30, 2024, to collect verbal comments. In accordance with section 176 of the Clean Air Act and the EPA's general conformity regulations, a Draft Conformity Determination has been prepared for the Shiloh Resort and Casino Project. The Final Conformity Determination is contained within appendix F-2 of the FEIS.

Background

The following alternatives are considered in the FEIS: (A) Proposed Project; (B) Reduced Intensity Alternative; (C) Non-Gaming Alternative; and (D) No Action Alternative. The BIA has selected Alternative A, the Proposed Project as the Preferred Alternative as discussed in the FEIS.

Environmental issues addressed in the FEIS include land resources; water resources; air quality and climate change; noise; biological resources; cultural and paleontological resources; transportation and circulation; land use; hazardous materials and hazards; public services and utilities; socioeconomic; environmental justice; visual resources; and cumulative, indirect, and growth-inducing effects.

The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, will assist the Department in its review of the issues presented in the Tribe's application. Selection of the Preferred Alternative does not indicate the Department's final decision because the Department must

complete its review process. The Department's review process consists of (1) issuing the notice of availability of the FEIS; (2) issuing a Record of Decision no sooner than 30 days following publication of a Notice of Availability of the FEIS by the EPA in the **Federal Register**; and (3) transfer of the approximately 68.60 acres into trust.

Locations where the FEIS is Available for Review: The FEIS is available for review at <https://www.shilohresortenvironmental.com/>, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825 (with advance notice and during regular business hours), and Windsor Regional Library located at 9291 Old Redwood Hwy. #100, Windsor, CA 95492, telephone (707) 838-1020 (during regular business hours). Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be included as part of the administrative record and responses to comments on the Final EIS. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and section 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA, as amended (42 U.S.C. 4371, *et seq.*), and in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with 40 CFR 93.155, which provides reporting requirements for conformity determinations.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by Delegation the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2024-27430 Filed 11-21-24; 8:45 am]

BILLING CODE 4337-15-P

Convention. EPA seeks to enhance its current information on how much mercury is used, in which products and manufacturing processes, and whether certain products are manufactured domestically, imported, or exported.

Reporting is required from any person who manufactures (including imports) mercury or mercury-added products, as well as any person who otherwise intentionally uses mercury in a manufacturing process under TSCA section 8(b). The Agency promulgated reporting requirements at 40 CFR part 713. To avoid duplication, EPA coordinated the reporting with the Interstate Mercury Education and Reduction Clearinghouse (IMERC).

Form number: 9600–024.

Respondents/affected entities: Entities potentially affected are those that manufacture (including import) mercury, manufacture (including import) mercury containing products, and those who intentionally use mercury in a manufacturing process.

Respondent's obligation to respond: Mandatory, per TSCA section 8(b) and 40 CFR 713.

Estimated number of respondents: 105 (total).

Frequency of response: Triennial.

Total estimated burden: 2,573 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$223,592 (per year), which includes \$0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 14,775 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease reflects a change in EPA's method of estimating the number of expected reports. In 2021, EPA amended the original final rule to effectuate the vacatur ordered by the Second Circuit Court. In this ICR, with data available from the Mercury Inventory and with no new changes to the rule itself, this ICR utilizes data from the Reporting Year 2021 of the Mercury Inventory. In the RY 2021, there were 105 submissions (the previous ICR used an estimate of 252). This ICR assumes each respondent completes the entire form. Wages were also updated to 2022 dollars. This change is an adjustment.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–27396 Filed 11–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–153]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or <https://www.epa.gov/nea>. Weekly receipt of Environmental Impact Statements (EIS) Filed November 8, 2024 10 a.m. EST Through November 18, 2024 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240216, Final, USGS, WI, Proposed Development of an Updated Facility for USGS National Wildlife Health Center Madison, Wisconsin, Review Period Ends: 12/23/2024, *Contact:* Jordan Sizemore 360–929–0783.

EIS No. 20240217, Final, NRC, MN, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 26, Second Renewal Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1 Final Report, Review Period Ends: 12/23/2024, *Contact:* Jessica Umana 301–415–5207.

EIS No. 20240218, Draft, NMFS, PRO, Identification of Aquaculture Opportunity Areas in U.S. Federal Waters of the Gulf of Mexico, Comment Period Ends: 02/20/2025, *Contact:* Andrew Richard 727–551–5709.

EIS No. 20240219, Draft, NMFS, CA, Identification of Aquaculture Opportunity Areas in U.S. Federal Waters off of Southern California, Comment Period Ends: 02/20/2025, *Contact:* Celia Barroso 562–432–1850.

EIS No. 20240220, Final, BIA, OR, Coquille Indian Tribe Fee to Trust Gaming Facility Project, Review Period Ends: 12/23/2024, *Contact:* Brian Haug 503–347–0631.

EIS No. 20240221, Final, BIA, CA, Koi Nation Shiloh Resort and Casino, Review Period Ends: 12/23/2024, *Contact:* Chad Broussard 916–978–6165.

Dated: November 18, 2024.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2024–27419 Filed 11–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12404–01–OA]

Animal Agriculture and Water Quality Subcommittee (AAWQ), Subcommittee of the Farm, Ranch, and Rural Communities Committee (FRRCC); Notice of Public Meeting Animal Agriculture and Water Quality Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given that the next meeting of the Animal Agriculture and Water Quality Subcommittee, a subcommittee of the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be held virtually on December 6, 2024. The goal of the AAWQ subcommittee is to provide recommendations that will inform the Agency's decisions regarding how to improve the implementation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) permitting program.

DATES: The public meeting of the AAWQ will be held virtually only on Friday, December 6, 2024, from approximately 8:30 a.m. to 5:30 p.m. (EST).

ADDRESSES: The meeting will take place virtually only. To register to attend virtually and receive information on how to listen to the meeting and to provide comments, please visit: www.epa.gov/faca/frcc-0. Virtual attendance will be via Zoom. The link to register for the meeting can be found on the FRRCC web page, www.epa.gov/faca/frcc-0. To provide public comments, attendees must submit request by Tuesday, November 26, 2024, at 11:59 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Dr. Venus Welch-White, Designated Federal Officer (DFO), at AAWQ@epa.gov or telephone. (202) 564–0595. General information regarding the FRRCC and AAWQ can be found on the EPA website at: www.epa.gov/faca/frcc.

SUPPLEMENTARY INFORMATION: Meetings of the AAWQ are open to the public. An agenda will be posted on AAWQ's website at <https://www.epa.gov/faca/frcc-0>.

Access and Accommodations: Requests for accessibility and/or accommodations for individuals with disabilities should be directed to AAWQ@epa.gov or at the phone number

Affidavit of Publication
STATE OF OREGON, COUNTY OF JACKSON

I, Julius Black, a citizen of the United State and a resident of the county aforesaid; I am over the age of eighteen years, and not part to or interested in the above-entitled matter. I am the principal clerk of the printer of

TROGUE VALLEY
TIMES

a newspaper of general circulation, published in the aforesaid county and state as defined by ORS 192.010 and ORS 192.020, that

Acct Name: ACORN ENVIRONMENTAL

PO Number:

Legal Description: DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE COQUILLE INDIAN TRIBE FEE-TO-TRUST AND GAMING FACILITY PROJECT CITY OF MEDFORD JACKSON COUNTY OREGON A

a printed copy of which is hereto affixed was published in each regular and entire issue of the said newspaper and not in any supplement thereof on the following dates to wit:

11/23/24

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



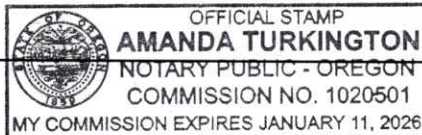
Signature

Dated at Medford, Oregon, this 23rd day of November, 2024

AdName: **459814**

State of Oregon, County of Jackson

Subscribed and Sworn to before me this 5TH day of Dec, 2024 by


Notary Public for Oregon

<p>No. _____</p> <p>in the _____ Court of the</p> <p style="text-align: center;">STATE OF OREGON for the COUNTY OF JACKSON</p>	
<p style="text-align: center;">AFFIDAVIT OF PUBLICATION</p> <p>Filed. _____</p> <p>By _____</p> <p>From the office of _____</p> <p>Attorney for _____</p>	

DEPARTMENT OF THE
INTERIOR

Bureau of Indian Affairs

Final Environmental Impact
Statement for the Coquille
Indian Tribe Fee-to-Trust and
Gaming Facility Project, City of
Medford, Jackson County,
Oregon AGENCY: Bureau of
Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises
the public that the Bureau of
Indian Affairs (BIA), as lead
agency, with the Coquille Indian
Tribe (Tribe), City of Medford
(City), Jackson County (County),
and the Oregon Department of
Transportation (ODOT) serving
as cooperating agencies, intends
to file a Final Environmental
Impact Statement (FEIS) with the
U.S. Environmental Protection
Agency (EPA) in connection with
the Tribe's application to transfer
into trust approximately 2.4 acres
for gaming purposes in the City
of Medford, Jackson County,
Oregon (Medford Site).

DATES: The Record of Decision
for the proposed action will be
issued on or after 30 days from
November 22, 2024 (the date the
EPA published its Notice of
Availability in the *Federal
Register*). The BIA must receive
any comments on the FEIS on or
before December 23, 2024.

ADDRESSES: By mail or hand
delivery to: Regional Director,
Bureau of Indian Affairs,
Northwest Region, 911 NE 11th
Avenue, Portland, Oregon 97232.
Please include your name, return
address, and "FEIS Comments,
Coquille Indian Tribe Fee-to-Trust
and Casino Project" on the first
page of your written comments.
By email to: Tobiah Mogavero,
NEPA Coordinator, Bureau of
Indian Affairs, at:
tobiah.mogavero@bia.gov, using
"FEIS Comments, Coquille Indian
Tribe Fee-to-Trust and Casino
Project" as the subject of your
email.

**FOR FURTHER INFORMATION
CONTACT:** Mr. Tobiah Mogavero,
NEPA Coordinator, Bureau of
Indian Affairs, Northwest Region,
(435) 210-0509,
tobiah.mogavero@bia.gov.
Information is also available
online at <https://coquille-eis.com>.

**SUPPLEMENTARY INFORMA-
TION:** The Notice of Availability
(NOA) of the Draft EIS was
published by the BIA (87 FR
72505) and EPA (87 FR 72482)
in the *Federal Register* on
November 25, 2022. The Draft
EIS was originally made available
for public comment for a 45- day
period. However, the BIA
extended the public comment
period for an additional 45-day
period that concluded on
February 23, 2023, resulting in a
total comment period of 90 days.
Virtual public hearings were held
on December 15, 2022, and
January 31, 2023, to collect
verbal comments on the Draft
EIS. **Background**

The following alternatives are
considered in the FEIS: (1)
Proposed Project; (2) Phoenix
Site; (3) Expansion of the Mill
Casino; and (4) and No Action/No
Development Alternative. The
BIA has selected Alternative 1,
the Proposed Project, as the
Preferred Alternative as
discussed in the FEIS.

Environmental issues addressed
in the FEIS include geology and
soils, water resources, air quality,
biological resources, cultural and
paleontological resources,
socioeconomic conditions
(including environmental justice),
transportation and circulation,
land use, public services, noise,
hazardous materials, aesthetics,
cumulative effects, and indirect
and growth inducing effects.

The information and analysis
contained in the FEIS, as well as
its evaluation and assessment of
the Preferred Alternative, will
assist the Department in its
review of the issues presented in
the Tribe's application. Selection
of the Preferred Alternative does
not indicate the Department's
final decision because the
Department must complete its
review process. The

Department's review process
consists of (1) issuing the notice
of availability of the FEIS; (2)
issuing a Record of Decision no
sooner than 30 days following
publication of a Notice of
Availability of the FEIS by the
EPA in the *Federal Register*; and
(3) transfer of the Medford Site in
to trust under the Coquille
Restoration Act of 1989, 25
U.S.C. 715 *et seq.*

**Locations where the FEIS is
Available for Review:** The FEIS is
available for review at
<https://coquille-eis.com>. Contact
information is listed in the **FOR
FURTHER INFORMATION
CONTACT** section of this notice.

Public Comment Availability:
Comments, including names and
addresses of respondents, will
be included as part of the
administrative record and
responses to comments on the
Final EIS. Before including your
address, phone number, e-mail
address, or other personal
identifying information in your
comment, you should be aware
that your entire comment—
including your personal
identifying information—may be
made publicly available at any
time. While you can ask in your
comment that your personal
identifying information be
withheld from public review, the
BIA cannot guarantee that this
will occur.

Authority

This notice is published pursuant
to section 1503.1 of the Council
of Environmental Quality
Regulations (40 CFR part 1500
through 1508) and section 46.305
of the Department of the Interior
Regulations (43 CFR part 46),
implementing the procedural
requirements of the NEPA of

1969, as amended (42 U.S.C.
4371, *et seq.*), and is in the
exercise of authority delegated to
the Assistant Secretary—Indian
Affairs by 209 DM 8. This notice
is also published in accordance
with 40 CFR 93.155, which
provides reporting requirements
for conformity determinations.

**Bryan Newland, Assistant
Secretary – Indian Affairs.**

Attachment 3
Supplemental Response to Substantive
Comments on the FEIS

Attachment 3 - Comments and Responses to Comments on the Final EIS

1.0 INTRODUCTION

This attachment to the U.S. Department of Interior’s (DOI) Record of Decision (ROD) regarding the Trust Acquisition of the 2.4-acre Site in the City of Medford for the Coquille Indian Tribe (Proposed Action) contains responses to certain “new” comments that were received on the Final Environmental Impact Statement (Final EIS) following the publication of the Notice of Availability (NOA) in the Federal Register on November 22, 2024 (89 FT 92712). A total of 135 letters were received during the waiting period and were considered by the DOI during the decision-making process for the Proposed Action. The commenters for these 135 Letters are indexed in **Table 1**. Master Responses have been provided in **Section 2** to address comments with similar subject matter that were submitted multiple times in separate comments. Specific comments that were determined to potentially be “new” comments (i.e. not previously responded to during the EIS process) are provided in **Exhibit 1**, and are responded to in **Section 3**. Copies of all comment letters are provided in **Exhibit 2**.

In summary, the comments received by the BIA following publication of the NOA for the Final EIS did not reveal substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

Table 1: Index of Comment Letters on Final EIS

Government Agencies (A)			
Number	Agency	Name	Date
A1	Office of the Governor of California	Matthew Lee, Senior Advisor for Tribal Negotiations	12/16/24
A2	U.S. House of Representatives	Cliff Bentz, Member of Congress	12/20/24
A3	Oregon Department of Transportation	Micah Horowitz, AICP, Senior Transportation Planner	12/23/24
Tribes (T)			
Number	Tribe	Name	Date
T1	Confederated Tribes of Coos, Lower Umpqua, & Siuslaw Indians	Meagan Davenport, Senior Executive Assistant	11/26/24
T2	Cow Creek Band of Umpqua Tribe of Indians	Carla Keene, Chairperson	11/26/24
T3	The Klamath Tribes	William E. Ray Jr., Chairperson	11/27/24
T4	Karuk Tribe	Russell Attebery, Chairman	12/2/24
T5	Tolowa Dee-ni’ Nation	Jeri Lynn Thompson	12/9/24

T6	Elk Valley Rancheria	Dale A. Miller, Chairman	12/16/24
T7	Confederated Tribes of the Grand Ronde Community of Oregon	Rob Greene, Tribal Attorney	12/17/24
T8	Lytton Rancheria	Andy Mejia, Chairperson	12/19/24
T9	Confederated Tribes of Siletz Indians	Craig Dorsay, Tribal Attorney	12/20/24
T10	Cow Creek Band of Umpqua Tribe of Indians	Michael Rondeau, CEO Tribal Government	12/19/24
T11	Cow Creek Band of Umpqua Tribe of Indians	Carla Keene, Chairperson	12/20/24
T12	Cloverdale Rancheria	Patricia Hermosillo	12/20/24
T13	Cachil Dehe Band of Wintun Indians of the Colusa Indian Community	Wayne Mitchum Jr., Chairman	12/20/24
T14	Confederated Tribes of the Umatilla Indian Reservation	Daniel Hester, Tribal Attorney	12/23/24
Individuals/Organization (I)			
Number	Individual	Organization	Date
I1	The Morrisons		11/22/24
I2	John Ivy	Coquille Tribal Member 506	11/22/24
I3	Joe Arena		11/22/24
I4	Angus Troxel		11/22/24
I5	Colin Evans		11/22/24
I6	Angus Troxel		11/22/24
I7	Keith Canaday		11/26/24
I8	Jennifer and Scott Schneider		11/23/24
I9	Roland Bauske		11/23/24
I10	Wendy Cushnie		11/23/24
I11	Lindsay Sturgeon		11/23/24
I12	Bill Englund		11/23/24
I13	Linda Robb		11/23/24
I14	Kylan Ledford	Cow Creek Tribal Member S-1160	11/23/24
I15	Margaret N. Taylor		11/23/24
I16	Paul McMahon		11/24/24
I17	Karen Callahan		11/24/24
I18	Laura Hawkins		11/24/24

I19	Thomas A Olbrich		11/24/24
I20	Jack and Susie		11/24/24
I21	JoJo Howard		11/25/24
I22	Kirby Ragsdale		11/25/24
I23	N Hill		11/26/24
I24	Joi and Geoffrey Riley		11/26/24
I25	Kelly Metcalf-Canaday		11/26/24
I26	Sara Monteith		11/26/24
I27	Roland Bauske		11/27/24
I28	Brady Scott	Coquille Tribal Elder	11/27/24
I29	Todd Hoener		11/28/24
I30	Stephanie Tritt	Cow Creek	11/29/24
I31	Gerry Douglas		12/1/24
I32	Medford Citizen		12/1/24
I33	Karen		12/1/24
I34	Karen Markman		12/1/24
I35	Katy Mallams		12/1/24
I36	Quentin Saludes	Coquille Tribal Member 687	12/1/24
I37	Barbara Varner		12/1/24
I38	Angie Steinhoff	Cow Creek Tribal Member	11/22/24
I39	Kayleen Moss		11/22/24
I40	Kathy Cammorata		11/21/24
I41	Fabiola Monroe		11/21/24
I42	Rick Shroy		11/22/24
I43	Nancy Nidiffer		12/2/24
I44	Mike Heverly		11/27/24
I45	Trevor Porter	Cow Creek Tribal Member 518	12/3/24
I46	Keanu Lycett	Cow Creek Tribal Citizen	12/4/24
I47	Rachel Gaylord	Cow Creek Tribal Citizen	12/5/24
I48	Anati Zubia	Coquille Tribal Member	12/5/24
I49	Courtney Buschmann Simpson		12/6/24
I50	Shelley Estes	Coquille Tribal Member	12/6/24
I51	Charlie Snider		12/7/24
I52	Trista Johnson	Cow Creek Tribal Member	12/8/24
I53	David Eisenberg		12/8/24

154	Harlan and Kathleen Posen		12/9/24
155	Randall Hunter	Coquille Tribal Member 958	12/9/24
156	Julie Wright	Coquille Tribal Elder	12/10/24
157	Robert Mengis		12/10/24
158	Ken and Lynette O'Neal		12/12/24
159	Jeff Bruton		12/12/24
160	Deborah Porter		12/14/24
161	Steven Kaesemeyer	Cow Creek Tribal Elder	12/15/24
162	Anne Batzer		12/16/24
163	Rolf Peterson		12/16/24
164	Robert Wade		12/16/24
165	Katherine Iverson		12/16/24
166	Theresa Mershon-Samuels		12/16/24
167	Jon Buckley		12/16/24
168	Linda Hayes		12/16/24
169	Jacky Hagan Sohn		12/16/24
170	Dawn Norris		12/16/24
171	Samantha Mutter		12/16/24
172	Amy Haptonstall		12/16/24
173	Jefferson Smith		12/16/24
174	Donna Ruffer		12/17/24
175	Alexander Iverson		12/17/24
176	Stanley Kerr		12/17/24
177	Marie Chesnut		12/17/24
178	Barbara Dollarhide		12/18/24
179	Sean Keller		12/18/24
180	Xiao Xu		12/18/24
181	Christopher Tanner	Coquille Tribal Member	12/18/24
182	Robert and Barbar Reynolds		12/18/24
183	Brandan Hull, MD		12/18/24
184	Grey Astley	Oregon Restaurant and Lodging Association	12/19/24
185	Maggie Walker	Cow Creek	12/19/24
186	Betty Jo Reynolds		12/19/24
187	Rachael Hand		12/19/24
188	Linda Moran		12/19/24

I89	Amy Gunter		12/20/24
I90	Alan DeBoer	Ashland Mayor	12/22/24
I91	Alice Crume		12/22/24
I92	Shelly Lehman	Cow Creek	12/22/24
I93	Steve and Gina Kaesemeyer	Cow Creek	12/22/24
I94	Eugene Majeski' and Syl Zucker		12/22/24
I95	Jim Fleischer		12/22/24
I96	Leigh Nelson		12/23/24
I97	Carissa Bussard	Karuk Tribal Member	12/23/24
I98	Herbert Rothschild		12/23/24
I99	Rose Crane		12/23/24
I100	Reginald and Annette Breeze		12/23/24
I101	Lorie Hancock		12/23/24
I102	Medford Resident		12/23/24
I103	Matthew		12/23/24
I104	Karen Harris		12/23/24
I105	Cara Davis-Jacobson		12/23/24
I106	Mr. and Mrs. Richard Fielder		12/23/24
I107	Ceili Widmann		12/23/24
I108	Fred Arnett		12/23/24
I109	Michael Framson		12/23/24
I110	Jerry Colton		12/23/24
I111	Mike Medina		12/23/24
I112	Kimberlee Tripp		12/23/24
I113	Kathleen Ortiz		12/23/24
I114	Jerred Shoemaker		12/23/24
I115	Sharon Gross		12/24/24
I116	Joan G. Hill		12/24/24
I117	Carma Mornarich		12/24/24
I118	Brad A. Breeze, CFP		12/29/24

2.0 MASTER RESPONSE TO COMMENTS

Master responses in this section address comments with similar subject matter that were submitted multiple times in separate comments. Responses to separate comments may refer to these master responses in whole or in part to avoid repetition.

2.1. Extension of Time for Review of the Final EIS

Summary of Comments

Commenters (including but not limited to T1, T2, T4, T5, T6, T7, T8) stated that because the Final EIS is over 1500 pages and was released during the winter holidays, more time should be provided for review prior to issuance of a decision. Some commenters (I59 and I85) stated that newly elected officials not yet sworn into office, including those for the City of Medford, should have adequate time and representation when it comes to transformational decisions that will affect a community for decades to come.

Response

The Department of the Interior (DOI) NEPA regulations (43 CFR Part 46) and CEQ Regulations for Implementing NEPA (40 CFR Parts 1500–1508) encourage agencies to facilitate public involvement in the NEPA process (40 CFR 1500.2(d); 40 CFR 1501.9); however, neither NEPA, the CEQ Regulations for Implementing NEPA, DOI's NEPA Procedures or the BIA's NEPA Guidebook (59 IAM 3-H) require a public comment period for a Final EIS. Rather, the DOI NEPA Procedures require that an agency may not issue a Record of Decision (ROD) until after 30 days from the publication by the USEPA of the Notice of Availability of the Final EIS in the federal register, with some exceptions (40 CFR 1506.10; 43 CFR 46.415(c)).

As described in detail in Final EIS Volume II, Section 1.4, extensive opportunities for public review and input have been provided throughout the EIS process in excess of the minimum requirements stipulated by the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Sections 1500 – 1508); the Department of the Interior's NEPA Procedures (43 CFR Part 46) and the BIA's NEPA Guidebook (59 IAM 3-H). These have included:

- Extended 60-day Scoping Comment Period with Public Hearing. While the initial scoping comment period was identified as 30 days, in response to requests, the BIA granted an extension resulting in a 60-day comment period with a public hearing. The BIA issued the Notice of Intent (NOI) for the Proposed Action in the Federal Register on January 15, 2015. The NOI described the Proposed Action and announced the initiation of the formal scoping process and a 30-day public scoping comment period. A newspaper notice announcing the scoping process and date and location of the public scoping meeting was published in the Medford Mail Tribune on January 16 and 18, 2015. Direct mailings were also sent to interested parties. On February 19, 2015, notices extending the comment period for an additional 30 days to March 19, 2015 were mailed to interested parties, and a newspaper notice announcing the extension was published in the Medford Mail Tribune on February 24, 2015. A scoping report was published by the BIA in June 2015 as described in Final EIS Volume II, Section 1.5. During the scoping process, the BIA identified four cooperating agencies: (1) Tribe, (2) ODOT, (3) City of Medford, and (4) Jackson County. Cooperating agencies and the USEPA were invited to review and comment on the administrative draft EIS prior to publication of the Draft EIS.

- Extended 90-day Draft EIS review period with two Public Hearings. While the CEQ NEPA Regulations, DOI NEPA Procedures, and BIA Handbook recommend that a Draft EIS review period be a minimum of 45 days (40 CFR 1506.10(d); 43 CFR 46.415(c)), in response to requests, the BIA granted an extension to the comment period resulting in a 90-day comment period with two public hearings. The review and comment period began on November 25, 2022, after the Notice of Filing with the USEPA in the Federal Register. The Notice of Availability (NOA) issued by the BIA and published in the Medford Mail Tribune on November 27, 2022, provided the time of the first virtual public hearing to receive comments from the public concerning the Draft EIS: December 15th, 2022. On December 20, 2022, the BIA via the federal register and Medford Mail Tribune (published on December 18, 2022) extended the review period for an additional 45 days with the second virtual public hearing occurring on January 31, 2023. The extended public comment period ended on February 23, 2023.

All 108 comment letters received in addition to the public hearing transcripts are included in the Final EIS Volume I, Attachment 2. Substantive comments received on the Draft EIS during the comment period, including those submitted or recorded at public hearings, were addressed in the Final EIS Volume I and appropriate edits were made in Final EIS Volume II. Since the publication of the Draft EIS, substantial changes relevant to environmental concerns related to the Proposed Action have not been made, nor has a new alternative been introduced as the Proposed Action. Similarly, there are no significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Action or its impacts. In response to comments received on the Draft EIS, text and analyses contained in the EIS have been supplemented, modified, and improved; and factual corrections have been made. While new information has been presented, the information has not resulted in substantial changes in the EIS's conclusions regarding the environmental impacts of the Proposed Action. Therefore, the BIA has determined that public engagement has been conducted in accordance with NEPA and an extended review period for the Final EIS is not warranted.

40 CFR 1501.10 and 40 CFR 1506.10 set forth the timelines for preparation of an EIS. 40 CFR 1501.10 (a) states:

“To ensure that agencies conduct sound NEPA reviews as efficiently and expeditiously as practicable, Federal agencies shall set deadlines and schedules appropriate to individual actions or types of actions consistent with this section and the time intervals required by § 1506.10 of this subchapter....”

The BIA has prepared the EIS consistent with these regulations.

2.2. Lack of/or Insufficient Consultation with Native American Tribes

Summary of Comments

A number of comments (including but not limited to A1 – California State Governor, T1 - Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, T4 – Karuk Tribe, T5 – Tolowa Dee-ni’ Nation, and T11 - Cow Creek Band of Umpqua Tribe of Indians) stated that there was a lack of, or insufficient, meaningful government to government consultation between the Department of the Interior and Native American Tribes.

Response

Tribal governments have been provided numerous opportunities for input during the NEPA review process. Noticing for the EIS (described in the Final EIS Volume II, Section 1.4) has been completed in accordance with the applicable requirements of NEPA, its implementing regulations and guidance, and the BIA NEPA Guidebook. In addition, as discussed in Final EIS Volume II, Section 3.6.4, the BIA sent letters to Cow Creek Tribe and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians inviting them to consult pursuant to Section 106 of the NHPA. All letters and communication from tribes received by the BIA have been considered as part of the BIA's decision including, but not limited to, information communicated in numerous in person meetings between the BIA and interested tribes, comment letters received from tribes during the Scoping Comment Period (comment letters were submitted by the Cow Creek Band of Umpqua Tribe of Indians, Coquille Indian Tribe, Elk Valley Rancheria, and Shasta Nation), 17 comment letters received from 11 different tribes on the Draft EIS (see the Final EIS Volume I, Comment Letters T1-T17), the 14 comment letters submitted by 12 different Tribes on the Final EIS (see **Table 1** and Comment Letters T1-T14 in **Exhibit 2**), and comments received through the Section 106 consultation process.

2.3. Compliance with Gaming Regulations and Legislation (Matters Beyond the Scope of NEPA)

Summary of Comments

A number of comments stated that the FEIS does not address the Coquille Tribe's lack of any aboriginal, ancestral, or historical connection to Medford area or the Rogue River Valley. Commenters states that the Project should not qualify for the Restored Lands Exception Under IGRA. Commenters stated that approving this project will set a precedent for future projects.

Response

These comments were largely repeated from comments provided during the Draft EIS review period. The statutory basis for the operation of gaming by Native American tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments is included within the federal IGRA (25 USC §2719). The Department of the Interior will review the Tribe's request in compliance with applicable federal laws, regulations, procedures, and definitions. However, the procedural process under 25 CFR 292 is independent from the NEPA process. Rather, the NEPA process is intended "to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment" (40 CFR §1500.1(c)). In order to fully analyze the potential physical environmental effects of the Proposed Action, the Final EIS assumed that the Medford Site can be utilized for gaming in accordance with federal law.

NEPA does not require detailed responses to comments that fail to raise substantive environmental issues. Comments addressing gaming eligibility and the application of the restored lands exception under IGRA do not raise substantive environmental issues; therefore, no response to these issues was provided in the Final EIS.

Regarding statements that the approval of the Proposed Action would lead to other tribes seeking to develop off-reservation gaming facilities closer to favorable market environments, NEPA requires the

analysis of reasonably foreseeable effects. It does not require the consideration of remote, speculative, or worst-case effects. The BIA's consideration of the Proposed Action will be governed by federal statutes and regulations, and concerns raised about policy implications or legal precedent created by that decision are speculative.

Regarding comments stating that the EIS should disclose the degree to which the Proposed Action would adversely affect the rights of other tribes under the IGRA, it should be noted that IGRA does not guarantee any tribe the right to a gaming market that is free from competition from other tribes. Conversely, the provisions of IGRA apply to all eligible tribes and tribal lands, and do not provide for market protection between eligible tribes. Further, economic competitive effects are not considered environmental effects under NEPA when they do not translate into physical effects to the environment.

2.4. CEQ Regulations and Marin Audubon Society v. Federal Aviation Administration

Summary of Comments

A number of commenters (T8 and T11) stated that the Final EIS was invalid and/or mitigation measures were no longer enforceable as a result of the recent decision in *Marin Audubon Society, et al., v. Federal Aviation Administration, et al.*, where the United States Court of Appeals for the District of Columbia Circuit ruled that the CEQ lacks the statutory authority to issue regulations for implementation of NEPA.

Response

The DOI is aware of the November 12, 2024 decision in *Marin Audubon Society v. Federal Aviation Administration, No. 23-1067 (D.C. Cir. Nov. 12, 2024)*. To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the DOI has nonetheless elected to follow those regulations at 40 C.F.R. Parts 1500– 1508, in addition to the Department of the Interior's procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook (59 Indian Affairs Manual 3-H) to meet the agency's obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

Further, the CEQ regulations themselves are not the "enforcement mechanism" for mitigation measures. Rather, the CEQ regulations state that the ROD "shall identify the authority for enforceable mitigation, such as through permit conditions, agreements, or other measures, and prepare a monitoring and compliance plan." Regardless as to whether the CEQ regulations are ultimately determined to not be binding on the Proposed Action, the BIA has prepared a Mitigation Monitoring and Compliance Plan (MMCP) for the mitigation measures adopted in the ROD. The MMCP is provided as Attachment 1 of the ROD. The MMCP identifies mitigation enforcement through compliance with federal laws and permit conditions, and as a matter of tribal law (refer to the Tribal Resolution in the ROD Attachment 4); the MMCP does not reference the CEQ regulations as the authority for enforcement of mitigation.

2.5. NEPA Timeline and EIS Accuracy

Summary of Comments

Some comments (including but not limited to T11) stated that the BIA failed to take the required "hard look" at the Proposed Action.

Response

The NEPA “hard look” doctrine is a principle of administrative law relied upon to give meaning to the “arbitrary and capricious” standard established by the Administrative Procedure Act; in summary, it requires that agencies take a hard look at the environmental consequences of proposed federal actions, based on consideration of all relevant evidence, and that decisions are supported by adequate facts. As stated in Final EIS Volume II, Section 1.1, the “EIS has been completed in accordance with the applicable requirements of NEPA, its implementing regulations and guidance, and the Bureau of Indian Affairs (BIA) NEPA Guidebook.” It provides a detailed description of the Proposed Action and analysis of the potential environmental consequences associated with the Proposed Action and the subsequent development of the Proposed Project. The scope of issues addressed within the Final EIS was informed by a thorough scoping process that involved multiple opportunities for public and agency input (refer to **Master Response 2.1** for a description of the public/agency engagement opportunities in the NEPA process). Consistent with the NEPA “hard look” standard, the determinations and mitigation recommendations described therein were informed by extensive research and studies prepared by qualified experts either cited as appropriate or provided within the technical appendices of the Final EIS. Supporting technical appendices to the Draft EIS included but was not limited to: cultural resource studies prepared by registered professional archaeologists that meet Secretary of Interior standards; economic impact analysis prepared by gaming economic specialists; a transportation impact study prepared by a traffic engineering firm; a water supply and wastewater feasibility study and a grading and stormwater plan prepared by a civil engineering firm; and air quality modeling completed using the USEPA’s model MOVES3.1. The following updates to the technical analysis were included as appendices to the Final EIS: Appendix O - Updated Substitution Effects Analysis for the Coquille Medford Project; Appendix P - Traffic Technical Memorandum: Comparison of 2019 Traffic Impact Analysis Volumes to 2023 Traffic Volumes; Appendix Q - Updated USFWS Species List and Table of Regionally occurring Sensitive Species and Their Likelihood of Occurrence; Appendix R - Updated Expanded Regulatory and Environmental Setting; Appendix S - Updated Air Quality Output Tables; and Appendix T – Public Services Memorandum.

3.0 RESPONSE TO NEW COMMENTS ON FINAL EIS

Specific responses to comments that were determined to potentially be “new” comments (i.e. not previously responded to during the EIS process) are provided below in **Table 2**. If a specific comment raises an issue that has previously been responded to within the Final EIS, the appropriate section or response within the Final EIS is referenced. Additionally, once an issue has been addressed in a response to a comment, subsequent responses to similar comments reference the initial response.

Table 2: Response to "New" Comments on the Final EIS

Comment Number	Response
A3-1	<p>Comments noted. Mitigation Measure 5.8, which relates specifically to compliance with OAR 734 -051 (Division 51) and Project Site access on Highway 99, provides a mechanism by which these improvements can be negotiated between ODOT and the Tribe. The Proposed Project would comply with all required permits related to transportation on State facilities as condition of access improvement approvals. Any new pedestrian facilities constructed as part of the Proposed Project would be subject to American Disabilities Act (ADA) standards.</p>
T11-1	<p>Please refer to Master Response 2.2 of this document regarding consultation with Native American Tribes.</p> <p>The BIA did analyze environmental justice impacts on tribal governments in Final EIS, Volume II, Section 4.7.1 and Final EIS, Volume I, Master Response 3: Gaming Substitution Effects. As described in Master Response 3, "Without confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined." Although impacts to tribal governmental services were not quantitatively estimated, effects were analyzed. As described in Final EIS, Volume II, Section 4.7.1, "Although the substitution effects resulting from Alternative A to competing gaming facility revenues may impact the operations of these casinos, they are not anticipated to cause their closure. Therefore, it is anticipated that under Alternative A, the above-listed facilities would continue to operate and generate a certain level of profit that would be utilized by the tribal governments that own them to provide services to their respective memberships." Substitution effects are also anticipated to diminish after the first full year of project operations. Thus, it is anticipated that funding of tribal functions (e.g., governmental services and/or per capita payments) would continue for these tribes.</p> <p>Because the BIA does not have access to the confidential and proprietary business information related to operation of the other gaming facilities within the market, or the specific budgets and spending decisions of the impacted tribes, it is not possible to make an assessment with any level of precision as to how each tribe may be individually affected. There are many factors, which are outside of the control of the BIA which influence the funding of government and social services for other tribes. These factors would vary from year to year, and may include, but are not limited to, the structure of the tribe's government and its business entities, the management decisions of tribal businesses, the level of contribution of revenues from tribal businesses to governmental and social services, the distribution of per capita payments (if applicable) to tribal members, economic factors and the use of federal, State, and/or local grants to fund governmental and social services. Therefore, such an assessment would inherently be speculative in nature.</p>

Comment Number	Response
	Please also see Master Response 2.2 and Response to Comment T11-2 for further information regarding consultation.
T11-2	<p>Please refer to Master Response 2.2 of this document regarding consultation with Native American Tribes. Executive Order 13175 referenced by the commenter requires meaningful consultation and collaboration with tribal officials specifically for the development of "Federal policies that have tribal implications", which is defined by the order as: "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." The Proposed Action of taking land into federal trust for the purpose of gaming is not a regulation, legislation, or policy and, therefore, is definitionally not a Federal policy that has tribal implications and consultation and collaboration is not triggered under Executive Order 13175. Rather for federal actions such as the Proposed Action, opportunities for Tribal government input is provided through the NEPA process and NHPA Section 106 process. As set forth in the NHPA implementing regulations at 36 CFR 800.2(a)(4), "[t]he agency official should plan consultations appropriate to the scale of the undertaking and the scope of federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act..." Pursuant to this regulation, the BIA coordinated the Section 106 consultation with the NEPA process and considered comments from Native American Tribes received under both the Section 106 consultation and the NEPA process in its determination.</p> <p>The Cow Creek Tribe's September 4, 2015 letter in response to the BIA Section 106 NHPA request for information called for additional information ("i.e., a brief information packet consisting of a description of the proposal, an initial list of issues and impacts, maps, drawings, and any other material or references that can help us understand what is being proposed"). While the August 13, 2015 BIA Section 106 NHPA letter did not include maps, it did include a description of the location of the proposed fee-to-trust property and Proposed Project. Further, the Cow Creek Tribe had already received notice that the Scoping Report for the Proposed Action was available online for their review in June 2015. The Scoping Report included a description of the Proposed Project and Alternatives, a list of issues that were identified in scoping and would be addressed in the EIS, and maps showing the location of the proposed fee-to-trust property and project site. As set forth in 36 CFR 800.3(b), an "agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of Section 106."; therefore, the Scoping Report could be used to provide information to inform the Section 106 consultation. Regardless, the BIA re-initiated Section 106 consultation in 2020 and sent new letters to tribes, which also received no response.</p>

Comment Number	Response
	<p>Subsequently, the Draft EIS was released in November 2022 which provided a detailed description of the project and analysis of potential impact. Section 3.6.4 of the Draft EIS regarding Native American Consultation stated that "To date, no response has been received by the BIA." This is true in that the BIA had not received any response regarding information on known cultural resources in the vicinity of the alternative sites. As noted by the commenter, the September 4, 2015 letter only requested additional information, but did not identify any sites in the vicinity of the proposed trust property or project site that could meet the criteria for listing on the NRHP. The Draft EIS noted that the 2015 archaeological investigation and 2022 supplemental archaeological research report prepared for the Medford Site revealed no cultural or archaeological resources and found that Roxy Ann Lanes does not meet the criteria for listing on the NRHP; consequently, the BIA determined that the proposed undertaking would have 'No Potential to Effect" on historic properties. In a response letter dated February 21, 2020, SHPO concurred that "the project will likely have no effect on any significant archaeological objects or sites". Even with the detailed analysis included in the Scoping Report and Draft EIS, which more than met the September 4, 2015 request for additional information, the Cow Creek Tribe did not identify any sites that could meet the criteria for listing on the NRHP in the vicinity of the alternative sites (the Cow Creek Tribe's comments that the Proposed Action's potential impacts to Bear Creek and Coho Salmon should be considered impacts to the Cow Creek Tribe's cultural resources was responded to in Final EIS Volume I Response to Comment T13-24.).</p>
T11-3	Please refer to Master Response 2.4 regarding CEQ Regulations and Marin Audubon Society v. Federal Aviation Administration.
T11-4	The DOI's basis for approval of the Proposed Action is outlined in the ROD.
T11-5	The "...Tribes should have the ability to streamline operations...." statement in Final EIS, Volume II is an acknowledgement that similar to any business enterprise that has advanced knowledge of a likely decline in revenue, the Tribes would have the opportunity to modify their respective operations in anticipation of this change. Such modifications may include reductions in expenses in certain areas of operations, and would presumably result in higher earnings and cash flows than if the modifications had not been implemented. The operators of existing Tribal casinos, including the Cow Creek Tribe, are in the best position to determine what measures, if any, would be in their best interests given their individual circumstances and operations.
T11-6	Please refer to Response to Comment T11-2.

Comment Number	Response
T11-7	<p>The commenter states that: "FEIS response to comments insults and chastises the Tribe, speculating that Cow Creek uses its gaming revenues for per capita payments in an apparent attempt to undermine the Tribe's position that Tribal government services to our members will be impacted by Coquille's predation of our gaming market. This is untrue." An attempt was made to located such language in Final EIS, Volume I (Responses to Comments). Such language was not found. However, the following statement does exist in Final EIS, Volume I, Master Response 3: Gaming Substitution Effects: "For certain tribes, these profits also provide funding for distributions to tribal members." This Final EIS statement is referring to each of the tribes that may experience substitution effects as a result of the Proposed Project, and not specifically the Cow Creek Tribe.</p> <p>The statement in Final EIS, Volume II, Section 1.3 that the Mill Casino is located in an inundation zone for a tsunami is factually accurate. The commenter is correct that the odds of a tsunami occurring in any particular year are relatively low. However, should one occur, the financial consequences to the Tribe could be severe. The odds that a tsunami occurs increases with the length of the time under consideration. Also, the location of the Mill Casino in an inundation zone is only one of the factors listed in support of the purpose and need for the Proposed Action. The first factor described in Section 1.3 is that the Proposed Project would provide additional revenue to address budget deficits.</p>
T11-8	<p>The purpose of the substitution effect analysis included in Final EIS, Volume II, Appendix O is to determine substitution effects on existing casinos owned and/or operated by other tribes. The Compass by Margaritaville Hotel is owned by the Coquille Tribe, not another tribe. Second, because of its location next to the Project Site and because it is owned by the Tribe, it is unlikely that the Compass by Margaritaville Hotel would experience significant substitution effects. Finally, the substitution effects analysis included in Final EIS, Volume II, Appendix O is focused on gaming revenues, not hotel revenues. For these reasons, it was not necessary nor warranted for Final EIS, Volume II, Appendix O to analyze potential substitution effects to the Compass by Margaritaville Hotel.</p> <p>Further, as stated in the Final EIS, Volume I, Response to Comment T1-2, the existing adjacent hotel (Compass by Margaritaville Hotel) was developed as a standalone, independent economic enterprise and is already in operation today on land owned in fee by the Tribe. The independent utility of the hotel as a standalone, separate project from Alternative A is illustrated by the fact that the hotel has been in operation since the summer of 2022, well in advance of the proposed opening year of Alternative A. Construction of the adjacent hotel was subject to permitting and approvals by the City of Medford, the local jurisdictional agency, similar to any other private development project on fee land within the City's boundaries. The hotel is not located on existing or proposed federal trust land, and was not subject to federal approval, oversight, or permitting, and thus there was no associated</p>

Comment Number	Response
	<p>federal action that would trigger analysis under NEPA. Figure 2-6 of the Draft EIS, Volume II illustrates the location of the hotel in relation to the Medford Site and clearly labels the hotel as a separate project. Accordingly, as with any other existing privately operated business, the adjacent hotel was included in the baseline existing setting for the impact analysis throughout the Draft EIS and is also considered as cumulative project in Section 4.15 the Draft EIS.</p>
T11-9	<p>The scope of the Proposed Action is the transfer of approximately 2.4 acres (Tax Lot 37-1W-32C-4701) within the Medford Site, described in Final EIS Volume II, Section 2.2.1, from fee to trust status as part of the restoration of lands for the Tribe by the Secretary in accordance with the Coquille Restoration Act of 1989 (25 USC 715). This Proposed Action has been consistently described in all notices as well as the Scoping Report, Draft EIS, and Final EIS. Although the trust acquisition only involves 2.4 acres, additional fee land would be utilized as parking, and therefore these areas have been included within the boundaries of the Medford Site as studied within the EIS. Table 2-1 of the Draft EIS and Final EIS lists the parcels within the 7.24-acre Medford Site, and clearly indicates that only the 2.4-acre parcel identified as Tax Lot 37-1W-32C-4701 would be taken into trust as part of the Proposed Action. The analysis of potential environmental impacts of the Proposed Action, as well as the subsequent proposed retrofit and remodel of the existing building within the proposed trust parcel boundaries into a gaming facility and utilization of adjacent fee land within the Medford Site as parking was included in the Final EIS as Alternative A. As described in Final EIS Volume II, Section 4.15.2, the Compass Hotel (also known as Hotel at the Cedars) was approved by the City of Medford and was constructed on fee land owned by the Tribe in accordance with local permitting requirements. There were no Federal actions, discretionary or ministerial, associated with the development of the Compass Hotel and operation of the Compass Hotel is not dependent on the Proposed Action. As the Compass Hotel is currently operational and not associated with the Proposed Action, it was appropriately considered under the cumulative analysis in Final EIS Volume II, Section 4.15.3.</p> <p>The Coquille Tribe has not amended the fee-to-trust application to include any additional parcels beyond the 2.4 acres described in the Final EIS. Should the Coquille Tribe submit a fee-to-trust application in the future for additional parcels in the vicinity of the 2.4-acre proposed trust parcel, that application would be considered under Department of the Interior’s land acquisition policy as articulated in the Department’s trust land regulations at 25 CFR Part 151. As a Federal discretionary action, the fee-to-trust transfer of additional parcels would require compliance with NEPA.</p>
T11-10	<p>Please refer to Master Response 2.5 regarding EIS Accuracy and the Final EIS, Vol I, Master Response 2. The need for updates to each of the studies as referenced in the comment is addressed below:</p>

Comment Number	Response
	<p>Unmet Needs Analysis: The EIS does not rely on the Tribe's Unmet Needs Analysis as the basis for the environmental effect determinations, and therefore, an update to this study is not required to meet NEPA obligations.</p> <p>Noise Output Files: As stated in the Final EIS, Vol I, Master Response 2: While the resources utilized to compose the environmental background and analysis for noise vary in age, the information is still relevant despite the environmental changes mentioned in the comments. In the areas surrounding the alternative sites, no new sensitive receptors have been introduced to the landscape that were not previously considered in the Draft EIS. Furthermore, as noted above in the "Transportation and Circulation", 2023 traffic volumes, which are the largest contributor to ambient noise levels in the vicinity of the Medford Site, have changed relatively little since the 2019 Draft TIA (refer to the Final EIS, Volume II, Appendix P). By extension, this same conclusion can be applied to the traffic portion of the noise environment. Therefore, updated noise measures were not deemed to be required. Furthermore, during the public comment period for Draft EIS, no comments were received that directly addressed noise.</p> <p>Environmental Site Assessments (2012), Hazardous Materials Reports (2015): Refer to Response to Comment T11-20. As stated in the Final EIS, Vol I, Master Response 2: An updated radius report was generated by NETROnline in March 2022, to identify locations of past and current hazardous materials involvement on and in the vicinity of the Medford Site. This report (included as Appendix M of the Final EIS) found no significant new sources of hazardous material that could affect the Medford Site. Further, in compliance with 602 DM 2, an updated Phase 1 Environmental Site Assessment was prepared by Green Environmental Management (GEM) on November 15, 2024. The updated Phase 1 concluded that there are no Recognized Environmental Conditions (RECs) within the proposed trust property (GEM, 2024).</p> <p>Air Quality Output Tables: As stated in the Final EIS, Vol I, Master Response 2: The operational emission estimates presented in Section 4.4 and Section 4.15 of the Final EIS, Volume II have been updated using EPA's more recent MOVES3.1 (versus MOVES2014). The revised emissions estimates are also provided in new Appendix S of the Final EIS, Volume II.</p>
T11-11	<p>The Purpose and Need for the Proposed Action is described in the Final EIS Volume II, Section 1.2. As stated therein, the <i>"purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus, satisfying both the Department of the Interior's (Department) land acquisition policy as articulated in the Department's trust land regulations at 25 Code of Federal Regulations (CFR) Part 151, and the principle goal of IGRA as articulated in 25 USC § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 CFR § 151.10(h) and 151.12."</i></p> <p>The Unmet Needs Report referenced in this comment is described in the Final EIS, Vol 2., Section 1.3, Background section. As such, this report provides background information related to the Tribe and their request; it does not provide the basis for the</p>

Comment Number	Response
	federal Purpose and Need described in Section 2, nor does it provide the basis for the environmental analysis in the EIS. Therefore, an update to that report is not needed to meet NEPA requirements.
T11-12	Please refer to Response to Comment T11-9.
T11-13	Please refer to Response to Comment T11-9. As discussed therein, the currently operating Compass Hotel was appropriately considered under the cumulative analysis in Final EIS Volume II, Section 4.15.3. As the Coquille Tribe has not submitted a fee-to-trust application for any additional parcels in the vicinity of the 2.4-acre proposed fee-to-trust parcel, future trust acquisition and subsequent development on additional trust properties are not reasonably foreseeable.
T11-14	Please refer to Master Response 2.5 regarding the NEPA "hard look" standard and completeness of the Final EIS; Response to Comment T11-9 regarding the scope of the Proposed Action and the consideration of the Compass Hotel; Response to Comment T11-15 regarding alternatives considered; and Master Response 2.2 and Response to Comment T11-2 regarding tribal consultation.
T11-15	As stated in the Final EIS, Volume I, Response to Comment T10-12: The Tribe has submitted an application to the BIA for the transfer of 2.4 acres of land within the Medford Site into federal trust for the development of a casino and related facilities. While the BIA did consider the development of a gaming facility, as proposed by the Coquille Tribe as the applicant, the BIA did not limit the range of alternatives to only consider gaming uses. Please refer to Draft EIS, Section 2.7, Alternatives Eliminated from Consideration. This section provides a discussion of alternatives that were eliminated from further study, including a variety of non-gaming alternatives, and the reasons for their elimination.
T11-16	A word search was conducted on the Final EIS and it does not appear that the document labelled the loss of revenue to the Cow Creek's Tribe's gaming facility as "purely economic." However, as described in Final EIS, Volume II, Section 4.7 and in Final EIS, Volume I, Master Response 3: Gaming Substitution Effects, it is necessary to analyze the substitution effects because this provides the necessary context to understand potential effects to the activities of the tribal governments and the human environment that may be caused by reductions in gaming revenue of existing tribal casinos. This is why part of the Final EIS analysis is focused on economic effects, including substitution effects. The socioeconomic effects that may result from decreases in gaming revenue are described in the Final EIS, including in Final EIS Volume I, Master Response 3: Gaming Substitution Effects. As stated in the last paragraph of Master Response 3: "Profits from the tribal gaming facilities may be utilized for a variety of purposes by its tribal

Comment Number	Response
	<p>government, with some of these revenues providing funding for government and social services. For certain tribes, these profits also provide funding for distributions to tribal members. Without confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined...."</p> <p>The BIA has solicited input from interested parties, including the Cow Creek Tribe, regarding the environmental impacts of the project on numerous occasions. Specifically, the Cow Creek Tribe was invited to provide input through noticing of the scoping period for the EIS, the scoping hearing, the Draft EIS review period, two Draft EIS hearings, and the Final EIS waiting period, as well as during in-person meetings conducted directly between DOI officials and the Tribe. No specific financial data was provided by the Cow Creek Tribe during these opportunities.</p> <p>The consideration of phasing was not contrived to obfuscate the impacts of the Project, but rather was conducted to reflect the proposed phasing plan described in the Final EIS, Volume II, Section 2.3.4. Regardless, the Final EIS, Volume II, Section 4.7 focuses on the socioeconomic effects of the Proposed Project based on the full buildout, which includes all phases.</p> <p>The commenter's concerns regarding socioeconomic impacts to the Cow Creek Tribe are acknowledged. Please see the first paragraph of this response, as well as Response to Comment T11-1, T11-5 and T11-8.</p> <p>As upheld by the United States District Court for the Eastern District of California, "competition...is not sufficient, in and of itself, to conclude [there would be] a detrimental impact on" a tribe (Citizens for a Better Way, et al. v. United States Department of the Interior, E.D. Cal., 2015). However, should competition effects be so severe as to cause closure of a facility, it could result in environmental effects associated with abandoned buildings and vacant lots, referred to as "urban blight." Additionally, in the case of tribal casinos, facility closure could result in economic effects to tribal communities from decreased availability and/or quality of governmental services (refer to discussion in T11-1). Research of markets where casinos have experienced impacts to their gaming revenues by more than 20% was conducted and was published in Appendix B-2 of the separately prepared Koi Nation Shiloh Casino Resort Final EIS (available at www.shilohresortenvironmental.com). The analysis focused on commercial gaming markets, as information was readily and publicly available (whereas such data is not available in tribal gaming markets). The researched gaming revenue disruptions were caused by various factors beyond gaming expansion, including the economic recession, regulatory factors, and increased competition from new entrants into the market. Appendix B-2 of the Koi Nation Final EIS describes several instances of properties facing significant challenges due to the emergence of new competitors and/or macro-economic market factors (example, the recession), resulting in substantial impacts to gaming revenues. However, in all</p>

Comment Number	Response
	<p>researched case studies, these casinos were able to adapt and regrow revenue via strategic initiatives, operational changes, and/or product improvement/expansion. Of the analyzed markets considered in the Koi Nation Final EIS Appendix B-2, there were no casino closures as a result of the measured gaming revenue impacts. This suggests that it is likely that the gaming facilities experiencing substitution effects from Alternative A can remain open and operational with management strategies and adaptation.</p>
T11-17	<p>Refer to Response to Comments T11-21 as well as T11-1, T11-5, T11-8 and T11-16.</p>
T11-18	<p>The distinction between potential increases in "crime" and "crime rates" is important. Final EIS, Volume II, Section 4.7 clearly states that crime would likely increase, but the crime rate would not: "Gaming facilities can increase the volume of people entering a given area. Whenever large volumes of people are introduced into an area, the volume of crime would also be expected to increase. This is true of any large-scale development. However, the studies on the subject summarized in Appendix E suggest that the introduction of casinos typically does not cause an increase in the crime rate, and in some cases may lead to a decline in the crime rate." Final EIS, Volume II, Section 4.10, Subsection <i>Law Enforcement</i> estimates the specific increases in crime that would result from Alternative A.</p>
T11-19	<p>While the environmental setting was corrected in the FEIS to discuss the known anadromous fish usage of habitat within Bear Creek, changes to the analysis itself were not warranted as the DEIS had considered Bear Creek potential anadromous fish habitat and conservatively assumed presence of anadromous fishes, including federally-listed salmonids. As with the Draft EIS, the Final EIS, Volume II Section 4.5.1 considered that impaired runoff from the totality of the Medford Site could adversely affect water quality in Bear Creek, but that this would be reduced to a less-than-significant level through implementation of a SWPPP during construction and a LID stormwater treatment system prior to discharge off-site during operation. Note that it is incorrect to state that Bear Creek is adjacent to the Medford Site. Bear Creek is approximately 1,400 feet from the Medford Site, as was displayed on Figure 3.5-3 of Volume II of the FEIS. While specific comments on this analysis were not received, additional information is provided below.</p> <p>The use of bioretention facilities, such as constructed stormwater treatment vegetated swales, has been found to prevent the acute lethal effects of stormwater on salmonids (Spromberg et al., 2015; Fardel et al., 2020; McIntyre et al., 2023). Specifically, vegetated bioswales with composting have been found to remove a majority of pollutants, including 6PPD-quinone, as organic materials are capable of sequestering this pollutant (Washington Stormwater Center, 2021). As stormwater would be treated</p>

Comment Number	Response
	<p>within the Medford Site prior to discharge and would travel an additional approximately 1,400 feet through vegetated drainages prior to discharge into Bear Creek, no appreciable levels of pollutants would enter Bear Creek from the Medford Site.</p> <p>It is correct that runoff from the totality of the Medford Site ultimately flows into Bear Creek. This was already noted in the FEIS, within Section 2.3.3 of Volume II, which stated “The site is currently developed and all surface drainage flows as sheet flow across the site to the east into a natural drainage swale that flows east towards Bear Creek.” The quote provided by the commentor is taken from a description of the habitats present within the Medford Site that was not intended to be descriptive of Bear Creek or the Medford Site hydrology. It is correct that 0.10 acres of the Medford Site is comprised of vegetative ditches, while the balance was classified as ruderal/developed.</p> <p>Regarding the Almeda Fire, it is outside the scope of the Final EIS to analyze impacts of the Almeda Fire on the environment. The purpose of the Final EIS is to assess impacts of the Project Alternatives on the environment. The Final EIS, Volume II Section 4.7.1 evaluated the potential for the Proposed Project to increase wildfire risk. As stated therein, the Proposed Project does not contain elements that would increase wildfire risk. While the Almeda Fire may have reduced the baseline quality of salmonid habitat within Bear Creek upstream of the Medford Site, the FEIS conservatively continues to assume presence of salmonids within Bear Creek. As discussed above, impacts from runoff were assessed in Volume II Section 4.5.1 of the FEIS. Additional analysis on stormwater runoff, including increased impervious surfaces, was provided in Volume II Section 4.3.1 of the FEIS. Please refer to this section of the FEIS for this analysis. No comments were provided on this analysis.</p> <p>As noted in the comment, a correction was made in the FEIS to identify the correct evolutionarily significant unit (ESU) of Oregon Coast coho. The analysis is unchanged as this correction does not change the potential impacts of the Project Alternatives or the level of impact significance. As discussed within Volume II Section 4.5.1 of the FEIS, impacts to federally listed species, including listed salmonids, were determined to be less than significant. No comments were received on the analysis.</p> <p>Volume II Section 4.5.1 of the FEIS provides an analysis on the Proposed Project’s potential to impacts on biological resources, including critical habitat and essential fish habitat. The “Habitats” header within this section correctly identifies the status of Bear Creek and directs reader to the discussion on impacts to federally listed species. As with the DEIS, the FEIS provided an analysis on impacts to Bear Creek and found that impacts to Bear Creek would be less-than-significant.</p> <p>It is understood that Coho salmon are culturally significant to the Cow Creek Tribe. The FEIS was responsive to this comment when it was received on the DEIS in Volume I Section 3.1.2 of the FEIS, under the "Cultural and Paleontological Resources"</p>

Comment Number	Response
	<p>section. As stated therein, the potential for impacts to salmon were thoroughly addressed in Section 4.3 of the Final EIS, Volume II. Note that, as discussed above, significant impacts to salmonids were not identified.</p>
T11-20	<p>The potential for soil contamination from pesticides on the Medford Site was disclosed in Final EIS Volume II, Section 3.12.2. Although soil testing was limited to the proposed trust parcel, the analysis assumed similar potential for soil contamination across the Medford Site. Given this conservative assumption, an updated ESA covering the entirety of the Medford Site is not warranted. Based on the minimal ground-disturbing activities that would occur under Alternative A as the majority of the site is already paved (see Final EIS Volume II, Section 2.3.3) and the presence of compacted non-native fill as the first 1.2 feet below ground surface, the potential for exposure of construction workers to soils at the site with elevated arsenic levels will be minimal. As described in Final EIS Volume II, Section 4.12.1, the risk to construction workers can be reduced by requiring workers to wear appropriate personal protective equipment (PPE) and follow proper decontamination procedures after working with on-site native soils below the layer of non-native fill. These measures, which would minimize or eliminate adverse effects, are included as mitigation in Final EIS Volume II, Section 5.0. Therefore, effects to construction workers as a result of elevated arsenic levels in the Medford Site soils are less than significant with mitigation. The Final EIS also acknowledges the possibility also exists that additional undiscovered contaminated soil is present on the site due to hazardous materials usage on adjacent sites that could affect surface and/or subsurface conditions on the Medford Site. Although not anticipated, construction personnel could encounter contamination during construction-related earth-moving activities. As described in Final EIS Volume II, Section 4.12.1, BMPs included in Final EIS Volume II, Section 2.3.3 provide requirements to follow in the event that contaminated soil is encountered during construction-related earth-moving activities. Implementation of the BMPs would ensure that effects to workers associated with the unanticipated discovery of contaminated soil are less than significant. Further, in compliance with 602 DM 2, an updated Phase 1 Environmental Site Assessment was prepared by Green Environmental Management (GEM) on November 15, 2024. The updated Phase 1 concluded that there are no Recognized Environmental Conditions (RECs) within the proposed trust property (GEM, 2024).</p>
T11-21	<p>GMA's response to this report is provided as Exhibit 3. The commenter's statements regarding the substitution analysis conducted by GMA were addressed in Final EIS, Volume I, Response to Comments T1-2, T10-17, T13-6, T13-27 and T13-28. As noted therein, the assumptions and methodologies employed by GMA in performing its substitution analysis are appropriate and consistent with standards for performing this type of analysis. The fact that Meister Economic Consulting arrived at a different</p>

Comment Number	Response
	estimate of substitution effects under its different set of assumptions and methodologies is acknowledged. Also see Response to Comment T11-8 above.
I84-1	<p>The commenter's concerns regarding the challenges of existing restaurant and hospitality businesses in attracting and retaining qualified employees are acknowledged. Operations of Alternative A would stimulate some level of economic growth, and this would benefit many local businesses. It is true that Alternative A would cause some businesses to experience competitive effects, and these would be most notable among existing casinos and businesses in the restaurant and hospitality sectors. The most acute effect would likely involve employees with casino experience, as some Alternative A operations require employees with specific gaming-related skills. Therefore, it is possible that some employees at competing casinos would seek employment at Alternative A. These employees would not be disadvantaged by such an outcome. Existing businesses would likely implement measures to retain their existing employees, to incentivize them to not seek employment at other competing casinos, including the Proposed Project. This is currently the case, as there are numerous casinos in the regional market. This dynamic could continue once Alternative A commences operations. Employees within the food service and hospitality industries would likely also seek employment at the Proposed Project. This would be a typical outcome as competition amongst firms for employees exists in all industries where there are multiple firms in a geographic region.</p>

4.0 REFERENCES

GEM, 2024. Phase 1 Environmental Site Assessment, Roxy Ann Lanes. Prepared by Green Environmental Management. Report date: November 15, 2024 (revised November 21, 2024).

Fardel et al., 2020. Performance of two contrasting pilot swale designs for treating zinc, polycyclic aromatic hydrocarbons and glyphosate from stormwater runoff. Available online at: <https://www.sciencedirect.com/science/article/abs/pii/S0048969720340250>. Accessed December 2024.

McIntyre et al., 2023. Bioretention filtration prevents acute mortality and reduces chronic toxicity for early life stage coho salmon (*Oncorhynchus kisutch*) episodically exposed to urban stormwater runoff. Available online at: <https://www.sciencedirect.com/science/article/pii/S0048969723043826>. Accessed December 2024.

Spromberg et al., 2015. Coho Salmon Spawner Mortality in Western US Urban Watersheds: Bioinfiltration Prevents Lethal Storm Water Impacts. Available online at: <https://besjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/1365-2664.12534>. Accessed December 2024.

Washington Stormwater Center, 2021. Technical Q+A On Stormwater And Tire Chemical Toxicity To Aquatic Organisms Available online at: https://www.wastormwatercenter.org/wp-content/uploads/Technical-Q-and-A-Tire-Chemical-Toxicity_WSU-UWT.pdf. Accessed December 2024.

EXHIBIT 1 – SELECTED “NEW” BRACKETED COMMENTS



Oregon

Tina Kotek, Governor

Department of Transportation
 Region 3 Planning and Programming
 100 Antelope Drive
 White City, Oregon 97503
 Phone: (541) 774-6299

December 23, 2024

Tobiah Mogavero
 Bureau of Indian Affairs
 Northwest Regional Office
 911 Northeast 11th Avenue
 Portland, OR 97232-4169

Re: Final Environmental Impact Statement for Coquille Casino Project

Dear Tobiah,

Thank you for providing the Oregon Department of Transportation (ODOT) with the opportunity to provide comments associated with the Final Environmental Impact Statement (FEIS) of the Coquille Indian Tribe's (Tribe) application for a proposed 2.4-acre fee to trust transfer and gaming facility adjacent to Oregon State Highway 99 in Medford. We request the Tribe take the following information into consideration.

- I. As noted on page 1-5 of the DEIS, approval of Access Permits to Highway 99 are required prior to legal access to the State Highway. A Misc./Utility Permit is required prior to any disturbance within the State Right of Way, and a Drainage Permit is required for connection to drainage facilities. Please contact District 8 Assistant Manager Lucas Schaffler at lucas.d.schaffler@odot.state.or.us or 541-621-0188 when the Tribe is ready to discuss the permit application process.
- II. Access management mitigation identified in the TIA will require further discussion to determine feasibility and performance. ODOT suggests convening a meeting to discuss transportation mitigation in greater detail prior to the permitting process.
- III. ODOT requests installation of frontage improvements consistent with the 2015 OR 99 Rogue Valley Corridor Plan along the State Highway, including sidewalk, additional Right of Way for future bike lanes, and other features to improve mobility, multimodal access, livability, and safety throughout the corridor.
- IV. All pedestrian ramps along Highway 99 should be designed to meet current ADA standards.
- V. ODOT will need to approve a drainage study prepared by an Oregon Registered Professional Engineer.

Please feel free to contact me at Micah.HOROWITZ@odot.state.or.us or 541-774-6331, should you have any questions or concerns.

Sincerely,

Micah Horowitz

Micah Horowitz, AICP
 Senior Transportation Planner



December 19, 2024

To: Tobiah Mogavero, NEPA Coordinator, Bureau of Indian Affairs

From: Greg Astley, Director of Government Affairs, Oregon Restaurant & Lodging Association

RE: FEIS Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project

It has long been held that federally recognized Native American tribes are considered sovereign nations that hold the right to self-government within the boundaries of their tribal lands. This includes the right to engage in economic activity on reservation lands, specifically gambling. While tribal casinos are largely thought of as competition only to state lotteries, the truth is they enjoy a competitive advantage in comparison to other hospitality industry businesses as well. Oregon has some of the highest labor costs in the nation, and the rising costs associated with employee benefits is creating an escalating challenge for Oregon's restaurant and lodging properties. The local economic impact of additional casino location proposals is and will continue to be of serious concern to ORLA members. Our position since April of 2008 has been as follows – Changes to current federal and state gaming policies should not be made for the purpose of allowing off-reservation casinos, tribal or private. The Medford casino proposal is just that – an off-reservation casino.

Approval of new casinos in Metro areas is a Pandora's Box

Oregon currently has 2 federally recognized Native American tribes who operate both Class 2 and Class 3 casinos. But approval of a Class 2 casino in an Oregon urban area would be a first and unprecedented. If approved, a new Class 2 casino inside Medford's city limits will launch new expectations amongst Oregon's other Native American tribes to expand gambling operations within their broad service areas off reservation land. Approval of the first and only casino in an established metro area will trigger many additional proposals in other large urban areas across the state. Any momentum for casino proliferation is broadly opposed by Oregonians as proven by multiple ballot measures seeking voter approval for casino projects. In addition, increased gambling access will further strain Oregon's social service network providing addiction treatment and mental health

services. These social service needs are a prime focus of Oregon's political leaders. Approval of an additional casino in Oregon will directly conflict with Oregon's current efforts to better manage addiction treatment and mental health services based on existing gaming supply.

Casinos in Metro Areas will Trigger Significant Market Disruptions

As stated above, ORLA continues to support the rights of sovereign nations and the importance of their operations and services. But if casinos emerge in service areas off reservation land, then we expect competitive inequities to emerge within the hospitality industry in these markets. Restaurant and lodging members are aggressively competing for talent in a challenging marketplace for employers. We expect these conditions to persist for the foreseeable future. Casino operations in metro areas will result in workforce migrations that further exacerbating the challenges faced by these small businesses. Gambling revenue unavailable to others within the industry's competitive set can upend workforce conditions. If restaurant and lodging locations can't compete with total compensation packages offered to industry employees by casinos in the same marketplace, then we can expect further erosion of Oregon's hospitality industry. Workforce shortfalls in the industry remain a top issue for Oregon's small, independent lodging and restaurant owners and operators who are already struggling to keep their doors open. Casinos, whether tribal or private, in urban areas will make an existing problem worse.

Thank you,



Greg Astley

Director of Government Affairs, Oregon Restaurant & Lodging Association

From: Vanessa Pence - GO \ Tribal Board Assistant <Vanessa.Pence@cowcreek-nsn.gov> **On Behalf Of** Carla Keene - GO \ Tribal Board Chairman
Sent: Friday, December 20, 2024 10:00 PM
To: FY22, BIA CoquilleCasinoEIS <CoquilleCasinoEIS@bia.gov>; Mercier, Bryan K <Bryan.Mercier@bia.gov>; Peone, Rudy J <Rudy.Peone@bia.gov>; Mogavero, Tobiah C <tobiah.mogavero@bia.gov>
Cc: Shelby Stoner <shelby@galandabroadman.com>; amber <amber@galandabroadman.com>; Gabe Galanda <gabe@galandabroadman.com>; Carla Keene <ckeene@cowcreek-nsn.gov>; Michael Rondeau <mrondeau@cowcreek-nsn.gov>
Subject: [EXTERNAL] FEIS Comments: Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Good Evening,

Please find attached the FEIS Comment Letter and attachments for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project.

Sincerely,

Carla Keene | Tribal Chairman
Cow Creek Band of Umpqua Tribe of Indians



carla.keene@cowcreek-nsn.gov
2371 NE Stephens St., Roseburg, OR. 97470
www.cowcreek-nsn.gov
Office: (541) 672.9405 |

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COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES

2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399

Phone: 541-672-9405

Fax: 541-673-0432

December 20, 2024

VIA U.S. MAIL TO:

Mr. Bryan Mercier
Immediate Past Northwest Regional Director
Mr. Rudy Peone
Acting Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

AND VIA E-MAIL TO:

Mr. Tobiah Mogavero
Regional NEPA Coordinator
Bureau of Indian Affairs
CoquilleCasinoEIS@bia.gov
Bryan.Mercier@bia.gov
Rudy.Peone@bia.gov
Tobiah.Mogavero@bia.gov

Re: FEIS Comments, Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project

Dear Immediate Past Director Mercier, Acting Director Peone, and Regional NEPA Coordinator Mogavero:

The Cow Creek Band of Umpqua Tribe of Indians (“Cow Creek Tribe” or “Tribe”) submits these comments on the Final Environmental Impact Statement (“FEIS”) prepared by the Bureau of Indian Affairs (“BIA”) to assess the environmental impacts of the Coquille Indian Tribe’s (“Coquille”) proposed 2.4-acre fee-to-trust transfer and subsequent remodel of an existing bowling alley into a 30,300 square foot gaming facility in the City of Medford, Oregon.

On February 23, 2023, the Cow Creek Tribe submitted detailed comments on the Draft Environmental Impact Statement (“DEIS”), highlighting multiple deficiencies to the DEIS and changes that needed to be made in order to ensure the resulting FEIS is compliant with NEPA. The BIA failed to sufficiently address these deficiencies; indeed, it appears it completely ignored the vast majority of the concerns outlined by the Tribe.

The FEIS claims “[s]ubstantive comments received on the Draft EIS during the comment period, including those submitted or recorded at public hearings, were addressed in the Final EIS Vol. I . . .” FEIS, Vol. II, p. 1-4. Even a cursory review of the FEIS reveals this is false. While the BIA noted that multiple nearby affected Tribal nations advocated for consultation in accordance with multiple executive orders and BIA policy, the FEIS does not actually respond to or address that subject, other than to repeatedly state the BIA “consulted with tribes pursuant to Section 106 of the NHPA.”¹ FEIS, Vol. I, Responses to Comments A2-2, T10-2, T10-8, T-13-1. The BIA’s failure to respond to the Tribe’s numerous consultation requests deprived the Cow Creek Tribe of the opportunity to provide more substantive DEIS and FEIS comments.

Likewise, in response to numerous comments from nearby affected Tribal nations about the unacceptable substitution effects on their and other gaming facilities—with whom the BIA refused to consult—the FEIS chastises and insults those Tribes by falsely claiming the BIA does not have evidence of whether those substitution effects will actually impact the provision of Tribal government services, because, according to the FEIS, “[f]or certain tribes, these profits also provide funding for distributions to tribal members.” The FEIS then asserts, “[w]ithout confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined.” FEIS Vol. I, p. 3-16. Had the BIA fulfilled its fiduciary duty and consulted with the affected Tribal nations, it would have been able to engage with them on this topic and determine “the environmental justice impact on governmental and social services” (as the BIA is required to do but admits in the FEIS *it has not done*).

Lack of Meaningful Consultation. Pursuant to Executive Order 13175, the BIA has a duty to engage the Tribe in meaningful consultation and Tribal officials must be given the opportunity to provide meaningful and timely input. In 2022, the Department of the Interior recognized “its trust relationship with Federally recognized Tribes” and its commitment to “invite Tribes to consult on a government-to-government basis” which is meant to include “robust, interactive, pre-decisional, informative, and transparent consultation . . .” 512 DM 4, Section 4.4. Pursuant to the consensus-seeking model adopted by the Department, meaningful consultation is not merely the opportunity to comment but also anticipates seeking a “consensus with impacted Tribes.” *Id.* No such effort to seek consensus with the numerous affected Tribal nations who oppose the Coquille’s application has been meaningfully consulted. Indeed, many requests for consultation and consensus have either been ignored or rebuffed.

For example, following a meeting with the White House Domestic Policy Counsel during which the Cow Creek Tribe was advised to submit its questions about Coquille’s application directly to Secretary Haaland, with a promise that she would respond, the Tribe submitted its questions in writing on August 2, 2024. August 2, 2024 Letter to Secretary Haaland, provided herewith as Attachment A. To date, Secretary Haaland has not responded. Prior to that, Cow Creek, along with the Karuk Tribe, Elk Valley Rancheria, and Tolowa Dee-ni’ Nation, invited Secretary Haaland to visit their communities and consult with them directly on the negative impact “to travel to our homelands and consult with our elected leaders about how the Coquille Project would impact each of our Tribal nations and peoples.” March 5, 2024 Letter to Secretary Haaland, provided herewith as Attachment B.

¹ A statement that is itself inaccurate, as explained in the “Lack of Meaningful Consultation” section, below.

The BIA heard from multiple affected Tribal nations that the DEIS did not adequately analyze the impact on the surrounding Tribes and communities. In failing to address these concerns in the FEIS, the BIA has completely failed to reach a consensus with these Tribes; instead, it summarily dismisses their concerns in the FEIS. The BIA has failed in its duties to consult and reach a consensus and its trust responsibility to the impacted Tribes, including the Cow Creek Tribe, which will be severely negatively impacted by the agency’s proposed action.

Moreover, the claim that the BIA “consulted with tribes pursuant to Section 106 of the NHPA” is false. FEIS, Vol. I, Responses to Comments A2-2, T10-2, T10-8, T-13-1. The FEIS claims NHPA “consultation letters were sent by the BIA to the Cow Creek Band ... to request information on known cultural resources in the vicinity of the alternative sites. To date, no response has been received by the BIA.” FEIS Vol. I, p. 3-44 (text included in DEIS, underlined text added to FEIS). This is false. On August 13, 2015, Northwest Regional Director Stanley Speaks sent a perfunctory Section 106 NHPA request for comment to Cow Creek Chairman Daniel Courtney.² Chairman Courtney responded by letter dated September 4, 2015,³ pointing out that Director Speaks’ letter did not provide sufficient information on which to comment, as required by Section 106 of the NHPA, and asking for additional information so that the Tribe could provide comments. Chairman Courtney’s letter referenced the Cow Creek Tribe’s numerous previous requests for the same information. Neither former Director Speaks, nor any other BIA official has ever responded to Chairman Courtney’s letter dated September 4, 2015, or otherwise addressed the deficiency in the Section 106 NHPA request, which rendered substantive comments by the Cow Creek Tribe impossible. The addition of the underlined language in the FEIS is striking and begs the question of whether the BIA has properly considered correspondence and submissions throughout this process.

2
cont.

The Tribe submits these comments on the FEIS, in hopes that the BIA will finally recognize the severe deficiencies in the FEIS, and its supporting studies, and perform additional and updated analysis, taking into consideration the criticism and shortcomings highlighted below.

The FEIS was Promulgated Under Unlawful Regulations. The Court of Appeals for the D.C. Circuit recently issued a 2-1 decision holding that the NEPA regulations promulgated by the White House Council on Environmental Quality (CEQ) are ultra vires and therefore unenforceable. In *Marin Audubon Society, et al., v. Federal Aviation Administration, et al.*, 2024 WL 4745044 (D.C. Cir. Nov. 12, 2024), the Court ruled that the CEQ lacks the statutory authority to issue regulations implementing the NEPA whatsoever, including (but not limited to) 40 C.F.R. § 1505. In *Marin*, the petitioners had challenged a plan devised by the Federal Aviation Administration and National Park Service to comply with requirements under the National Parks Act for tourist flights over national parks (the Plan). The Plan's NEPA analysis determined no environmental assessment or environmental impact statement need be conducted due to the Park Service's categorical exclusion. While the petitioners challenged the use of the categorical exclusion, the Court instead determined that the CEQ regulations were *ultra vires* (acting beyond powers or authority) and thus were unlawful.

3

The FEIS declares it was “completed in accordance with applicable requirements, including ... the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR

² Provided herewith as Attachment C.

³ Provided herewith as Attachment D.

Section 1500 – 1508).” FEIS, Vol. II, p. 1-3. Under *Marin*, the FEIS is therefore itself unlawful and cannot be relied on as the basis for a decision granting Coquille’s application.

Nothing in the FEIS Changes the Basis for BIA’s Previous Denial of the Application.

On May 27, 2020, John Tahsuda, PDAS-IA, denied the Coquille’s application on the basis “that the [Coquille’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.” May 27, 2020 Denial Letter. On December 22, 2021, AS-IA Bryan Newland withdrew the denial, stating it “resulted in the Department’s cancellation of the environmental review process, which deprived the decision maker of important information critical to making a final determination, and pre-empted the [Coquille’s] effort to negotiate inter-governmental agreements with local authorities.” December 22, 2021 Denial Withdrawal Letter. AS-IA Newland remanded the application to the BIA to complete the NEPA process.

Even if the FEIS were lawful, it changes nothing about PDAS-IA Tahsuda’s analysis. Coquille’s application remains subject to 25 C.F.R. Part 151 (1982).⁴ Thus, 25 C.F.R. § 151.11(b) (1982)’s requirement 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” remains in place. Denial Letter, p. 8. In light of the BIA’s and Coquille’s failure to update its 2012 Unmet Tribal Needs report for the FEIS, or to analyze how Coquille’s successful Tribal One construction enterprise (which did not exist at the time the Unmet Tribal Needs report was drafted) meets Coquille’s unmet needs, the FEIS does nothing to change the reasoning on which this application has already been denied once. It should therefore be denied again.

The FEIS Violates the IRA’s Privileges and Immunities Clause. The Indian Reorganization Act (“IRA”) provides,

Departments or agencies of the United States shall not promulgate any regulation or **make any decision or determination** pursuant to the [Indian Reorganization] Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

25 U.S.C. § 5123(f) (emphasis added).

The purpose of this clause is to prohibit “disparate treatment between similarly situated recognized tribes.” *Koi Nation of N. Cal. v. U.S. Dep’t of the Interior*, 361 F.Supp.3d 14, 54 (2019). It applies to the Department’s decisions under the IRA, Coquille Restoration Act (“CRA”), and IGRA, as the CRA and IGRA are “other Act[s] of Congress” and “gaming activities on Indian lands under IGRA’s restored lands exception certainly are ‘privileges . . . available to the Indian tribe’ by

⁴ 25 CFR Part 151 was updated on December 12, 2023. Pursuant to 25 C.F.R. § 151.17 (2023), “[r]equests pending on January 11, 2024, will continue to be processed under the prior version of 25 CFR part 151([1982,] revised as of April 1, 2023) unless the applicant requests in writing to proceed under this part. To date, Coquille has not submitted a written request to proceed under the new regulations. Thus, the prior regulations continue to apply to this application.

virtue of a tribe’s status as a recognized Indian tribe.” *Id.*, at 53. A BIA decision violating the privileges and immunities clause—enhancing, for instance, the gaming privileges of one tribe relative to other tribes—is arbitrary and capricious. *See generally id.*⁵ “In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes’ gaming operations.” *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015).

The FEIS violates the IRA’s privileges and immunities clause. The FEIS is replete with misstatements of fact, flawed logic, and serpentine reasoning aimed at enhancing the interests of the Coquille Indian Tribe relative to the numerous other tribes who will be negatively impacted by their Medford project and therefore stand in opposition to it. Examples include but are not limited to:

- In addressing the improperly minimized substitution effects the BIA does acknowledge the Medford project will have on other tribes,⁶ including the Cow Creek Tribe, the BIA dismisses our concerns by claiming, without reference to any data or analysis, that “[w]ith appropriate management practices, the [negatively impacted] Tribes should have the ability to streamline operations at their facilities to absorb this level of impact and remain operational.” FEIS, Vol. II, p. 4-31. It is unclear how the BIA could reach this conclusion, having refused to consult with the Cow Creek Tribe and learn the actual details of our gaming operation. Furthermore, the FEIS makes no mention of the mismanagement by the Coquille of its Mill Casino and how improved management practices there could produce substantial additional income.
- In the same vein, the FEIS recognizes the income of Coquille’s Mill Casino “was further worsened with the addition of tribal gaming competition within the Mill Casino’s limited local market” FEIS, Vol. II, p. 1-2. It also rejects alternative gaming sites within Coquille’s existing trust lands because that “trust land shares the same market for casino patrons as The Mill Casino; [and] any patronage to a new facility would likely be taken from the existing casino” FEIS, Vol. II, § 2.7.2. Despite its own finding that other Tribal gaming operations, including the Cow Creek Tribe’s Seven Feathers Casino Resort, will be negatively impacted by the predation of our gaming market by Coquille, the FEIS fails to conclude the same factor as it relates to other Tribes mitigates against granting the Coquille’s application. As the Elk Valley Rancheria succinctly put it in their DEIS comment letter: “It is unclear why the Department would authorize a second casino for Coquille to inflict th[is] very type of harm on other tribes in contravention of the Government’s trust responsibility.” FEIS, Vol. I, Appendix, Letter T8.
- As noted above, the FEIS added a claim that the BIA’s request to the Cow Creek Tribe for Section 106 NHPA consultation was ignored. In fact, by letter dated September 4, 2015, the request was responded to with a request for adequate information on which to base comments. Thus, it is the Tribe’s request for adequate information that, “[t]o date, no response [from the BIA] has been received by” the Tribe. FEIS, Vol. I, p. 3-44.

⁵ See also *Scotts Valley Band of Pomo Indians v. United States Dep't of the Interior*, No. CV 19-1544 (ABJ), 2022 WL 4598687 (D.D.C. Sept. 30, 2022) (Department decision placing one Indian tribe in a disadvantageous position as to other tribes found arbitrary and capricious.)

⁶ See “Flawed Economic Analysis section,” below.

- As also noted above, the FEIS response to comments insults and chastises the Tribe, speculating that Cow Creek uses its gaming revenues for per capita payments in an apparent attempt to undermine the Tribe’s position that Tribal government services to our members will be impacted by Coquille’s predation of our gaming market. This is untrue. The BIA has the Cow Creek’s annual audits and its gaming revenue ordinance readily available for review to confirm that the Cow Creek gaming revenue is used to support Tribal government services. The BIA’s unfounded assumption is particularly troubling when contrasted with its treatment of the *possibility* that the Coquille’s existing Mill Casino might, someday, be damaged by a tsunami. FEIS, Vol. II, p. 1-2. While such a conclusion is purely speculative,⁷ it is relied on throughout the FEIS as the basis for Coquille’s purpose and need to open a casino in Medford. This, despite the BIA taking the position, “consideration of remote, speculative, or worst-case effects” are not relevant to a determination of the reasonably foreseeable effects of the Medford project. FEIS, Vol. I, Comment Response T13-10.
- The gravity model used by Coquille’s third-party analyst to determine substitution effects on other Tribes includes the hotels at Cow Creek’s Seven Feathers Casino; the Klamath, Modoc & Yahooskin Tribes’ Kla-Mo-Ya Casino; the Coos, Lower Umpqua & Siuslaw Indians’ Three Rivers Casino; and Tolowa Dee-ni’ Nation’s Lucky 7 Casino. FEIS, Vol. II, Appendix O. However, the Coquille’s Compass Hotel is not considered because it “is already in operation today.” FEIS, Vol. II, Appendix O; *id.*, Vol. I, at Response to Comment T13-27.

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IGRA’s Two-Part Determination. In response to numerous comments on the illegality of taking the Medford parcel into trust under the restored lands exception to the Indian Gaming Regulatory Act (“IGRA”), the BIA repeatedly states “compliance with the Coquille Restoration Act and IGRA [and 25 C.F.R. Part 292] is a procedural issue and is beyond the scope of NEPA.” FEIS, Vol. I, Response to Comments I2, I16-1, I37-1, T8-1, T8-3, T10-10, T13-10, 14-6. However, the legality of the underlying proposed action is at the very heart of any NEPA process. NEPA specifically states that an agency need not complete an environmental review where, as here, “the preparation of such a document would clearly and fundamentally conflict with the requirements of another provision of law.” 42 U.S.C. § 4336(a)(3).

Moreover, despite claiming compliance with the law is “beyond the scope of NEPA,” the FEIS is replete with references indicating the BIA wrongly believes it can take the Medford parcel into trust for gaming purposes under the restored lands exception to IGRA.⁸ The FEIS claims, “[i]n regard to gaming eligibility, on January 19, 2017, the Department informed the Regional Director that the Solicitor’s Office had completed a preliminary review and determined the land was eligible for gaming under a restored lands analysis if the land is acquired in trust pursuant to the Coquille Restoration Act [(CRA)].” FEIS, Vol. I, Response to Comments T8-3 and T13-10. However, the FEIS makes it clear the land is being acquired in trust pursuant to the Indian Reorganization Act

⁷ The FEIS references a tsunami in 2011 that caused damage in Coos Bay without mentioning that the Mill Casino was undamaged. FEIS Vol. II, at p. 1-2. The FEIS provides no actuarial data or analysis on the actual likelihood of tsunami occurrence or damage to the Mill Casino.

⁸ *See, e.g.*, FEIS Vol. II, § 2.3 (““Alternative A consists of the following components: (1) the transfer of approximately 2.4 acres (Tax Lot 37-1W-32C-4701; **Figure 2-6**) within the Medford Site from fee to trust status as part of the restoration of lands for the Tribe by the Secretary in accordance with the Coquille Restoration Act of 1989 (25 USC 715)...”); *Id.* at § 2.7 (Criteria for alternatives includes: “Location within the Tribe’s five-county area described in the Coquille Restoration Act of 1989.”).

(IRA), not the CRA. It cannot be both. The BIA has the authority to take land into trust for Coquille *anywhere* pursuant to the IRA. Only if that land meets the requirements of 25 C.F.R. § 292.12⁹ can it thereafter be used for gaming under the restored lands exception to IGRA.¹⁰ That the Medford parcel is within the Coquille’s service area does not render this acquisition “pursuant to the Coquille Restoration Act.”¹¹

Whether through IGRA or the CRA, Congress never intended to allow Coquille to have land, for which it lacks any aboriginal, ancestral, or historical connection, taken into trust as “restored lands.” As Senators Ron Wyden (one of the original authors and sponsors of the Coquille Restoration Act) and Jeff Merkley have made clear, “[t]o suggest that it was the intent of Congress to allow the Coquille Indian Tribe to open a second casino in Medford requires willful disregard of the legislative history of the CRA and abuse of the restored lands exception.”¹² The FEIS attempts to sidestep this issue, claiming “[c]ompliance with the Coquille Restoration Act and IGRA is a procedural issue beyond the scope of NEPA,” FEIS, Vol. I, Response to Comments T8-3, T13-10, T14-6, I2, I16-1, and I37-1, while essentially treating the Coquille’s entire health care service area as “restored lands” for gaming. *See e.g.* FEIS, Vol. II, §§ 2.3, 2.3.1, 2.7 & 2.7.2.

Medford is not and never has been Coquille territory. Medford sits within the ancestral and ratified Treaty territory of other Tribal peoples. Coquille’s ancestral and Treaty territory is along the southern Oregon coast. There are no Coquille ancestral villages, burial sites, hunting or fishing areas, or sacred places in Medford or the Rogue River Valley. Nor is there any linguistic connection between the Coquille and the Takelman and Shasta speakers of the Rogue River Valley. History and territory matter, especially between Indigenous peoples and Tribal nations. Simply put, Coquille does not belong and has never belonged in Medford or the Rogue River Valley.

If the United States takes land into trust in Medford for Coquille, it will subvert and rewrite history. Coquille has already falsely claimed an ancestral and historical connection to Medford and the Rogue River Valley. Modern history teaches us that foreign tribes who enter and occupy the territory of aboriginal Tribal nations, abruptly or gradually cause the public and local and state governments to misunderstand which Tribal people belong where. Foreign Tribes eventually cause society to believe that it is they who belong in places like Medford, which displaces and causes

⁹ DOI has developed a comprehensive set of regulations, 25 C.F.R. Part 292, for determining whether land taken into trust pursuant to the IRA is eligible for gaming. Because the acquisition of the Medford Parcel is pursuant to the Secretary’s authority under the IRA, and not the CRA, the only way for it to qualify as “restored lands” is for the Coquille Indian Tribe to meet the criteria found in 25 C.F.R. § 292.12; criteria the Tribe simply cannot, and does not even attempt to, meet. As such, the only way the Medford Parcel can be used for gaming is through a “two-part determination” under 25 C.F.R. § 292.13, whereby, (1) after consultation with other affected Indian Tribes and state and local officials, the Secretary determines that gaming on the parcel is in the Tribe’s best interest and (2) the Governor of the State of Oregon concurs with the Secretary’s determination.

¹⁰ For a full survey and legal analysis of this issue, please see the March 24, 2023 letter from Cow Creek General Counsel Anthony Broadman to AS-IA Bryan Newland, provided herewith as Attachment E.

¹¹ DOI recognized, as a general matter, that service area has little to with a tribe’s historical territory when it adopted 25 C.F.R. Part 292. When adopting the regulation, the department explicitly declined to recognize service area as establishing a tribe’s modern connection to a particular parcel of land and stated, “. . . service area is not necessarily defined by the DOI and would thus add complication to the analysis due to the added necessity of collaboration with other agencies. Furthermore, **the tribe’s service area is often based on factors not connected with the DOI’s section 2719 analysis and is often ill-defined, overlapping and potentially inconsistent.**” *Gaming on Trust Lands Acquired After October 17, 1986*, 73 Fed. Reg. 29354, 29365 (May 20, 2008) (emphasis added).

¹² December 1, 2023 Letter from Senators Wyden and Merkley to Secretary Deb Haaland, provided herewith as Attachment F.

irreparable socio-economic, historic, and cultural harm to the aboriginal Indigenous peoples and Tribal nations who have always existed and belonged in those places.

Coquille threatens such irreparable inter-Tribal harm throughout southern Oregon and northern California, which is in great part why so many aboriginal and other Tribal nations and inter-Tribal organizations from those regions and beyond have all commented in opposition to Coquille’s Medford project. The opposition includes the Shasta Nation; Cow Creek Band of Umpqua Band of Indians; Klamath Tribes; Confederated Tribes of the Grand Ronde; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; Karuk Tribe; Tolowa Dee-ni’ Nation; Elk Valley Rancheria; Shingle Springs Band of Miwok Indians; California Nations Indian Gaming Association (“CNIGA”), Northern California Tribal Chairpersons Association (“NCTCA”); and Tribal Alliance of Sovereign Nations (“TASIN”); and Saginaw Chippewa Indian Tribe of Michigan.

NEPA requires the BIA to take a “hard look” at the identified impacts of Coquille’s proposed second casino, including the environmental and interrelated socio-economic, historic, and cultural impacts of the proposed action in Medford. 42 U.S.C. § 4332(A)-(C); 40 C.F.R. § 1502.16 (2020). It appears, however, that the BIA has failed to take that hard look. The FEIS does not in any way address Coquille’s lack of any aboriginal, ancestral, or historical connection to Medford or the Rogue River Valley. Nor does it appear from the FEIS that the BIA effectively considered comments on the DEIS from seven affected Tribal nations regarding Coquille’s lack of any aboriginal, ancestral, or historical connection to the Medford land parcel or the Rogue River Valley.¹³

Insufficient Scope. The Notice of Intent and the Scoping Report, published in 2015, are insufficient and fail to recognize the full scope of the proposed action. The proposed action, as initially contemplated, included a 2.4-acre transfer of land, converting a bowling alley to a gaming facility. In the last nine years, the scope of the proposed action increased substantially, the proposed action now includes a newly constructed 111-room hotel; further, the gaming facility will exist as a part of a sprawling 45-acre development. The BIA is required to “revise the determinations made” during the scoping process where “substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.” 40 C.F.R. § 1501.9(g). The increased scope is acknowledged in Section 2.0 (Alternative) the FEIS, where it is described as a 7.24 acre site adjacent to the Coquille Tribe’s Compass Hotel. FEIS, Vol. II, § 2.2.1.¹⁴ However, the FEIS fails to incorporate the increased scope throughout other parts of its analysis, claiming, for instance, that consideration of the Compass Hotel is unnecessary because the hotel was “developed on a standalone, independent basis and is already in operation today.” FEIS, Vol. I, Response to Comment T13-27. By acknowledging, but failing to analyze, the increased scope of the proposed action, the FEIS has failed to take the requisite hard look at the proposed action.

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¹³ See FEIS, Vol. I, Appendix, Letters: T8 (Elk Valley Rancheria); T9 (Confederated Tribes of the Grand Ronde); T10 (Karuk Tribe); T11 (Cow Creek Band of Umpqua Tribe of Indians); Letter 12 (Saginaw Chippewa Indian Tribe of Michigan); Letter 13 (Shingle Springs Band of Miwok Indians); T13 (Cow Creek Band of Umpqua Tribe of Indians); and T17 (Shasta Nation); see also February 14, 2023 Opposition Letter from NCTCA; August 10, 2023 letter from CNIGA; and November 8, 2023 letter from TASIN, provided herewith as Attachments G-I.

¹⁴ “The site is approximately 7.24 acres and consists of nine tax lots . . . currently owned by the Tribe and a portion of another tax lot . . . that is currently leased by the Tribe. . . . The adjacent parcels to the northwest, northeast, southeast and east consist of commercial and residential uses, including the recently constructed Compass Hotel (also known as the Cedars) that began operation in the summer of 2022.” FEIS, Vol. II, p. 2-1.

Outdated Materials. Despite claiming “the analysis was reviewed and updated where warranted to reflect the most recently available information as needed to provide ‘full and fair discussion of significant environmental impacts’ as required by NEPA (40 CFR 1502.1),” FEIS, Vol. I, p. 3-2, the FEIS *still* relies on outdated materials. The FEIS relies on several documents that are eight to nine years old, including the Coquille’s Unmet Needs Analysis (2013/2014), Noise Output Files (2015), Environmental Site Assessments (2012), Hazardous Materials Reports (2015), and Air Quality Output Tables (2013-16 data). FEIS, Vol II, at p. 4-30; DEIS, Appendices J-N; FEIS, Vol. II, Appendix S. The environmental landscape and gaming industry has shifted significantly in recent years, most notably due to the shockwaves felt throughout the world from the COVID-19 pandemic. Moreover, as discussed in more detail below, in the past few years there have been significant changes to the scope of the proposed action, necessitating updated studies and analyses in order to understand the full impact of the proposed action.

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The Tribe raised these concerns when submitting comments on the DEIS; however, the BIA failed to update any of these studies. While FEIS Appendix S purports to be an “update,” it is based on the same underlying data from 2013-16 on which DEIS Appendix N was based. These outdated documents, which are relied upon for the conclusions drawn in the FEIS, must be updated. Courts have held that relying on stale data during an environmental impact analysis does not satisfy the “hard look” required under NEPA. *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1086-87 (9th Cir. 2011) (finding that reliance on stale aerial surveys was arbitrary and capricious). *See also Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) (finding that six-year-old data, without updated habitat surveys, was too stale). In failing to update any of the outdated and foundational studies supporting the conclusions contained in the FEIS, the BIA failed to take the requisite hard look at the proposed action.

Insufficient Purpose and Need. The purpose and need outlined in the FEIS are insufficiently broad and fail to take into consideration the current status of Coquille’s financial resources. To establish the purpose and need, the FEIS relies primarily upon the Unmet Tribal Needs Report, which was drafted in 2013 and last updated in 2014. FEIS, Vol II, p. 4-30. As noted in detail in the Cow Creek’s DEIS comment letter, since the Unmet Tribal Needs Report was last updated, Coquille has greatly expanded its construction business, Tribal One, which has been awarded several multimillion-dollar contracts, with numerous federal agencies, including the U.S. Army Corp of Engineers, United States Department of Agriculture and the BIA, necessitating an update to the Unmet Tribal Needs Report. In the FEIS, the BIA failed to update the Unmet Tribal Needs Report, did not even mention Tribal One, and therefore failed to adequately define the purpose and need of the proposed action.

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Lack of Analysis on Connected Actions. The FEIS fails to incorporate any analysis of connected actions, including a hotel that has already been constructed on the site of the proposed action. When determining the scope of a proposed action, the BIA must include the consideration of connected actions or those actions that are closely related. 40 C.F.R. § 1501.9(e)(1). This includes actions that are “interdependent parts of a larger action.” *Id.*

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The Notice of Intent, dated January 15, 2015, described the proposed action as “2.4 acres of land” where Coquille would “renovate an existing bowling alley to convert it into a gaming facility.” There was no mention of a hotel, a golf course, or the many other amenities Coquille now clearly intends to add to this project after the parcel is transferred into trust. After most of the studies that

form the basis of the FEIS were completed, the Coquille constructed a 110-room hotel at the site of the proposed action. Construction on the hotel began in 2021 and was completed in 2022. FEIS, Vol. II, p. 2-1.

The FEIS fails to adequately analyze the impact of the hotel. The FEIS acknowledges the existence of the hotel, noting “the adjacent hotel would be available to serve patrons” of the casino. FEIS, Vol. II, p. 2-28. However, with one exception noted below, the hotel is not mentioned in any of the underlying studies; which makes sense, as most of the studies were completed before the Coquille even contemplated construction of the hotel. Most notably, any mention of Coquille’s hotel is missing from the FEIS Draft Socioeconomic Impact Report. FEIS, Vol. II, Appendix O. While the hotels at Cow Creek’s Seven Feathers Casino; Klamath, Modoc & Yahooskin Tribes’ Kla-Mo-Ya Casino; the Coos, Lower Umpqua & Siuslaw Indians’ Three Rivers Casino; and Tolowa Dee-ni’ Nation’s Lucky 7 Casino are all factored into the 2023 Draft Substitution Effects Analysis provided with the FEIS, the Coquille’s Compass Hotel is not considered because it “is already in operation today.” FEIS, Vol. II, Appendix O; *id.*, Vol. I, Response to Comment T13-27.

The DEIS recognized the increased impact that will be caused by the Compass Hotel in a two-page 2022 “Hotel Memorandum” appended to the Traffic Impact Analysis. The Hotel Memorandum “addresses the potential impact of the now under construction 110-room hotel located at 2399 South Pacific Highway, Medford, Oregon, on the Alternative A site for the gaming facility project evaluated in the 2019 TIA.” DEIS Appendix H (Hotel Memorandum 2022). However, this is the only study that was updated to include analysis of the hotel. As noted by an independent economist, the “addition of the adjacent Compass by Margaritaville Hotel further reduces the comparative gravity of Seven Feathers Casino Resort and other existing casinos relative to the Proposed Medford Casino, and thus, adds to the competitive advantage of the proposed casino.” FEIS, Vol. I, Attachments, Letter T13, Attachment B, pp. 2-3. Further, while the FEIS acknowledges the scope of the proposed action has increased, now describing the site as consisting of “7.24 acres,” FEIS, Vol. II, p. i, the actual development is likely to be much larger, considering the 45 acres the Coquille have acquired in the surrounding area.

By acknowledging the additional impact of the Coquille’s newly constructed hotel will have on traffic, but failing to incorporate analysis of the hotel into other aspects of the FEIS and failing to consider the large-scale development likely planned at the site of the proposed action, the BIA has failed to consider a connected action and has failed to take the requisite hard look at the proposed action.

Lack of Analysis of Reasonably Foreseeable Developments and Cumulative Effects. The FEIS fails to analyze the impacts of reasonably foreseeable actions related to the proposed action, it fails to include analysis of the impact of the hotel (which has already been constructed, and it fails to recognize the Coquille’s future plans for development of the site. The BIA must include in its analysis effects or impacts that are “reasonably foreseeable,” including effects that are “cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.1(g). The BIA was required to describe the affected environment, which includes “the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).” 40 C.F.R. § 1502.15. The BIA failed to fully incorporate analysis of the hotel, which has already been constructed on the site of the proposed action, and it failed to acknowledge the fact that the Coquille

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have acquired 45 acres in and around the site of the proposed action, in preparation for a large-scale development.

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NEPA’S Hard Look Requirement. The BIA failed to take the requisite hard look at the proposed action. The BIA is required to take a hard look at the environmental consequences of the proposed action. *Nat. Res. Def. Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972); *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 781 (9th Cir. 2006). The FEIS fails to fulfill the hard look requirement. Most notably, it relies on outdated and inaccurate information. A fact that has been pointed out to the BIA on numerous occasions. However, the BIA continues to rely on studies that were drafted a decade ago, including the Coquille’s Unmet Needs Analysis (2013/2014), Noise Output Files (2015), Environmental Site Assessments (2012), Hazardous Materials Reports (2015), and Air Quality Output Tables (2013-16 data). FEIS, Vol II, p. 4-30; DEIS, Appendices J-N; FEIS, Vol. II, Appendix S. All of these errors—the outdated materials, the insufficient scope, the lack of analysis of connected actions, the insufficient alternatives, and the claim of having performed consultation it has not performed—demonstrate that the BIA has not taken the requisite hard look at the proposed action. Further study of the proposed action is required before the BIA issues a decision on the application.

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Insufficient Alternatives. The BIA failed to consider non-gaming alternatives to the proposed action. The BIA is required to “evaluate reasonable alternatives.” 40 C.F.R. § 1502.14(a). In the FEIS, the BIA focused too narrowly on gaming alternatives. Other than the proposed action, the only alternatives analyzed by the FEIS are a casino in Phoenix, Oregon, an expansion of the Coquille’s existing Mill Casino, and “no action.” FEIS, Vol. II, §§ ES.3 & 2. The broad purpose listed in the FEIS is “to facilitate tribal self-sufficiency, self-determination, and economic development” FEIS Vol. II, §§ ES.2 & 1.2. This purpose could be accomplished in many ways, including ongoing expansion of Coquille’s extremely successful construction venture, Tribal One. In fact, if the Coquille were to pursue a non-gaming alternative, it would address and/or avoid many of the negative impacts of the proposed action. Many tribes have encouraged their own self-sufficiency, self-determination, and economic development by diversifying the types of businesses owned by the Tribe and expanding into non-gaming business markets. As discussed above, Coquille itself has already successfully expanded into construction; though, the outdated studies in the FEIS fail to incorporate this into the analysis. The FEIS should include an analysis of non-gaming alternatives.

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Underestimates the Socioeconomic Impact on the Cow Creek Tribe. While acknowledging “[a]n adverse economic, fiscal, or social impact would occur if the effect of the project were to negatively alter the ability of governments to perform at existing levels or alter the ability of people to obtain public health and safety services,” FEIS Vol. II, p. 4-18, the FEIS dismisses the impacts to the Cow Creek Tribe as primarily economic, citing to an inapposite holding from *Citizens for a Better Way, et al. v. United States Department of the Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925 (E.D. Cal., 2015). FEIS Vol. II, p. 4-23. As we pointed out in our DEIS comment letter, reliance on *Citizens for a Better Way v. U.S. Dep’t of Interior* is misplaced. While *Citizens* recognizes that a “purely economic interest” is, in many circumstances, an insufficient basis for a finding of detrimental impact under NEPA, it is a gross misnomer to label the loss of revenue to the Cow Creek Tribe’s gaming facility as “purely economic.” Moreover, *Citizens* recognizes that a “purely economic interest” can be a sufficient basis for a finding of detrimental impact on a tribe when the competing facility “would ... jeopardize the competing

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casino's viability." *Citizens*, at *9.

Ashley Creek Phosphate Co. v. Norton, 420 F.3d 934 (9th Cir. 2005), the Ninth Circuit case on which *Citizens* relies, found loss of potential revenue for a commercial, for-profit entity was a "purely economic interest," which did not bring the commercial entity within the "zone of interest" NEPA is designed to protect. The *Ashley Creek* decision draws a distinction between "purely economic interest" and an "economic concern that is . . . tethered to the environment." *Id.* at 943.

"The environment," in this context, is the "human environment," which is defined as: "comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment.(See also the definition of "effects" in paragraph (i) of this section.)" 40 C.F.R. § 1508.1(r). Paragraph (i) of this section, in pertinent part, reads:

(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

40 C.F.R. § 1508.1(i)(4) (emphasis added).

The updated Socioeconomic Impact Analysis provided with the FEIS goes to great lengths to minimize and obfuscate the true substitution effects the Medford casino would have on Cow Creek's economic survival. FEIS, Vol. II, Appendix O. The analysis is now broken down into three phases. Yet, there is no reason to believe Coquille intends to follow a three-phase process in implementing gaming in Medford. To the contrary, the FEIS admits that there is only a "potential for phased gaming operations," not that it is Coquille's actual plan. FEIS, Vol. I, at pp. 3-10 & 3-15. As detailed below, the analysis improperly manipulates data and inputs for its gravity model in its attempt to minimize the true substitution effects. Even with those manipulations, the analysis determines the Cow Creek will suffer a 21.3% substitution effect once the Medford casino is fully operational. FEIS, Vol. II, Appendix O, at p. 32. The conclusion that it will take 16.1 years for the Cow Creek's facility to recover from these substitution effects remains unchanged. DEIS Appendix E, Impact Study for the Coquille Development Project – August 2019, p. 89.

The gaming facility is our primary source of governmental revenue. A reduction of that magnitude will devastate all of the programs provided by the Tribe. The socioeconomic impact to the Cow Creek cannot be understated, these are the funds that are used to provide educational opportunities to our children, to provide health care and living assistance to our elders, to provide social services to all of our members. It will impact the Cow Creek's ability to support local governments and businesses. It will impact our ability to providing funding to programs aimed at protecting salmon, lamprey, and other culturally relevant species. The Cow Creek's members need and depend upon several of the programs run by the Tribe; the proposed action will decimate the Cow Creek's public assistance, environmental, and other programs. The impacts go so far beyond merely economic impacts, and the FEIS fails to take into consideration the social, cultural, and health impacts to the Cow Creek Tribe and its members.

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To add insult to injury, the FEIS dismisses the Cow Creek’s concerns entirely, insinuating that the Tribe uses its gaming revenue for per capita payments, rather than governmental services. The Cow Creek has asked numerous times for the BIA to consult with the Tribe on this application; a request that has been summarily denied and dismissed. The FEIS claims that “[w]ithout confidential and proprietary information specific to the revenues of each tribal casino and the amount distributed to the respective tribal governments and tribal members, the environmental justice impact on governmental and social services cannot be determined.” FEIS, Vol. I, p. 3-16. Consultation with the Tribe would have resulted in the BIA having access to the very confidential and proprietary information the FEIS indicates is missing from the analysis.

Flawed Economic Analysis. The economic analysis relied on in the FEIS is flawed, as it underestimates the level of cannibalization of other Tribal gaming operations’ revenue and makes conclusions that are speculative, at best. The Cow Creek Tribe commissioned an independent economic analysis of the BIA’s conclusions and anticipated financial impact of the proposed action on the Cow Creek Tribe as set forth in the DEIS. The report highlighted many errors in the BIA’s analysis. We informed the BIA of these errors and provided the BIA with the underlying report. FEIS, Vol. I, Appendix, Comment Letter T13, Attachments A & B. However, rather than adequately address those errors, the FEIS dismisses them entirely and relies on a draft “updated” analysis by Coquille’s third-party consultant, Global Market Advisors (“GMA”), that suffers from the same fatal flaws as the previous analysis. FEIS, Vol. I, Response to Comment T13-27; *id.*, Vol. II, Appendix O.

The brevity of the comment period on the FEIS, which multiple Tribes and government actors have asked to extend, did not provide adequate time to do a complete analysis. However, as detailed in the letter dated December 18, 2024, from Meister Economic Consulting, and Pyramid Associates, LLC, it is clear **“the competitive effects conclusions of the FEIS are erroneous as they underestimate the true cannibalization by the Proposed Medford Casino.”**¹⁵

- *The FEIS competitive effects analysis fails to account for all relevant factors.* GMA failed to properly incorporate non-gaming amenities, such as a hotel, food and beverage offerings, spa, entertainment venues, retail outlets, a golf course, etc., in its gravity model. Instead, GMA relied on an opaque, subjective, and qualitative “attraction factor” that does not properly account for non-gaming amenities in GMA’s gravity model.
- *The FEIS competitive effects analysis fails to capture proper sizing of Seven Feathers Casino Resort.* GMA includes the wrong number of Class III slot machines at Seven Feathers Casino Resort, thereby underestimating Coquille’s “competitive advantage” and injecting yet another significant source of error into its analysis.
- *The FEIS competitive effects analysis fails to properly account for the contribution of the existing hotel to the proposed Medford casino’s cannibalization of gaming revenue.* GMA fails to incorporate in any way the 111-room Compass by Margaritaville Hotel owned by the Coquille Indian Tribe directly adjacent to the site of the Proposed Medford Casino, and which will be used by the Proposed Medford Casino for their casino patrons, dismissing its impact because it is “already in operation.” FEIS, Vol. I, Response to Comment T13-27. It

¹⁵ Attachment J, p. 1.

is disingenuous for GMA to pretend that the hotel will not be marketed in conjunction with the casino to enhance its attractiveness to potential casino patrons. Thus, a comprehensive and accurate gravity model *must* include the hotel. The hotel's omission from GMA's gravity model is another reason why GMA underestimates the competitive impact of the proposed Medford Casino's cannibalization of gaming and non-gaming revenues at Seven Feathers Casino Resort.

- *The FEIS competitive effects analysis relies on irrelevant data.* In its revised analysis in Appendix O, GMA incorporates into its gravity model players club data from The Mill Casino, Hotel & RV Park, the Coquille Tribe's existing casino elsewhere in the State of Oregon, possibly to compensate for the fact that GMA did not in its original analysis in DEIS Appendix E include any actual market data, such as players club data, for any of the tribal casinos, that will be negatively affected by the Proposed Medford Casino. FEIS, Vol. II, Appendix O, p. 30. However, The Mill Casino is not located in or competing in the relevant market area, as it is 169 miles and 3 hours from the proposed Medford casino site, which would place it outside the designated market area of even a large resort casino with a full array of non-gaming amenities. The Mill Casino data is not just irrelevant to measuring the impact of the proposed Medford casino on Seven Feathers Casino Resort, it generates an additional source of error and inaccuracy with regard to measuring that impact.
- *The FEIS competitive effects analysis underestimates total competitive impact given it erroneously focuses only on local market gaming revenue, ignoring outer market revenue.* Outer market revenue includes revenue from drive-through and pass-by traffic customers who are likely to stay overnight at the hotel and spend money on food and beverages, unless intercepted by another gaming facility. GMA dismisses and excludes this well-understood category of revenue from its gravity model, instead analyzing only local market gaming revenue. FEIS, Vol. II, Appendix O, p. 30.
- *The FEIS competitive effects analysis fails to account for non-gaming revenue losses.* Seven Feathers Casino Resort stands to lose approximately 52.1% of its total annual non-gaming revenues (i.e., food and beverage, hotel, retail, and other) to the Proposed Medford Casino if it were to be opened. However, the financial statements show that promotional allowances are only about 4% of gross non-gaming revenue (only food and beverage revenue). GMA claimed that "projected losses are overstated due to the fact that a large portion of food and beverage revenue at Seven Feathers Casino Resort would likely stem from comped revenue." GMA was merely assuming that a large percentage of food and beverage revenue was comped, and they are incorrect. Further, GMA did not address other lost non-gaming revenue, which was not comped at all. Thus, significant non-gaming revenue losses will be incurred, and GMA still does not even attempt to compute those losses.
- *Without explanation, the FEIS competitive effects analysis presents different results than the DEIS competitive effects analysis.* GMA's estimates of gaming revenue that will be generated by the Medford casino increased from \$32.2 million in its 2016 report, DEIS, Appendix E, pp. 87-8, to \$49.3 in its 2023 report. FEIS, Vol. II, Appendix O, pp. 2-3. GMA does not offer any explanation for these differences, although they use essentially the same model with the same assumptions in both studies (changing the years of the model would not explain the vast majority of the differences). Despite increasing its estimate of the

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substitution effect on Seven Feathers Casino Resort and the market as a whole, GMA's model continues to underestimate the substitution effect on Seven Feathers Casino Resort.

- *The FEIS competitive effects analysis significantly underestimates detrimental economic impact to Seven Feathers Casino Resort and the Cow Creek Tribe.* While GMA does not provide all the details, data, and underlying assumptions for its competitive effects analysis, there is enough set forth in FEIS Vol. II, Appendix O from which one can easily identify several reasons why the detrimental economic impact on the Seven Feathers Casino Resort and the Cow Creek will be more severe than what is estimated in the FEIS. For example, and as set forth above and in more detail in Attachment J, GMA's model includes more Seven Feathers gaming machines in the model than the Seven Feathers Casino actually has on the floor, fails to incorporate the Compass by Margaritaville Hotel, and excludes Seven Feathers players club data. **When all relevant factors are included, it becomes clear Seven Feathers Casino Resort will experience at least a 28.5% loss of total annual gaming revenues and 52.1% loss in total annual non-gaming revenues.**¹⁶
- *The FEIS erroneously claims detrimental economic impact to Seven Feathers Casino Resort and the Cow Creek Tribe is acceptable and recoverable.* The FEIS erroneously and dismissively claims “[a] typical properly managed facility should have the ability to streamline operations to absorb the magnitude of impacts described in Table 4.7-6 and remain operational.” FEIS Vol. I, p. 4-23. There is no way that the FEIS can definitively draw this conclusion without data from the affected casinos, which could have been included had the BIA consulted with the Cow Creek as required. The FEIS moreover claims “[e]stimated substitution effects are anticipated to diminish after the first year of project operations because local residents will have experienced the casino and will gradually return to more typical and more diverse spending patterns.” *Id.* This conclusion is purely speculative. It is not supported by any data or analyses in the main text of the FEIS, nor is this conclusion made or supported at all in studies completed by GMA in Appendices E or O. The FEIS claims “substitution effects also tend to diminish after the first full year of operations because, over time, growth in the total population and economic growth tend to increase the dollar value of demand for particular good and services.” *Id.* This claim is speculative and unsupported by data. Moreover, this claim mistakenly equates growth in a market with a diminution of substitution effects. The FEIS relies on the DEIS's suggestion that a revenue loss is acceptable because Seven Feathers Casino Resort's gaming revenue will allegedly recover to the 2023, pre-Medford Casino level in 16.1 years (by approximately 2040). DEIS, p. 4-22; *Id.*, Appendix E, p. 67. It is impossible to verify this claim, but even if true, 16.1 years is an extremely long time until full recovery, and the losses for each of those 16.1 years are a loss that can *never* be recovered by the Cow Creek Band; nor can the impacts on Tribal members be repaired retroactively.
- *The FEIS confirms that the proposed Medford casino will yield only a small net economic benefit to the region because it will largely cannibalize existing casinos' market.* Despite all its aforementioned shortcomings, the FEIS still admits that the Proposed Medford Casino will grow the existing gaming market by only a small amount, 24.8%. FEIS, Vol. II, p. 4-22; *id.*, Vol. II, Appendix O, p. 3. This means that **the vast majority of the proposed**

¹⁶ This will result in a direct loss of at least a 12.3% decline in total revenue for the Tribal government to fund essential public services, such as healthcare and educational services.

Medford Casino’s gross gaming revenues, 75.2%, will be cannibalized from existing gaming facilities in the market area, of which a large proportion will be cannibalized from Seven Feathers Casino Resort. In other words, the Proposed Medford Casino will bring very little net economic benefit to the region because the proposed casino is largely just replacing economic activity that already exists in the proposed casino’s market area.

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Accordingly, the FEIS, and the underlying GMA studies supporting the conclusions in the FEIS, are fundamentally flawed and do not include analysis of the full scope of the impacts that will be caused by the proposed action.

Underestimates Impact on Crime. The FEIS underestimates the impact that the proposed action will have on crime. The FEIS claims that the “introduction of casinos typically does not cause an increase in the crime rate and, in some cases may lead to a decline in the crime rate.” FEIS, Vol. II, at p. 4-29. However, the study relied upon by the FEIS, provided in DEIS Appendix E, recognizes a strong link between the existence in casinos with increase in petty crime, violent crime, and prostitution. The proposed action will have an impact on the level of crime in the area. This is further supported by the Coquille’s Mill Casino. The Mill Casino generates the most police calls for any one location in North Bend, 640 calls annually.¹⁷ A casino in Medford will significantly increase the rate of crime.

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Underestimates Impact on Biological and Cultural Resources. The DEIS contained numerous factual errors, the end result of which was to underestimate the impact of the proposed action on biological and cultural resources. While it appears the factual errors have been corrected in the FEIS, it does not appear the analysis was updated to reflect the corrections, resulting in the same underestimation of impact on biological and cultural resources from which the DEIS suffered.

First, the DEIS listed Bear Creek as a “potential” anadromous fish bearing stream, which “may contain habitat for federally listed fish species, Chinook salmon, coho salmon, and green sturgeon.” DEIS, § 3.5.2. This was an error, as Bear Creek is a well-known anadromous fish bearing stream. Moreover, it is well documented that the stream is home to the Southern Oregon Northern California Coast (“SONCC”) Coho, a species listed under the Endangered Species Act and is a stream that has an Essential Salmonid Habitat (“ESH”) designation. The FEIS corrects the factual error, but not the analysis. FEIS, Vol. II, p. 3-28. In fact, the FEIS continues to inaccurately minimize the significance of Bear Creek’s correct classification, noting that only 0.10 of the 7.35 acres of which the Medford site is comprised are “vegetated ditches (upland swales) that convey stormwater.” *Id.* Stormwater collects in the ditches from throughout the full 7.35 acres. Bear Creek is adjacent to the Medford site and is 800 feet from the Phoenix site. The acreage comprised of ditches is irrelevant, as the FEIS makes it clear that stormwater runoff from the proposed action, both in its construction and operational phases, will reach Bear Creek. The stormwater runoff from the proposed action will contain toxins such as petroleum distillates and mercury know to harm the ESA listed fish in Bear Creek.

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Second, the FEIS fails to consider or analyze the impacts of the September 2020 Alameda Fire, which tore through Bear Creek just upstream of the proposed project. The fire burned through

¹⁷ Mann, Damian, *Worth the Risk? If you wonder what would be the impact of a casino in Medford, take a ride to North Bend*, Mail Tribune (Sept. 30, 2012).

the creek and riparian area from Ashland to north Phoenix, including large trees that had provided shade to cool stream temperatures in the summer months. These environmental impacts to Bear Creek from the Alameda Fire were never analyzed as part of the NEPA process and are not addressed in the FEIS. Bear Creek is already a significantly impacted urban stream experiencing issues with temperature, bacteria, and sedimentation. The runoff from additional impervious surface area to ditches in the project site that drain directly to Bear Creek have the potential to exacerbate current water quality and habitat issues as a result of the project and the Alameda Fire, a fact on which the FEIS is silent.

Third, the DEIS listed the wrong Evolutionary Significant Unit (“ESU”), the Oregon Coast Coho, as a species that may be impacted. DEIS, § 3.5.2. The correct ESU is the SONCC Coho; any naturally spawning Coho in waters between Cape Blanco, Oregon and Punta Gorda, California are considered SONCC Coho.¹⁸ While the correct ESU is listed in the FEIS, the analysis and conclusions remain the same, indicating that no corrected analysis (based on having previously identified the wrong species) actually occurred.

Fourth, the DEIS stated that the Critical Habitat is located approximately 4.5 miles north of the Medford Site. DEIS, § 3.5.2. This is not true. Bear Creek is considered critical habitat for the SONCC Coho. As the Tribe pointed out in its DEIS Comment Letter, on page 1-7 of the *Final Recovery Plan for the Southern Oregon/ Northern California Coast Evolutionarily Significant Unit of Coho Salmon (Oncorhynchus kisutch)* completed in 2014, it states,

Critical habitat for SONCC coho salmon was designated as all accessible reaches of rivers (including estuarine areas and tributaries) between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

See supra, note 17. The FEIS cut and pasted the language from the Tribe’s DEIS Comment Letter, correcting the factual error in the DEIS. However, as with the classification of Bear Creek and correction of the ESU, the analysis remains unchanged, revealing a failure to actually incorporate these corrections into the FEIS’s conclusions.

Finally, the Cow Creek Tribe considers both the Bear Creek and the Coho to be cultural resources. Culturally, they are very important to the Tribe. Bear Creek is home to some of the Cow Creek people’s first foods, including the Coho. Salmon are particularly important to the Cow Creek people. The Cow Creek Tribe holds an annual salmon ceremony, honoring the salmon people. The ceremony ensures the return of our fish runs every year. If Bear Creek is impacted, it will impact the salmon people who live in Bear Creek. Any impacts to salmon should be considered impacts to cultural resources, as our natural resources are cultural resources. This issue was raised in the Cow Creek’s response to the DEIS; however, it was not addressed in the FEIS.

Outdated and Incomplete Environmental Site Assessment. The FEIS relies on an outdated and incomplete Environmental Site Assessment (“ESA”). DEIS, Appendix L. As outlined

¹⁸ National Marine Fisheries Service. (NMFS) 2014. *Final recovery plan for the Southern Oregon/Northern California Coast evolutionarily significant unit of coho salmon (Oncorhynchus kisutch)* Available online at: <https://repository.library.noaa.gov/view/noaa/15985>. Accessed December 20, 2024.

in previous correspondence from the Tribe, agricultural use of the general location of the proposed action historically employed harmful legacy pesticides. The Cow Creek has repeatedly notified the BIA of these findings; yet the BIA failed to obtain an updated ESA when the scope of the project grew, instead relying on an outdated 2012 ESA with a supplemental investigation on the same reduced acreage performed in 2015. FEIS, Vol. II, § 3.12.2. At the time the ESA was performed, the proposed action encompassed only a 2.4 acre site. Soil samples for the ESA were taken only from the 2.4 acre site. *Id.* The proposed action now composes a 7.24 acre site. FEIS, Vol. II, § 2.2. Further environmental analysis of the additional 4.84 acres must be done. The ESA must be updated to study the entire site of the proposed action, with soil samples analyzed from throughout the site.

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Thank you for your consideration. We sincerely hope that the BIA takes these substantive comments into consideration and takes the actions necessary to ensure the BIA analyzes the full impact of the proposed action and takes the requisite hard look that is mandated by federal law.

Sincerely,



Carla Keene, Chairman
Cow Creek Band of Umpqua Tribe of Indians

Enclosures:

- Attachment A August 2, 2024 Letter from Chairman Keene to Secretary Haaland
- Attachment B March 5, 2024 Letter from Chairman Keene, Karuk Tribe Chairman Attebery, Elk Valley Rancheria Chair Miller, and Tolowa Dee-ni' Nation Vice Chair Sullivan
- Attachment C August 13, 2014 Letter from NW Regional Director Speaks to former Cow Creek Chairman Courtney
- Attachment D September 4, 2015 Letter from Chairman Courtney to Director Speaks
- Attachment E March 24, 2023 Letter from Cow Creek General Counsel to AS-IA Newland
- Attachment F December 1, 2023 Letter from Senators Wyden and Merkley to Secretary Haaland
- Attachment G February 14, 2023 Opposition Letter from NCTCA
- Attachment H August 10, 2023 Opposition Letter from CNIGA
- Attachment I November 8, 2023 Opposition Letter from TASIN
- Attachment J December 18, 2024 Letter from Meister and Pyramid

ATTACHMENT A



**COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES**

**2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399**

Phone: 541-672-9405

Fax: 541-673-0432

August 2, 2024

VIA EMAIL

Secretary Deb Haaland
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Haaland:

The Cow Creek Band of Umpqua Tribe of Indians is among the dozens of Tribal nations and other governments who oppose the Coquille Indian Tribe's ("Coquille") pending application to take land into trust for gaming purposes in Medford, Oregon, beyond their ancestral homelands and 175 miles away from their Tribal headquarters in North Bend (the "Medford Application"). In overwhelmingly bipartisan fashion, the Oregon and California Congressional Delegations, as well as the current Governor of Oregon and three of her predecessors, also oppose the Medford Application. We have been consistently troubled by the Department's lack of responsiveness to the concerns we have posed to you and Assistant Secretary – Indian Affairs Bryan Newland. The White House Domestic Policy Council advised us that this is out of their jurisdiction and to pose our "questions on gaming matters" to you for response.

1. Has Coquille, pursuant to 25 CFR § 151.17(a), submitted a written request to apply the new Part 151 regulations to the Medford Application?
2. Is the Department still considering the Medford Application under 25 CFR § 292.11(a) when it is well established through the Congressional record and statements of the Coquille Restoration Act's authors that it was not intended to authorize the acquisition of restored lands for gaming purposes beyond the initial 1,000 acres located in Coos and Curry Counties?
3. Will the Department require that Coquille close down its Mill Casino, in North Bend, Oregon, if it grants the Medford Application?
4. What is the Department's policy and procedure for relying on 25 CFR § 1.2 (Apr. 12, 1960) to waive the Part 151 or Part 292 regulatory requirements for a particular application? We are aware that the Department, in unprecedented fashion, very recently waived the Part 292 requirements for the Redding Rancheria project in northern California.

5. In his July 1, 2024 letter to Redding Rancheria Chairman Potter, finding the Strawberry Fields property eligible for gaming, AS-IA Newland refers to “Congress’ broad restorative justice intent” in promulgating the restored lands exception to IGRA’s gaming prohibition. Restorative justice is a holistic venture, which seeks to repair the harm done to victims in a particular situation. In Oregon, as in California, numerous tribes were terminated by the Western Oregon Tribal Termination Act of 1954. Where in IGRA is “Congress’ broad restorative justice intent” expressed? How would it serve the goal of restorative justice for the Department to use the restored lands exception to permit Coquille to game on land in Medford, Oregon when doing so would harm numerous other tribes that also suffered the harms of colonization and termination?
6. On February 16, 2024, the Bureau of Indian Affairs asked Coquille to identify any “relevant historical injustices” associated with the Medford Application. Where in IGRA does Congress express any intent regarding “historical injustices”? As a Tribal nations negatively implicated by the Medford Application, according to the Draft Environmental Impact Statement, does the federal government intend to consult with us about the historical injustices suffered by the Cow Creek Umpqua People?
7. We understand the Department is readying multiple off-reservation gaming decisions for issuance immediately before the Labor Day weekend, much like it did with two decisions in California on Friday, July 5, 2024. Clandestine federal decision-making is an affront to Tribal sovereignty and our nation-to-nation relationship. Does the Department plan to issue a decision on the Medford Application immediately before the Labor Day weekend?

We look forward to your responses to our questions.

Very truly yours,



Carla Keene, Chair
Cow Creek Band of Umpqua Tribe of Indians

Cc: Morgan Rodman, Senior Policy Advisor for Native Affairs
White House Domestic Policy Council
Laura Daniel-Davis, Acting Deputy Secretary
Sarah Greenberger, Associate Deputy Secretary
Bryan Newland, Assistant Secretary – Indian Affairs
Kathryn Isom-Clause, Deputy Assistant Secretary – Indian Affairs
Wizipan Garriott, Principal Deputy Assistant Secretary – Indian Affairs
Paula Hart, Director, Office of Indian Gaming
U.S. Department of Interior
U.S. Senator Ron Wyden
U.S. Senator Jeff Merkley
U.S. Representative Cliff Bentz
Oregon Governor Tina Kotek

ATTACHMENT B



March 5, 2024

VIA EMAIL

Secretary Deb Haaland
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Haaland,

We understand the Interior Department continues to engage in the environmental review process for the Coquille Indian Tribe's Fee-to-Trust and Gaming Facility Project ("Coquille Project"), despite unprecedented Tribal, inter-Tribal, Congressional, gubernatorial, and local government opposition to the project. To the extent you have not yet reached the conclusion that the Coquille Project, if approved, would violate the substance and intent of the Indian Gaming Regulatory Act, and would cause irreparable harm to regional Tribal communities, we invite you to travel to our homelands and consult with our elected leaders about how the Coquille Project would impact each of our Tribal nations and peoples.

It is important to us that you personally witness our Tribal communities to fully understand those impacts in person before you reach your decision. Your visit is also consistent with the Department's stated commitment to meaningfully consult with affected Tribal nations in advance of policy decisions of Tribal implication, as well as the Biden administration's promise "to protect the ability of every Native person here in the United States to lead safe, healthy, and fulfilling lives in their homelands." We believe your visit could be accomplished over a couple of days in northern California and southern Oregon.

If you would, please formally respond to this invitation at your earliest convenience. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Russell 'Buster' Attebery".

Russell "Buster" Attebery, Chair
Karuk Tribe



Carla Keene, Chair
Cow Creek Band of Umpqua Tribe of Indians



Dale Miller, Chair
Elk Valley Rancheria



Scott Sullivan, Vice Chair
Tolowa Dee-ni' Nation

Cc: Laura Daniel-Davis, Acting Deputy Secretary
Sarah Greenberger, Associate Deputy Secretary
Bryan Newland, Assistant Secretary – Indian Affairs
Paula Hart, Director, Office of Indian Gaming

ATTACHMENT C



United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

RECEIVED

AUG 20 2015

COW CREEK LEGAL DEPT.

AUG 13 2015

In Reply Refer To:
Environmental and Cultural Resources

The Honorable Daniel Courtney
Cow Creek Band of Umpqua Tribe of Indians
2371 NE Stephens Street, Suite 100
Roseburg, Oregon 97470-1399

Dear Chairman Courtney:

Under the provisions of Section 106 of the National Historic Preservation Act (NHPA), as amended, the Bureau of Indian Affairs (BIA) is extending an invitation for comments to the Cow Creek Band of Umpqua Tribe of Indians (Tribe) concerning a proposed fee-to-trust transfer of lands and gaming facility project for the Coquille Indian Tribe. The proposed action would transfer approximately 2.4 acres of land from fee to trust status, upon which the Coquille Indian Tribe would renovate an existing bowling alley to convert it into a gaming facility. Adjacent fee land would be used for parking. The subject parcel is located in the City of Medford, Jackson County, Oregon, adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane.

If your Tribe has any knowledge of, or concerns about historic properties with which you ascribe religious or cultural importance in relation to this proposed federal undertaking, we would like to include such comments in our initiation of Section 106 consultation with the State Historic Preservation Office (SHPO). Please be advised that the BIA understands the sensitive nature of such information and that it is to be used only to meet the requirements under Section 101(d)(6)(B) of the NHPA, thereby affording tribes the opportunity to comment on proposed actions that may have the potential to affect historic properties.

If you have any questions or require additional information, please contact Dan Hall, Acting Regional Archeologist, at (916) 978-6041

Sincerely,


Northwest Regional Director

cc: Regional Environmental Protection Specialist
Chairperson, Coquille Indian Tribe

ATTACHMENT D



**COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES**

**2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399**

Phone: 541-672-9405

Fax: 541-673-0432

September 4, 2015

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs, Northwest Region
U.S. Department of the Interior
911 Northeast 11th Avenue
Portland, OR 97232-4169

VIA E-MAIL AND U.S. CERTIFIED MAIL

Re: Section 106 Consultation

Dear Director Speaks:

We with the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Band") received your August 13, 2015 letter, inviting the Cow Creek Band to submit its "concerns about historic properties with which you ascribe religious or cultural importance in relation to this proposed federal undertaking." However, the letter provides only a one-paragraph description of the "proposed federal undertaking," providing:

The proposed action would transfer approximately 2.4 acres of land from fee to trust status, upon which the Coquille Indian Tribe would renovate an existing bowling alley to convert it into a gaming facility. Adjacent fee land would be used for parking. The subject parcel is located in the City of Medford, Jackson County, Oregon, adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane.

We will be pleased to provide the information the BIA seeks but the information contained in the August 13, 2015 letter does not tell us enough to do so, or to meaningfully consult with the BIA as required by Section 106 of the National Historic Preservation Act (NHPA). As we have reiterated throughout the NEPA process, the public needs more information in order to effectively comment on the proposed action. The same holds true for the "proposed federal undertaking."

As outlined in the Advisory Council on Historic Preservation's Handbook on Consultation with Indian Tribes in the Section 106 Review Process, Executive Order 13175 requires federal agencies to engage in "meaningful and timely" consultation with tribes. To comply with Executive Order 13175, the Department of the Interior's enacted

its Policy on Consultation with Indian Tribes; the policy recognizes that “[c]onsultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility.”

The Bureau of Indian Affairs also enacted a Government-to-Government Consultation Policy, which recognizes the importance of providing a tribe with information, early in the consultation process, in order to allow the tribe to provide a meaningful contribution. The Policy sets out a step-by-step consultation process. During the first step of the consultation process, the policy states that an agency “should put together a brief information packet consisting of a description of the proposal, an initial list of issues and impacts, maps, drawings, and any other material or references that can help the interested tribes to understand what is being proposed. At this stage, the purpose of the information is to enable participants to make an intelligent contribution.” *See also Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Dep’t of the Interior*, 755 F.Supp.2d 1104, 1119 (S.D. Cal. 2010).

Here, the Cow Creek Band has repeatedly requested that the BIA provide it with more detailed information regarding the proposed action. Our request now extends to the BIA’s Section 106 process and the proposed federal undertaking; we need threshold information from the BIA—i.e., a brief information packet consisting of a description of the proposal, an initial list of issues and impacts, maps, drawings, and any other material or references that can help us understand what is being proposed—in order to allow us to make an intelligent contribution and to otherwise meaningful consult under the NHPA. Accordingly, please provide us with any or all such information regarding the proposed action. After we have received and reviewed that information, we will work with the BIA to determine any cultural and historical concerns. If you have any additional questions, please do not hesitate to contact us.

Best regards,



Dan Courtney

Chairman

Cow Creek Band of Umpqua Tribe of Indians

ATTACHMENT E



COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

2371 NE Stephens Street Suite 100

Roseburg, OR 97470

Phone: 541-677-5586

Fax: 541-677-5527

March 24, 2023

VIA EMAIL

Bryan Newland
Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Assistant Secretary Newland:

Thank you for taking the time to meet with the Cow Creek Band of Umpqua Indians (“Cow Creek Tribe”) on Monday, February 27. As requested, we write with a detailed analysis on the Coquille Indian Tribe’s (“Coquille”) application to transfer fee land in Medford, Oregon (the “Medford Parcel”) into trust for gaming purposes. As we discussed, Coquille asserts a novel and unsupportable reading of its restoration act to argue the Medford Parcel should be treated as “restored lands,” which we ask you to reject. Given the Medford Parcel does not meet the requirements of any statutory exception to IGRA’s prohibition against gaming on lands not already in trust in 1988, and the fact that Coquille is already gaming on restored lands in Coos County, Oregon, Coquille’s application must be subjected to a Two-Part Determination.

A. IGRA and its Exceptions to Gaming on Land Acquired after October 17, 1988.

As you know, Congress passed the Indian Gaming Regulatory Act (“IGRA”) in 1988 for the purposes of, among other things, regulating a growing Indian gaming industry sanctioned by the U.S. Supreme Court’s holding in *California v. Cabazon Band of Indians*.¹ IGRA prohibits gaming on “lands acquired by the Secretary [of the Interior] in trust for the benefit of an Indian tribe after October 17, 1988, unless” one of the statutory exceptions applies.² The statutory exceptions are: 1) “Settlement of Land”,³ 2) “Initial Reservation”,⁴ and 3) “Restored Lands.”⁵

The Restored Lands Exception can be met in one of two ways. If the tribe was restored by Congressional Act, it must show that either:

¹ 480 U.S. 202 (1987).

² 25 U.S.C. § 2719(a).

³ 25 U.S.C. § 2719(b)(1)(B)(i) and 25 C.F.R. § 292.5.

⁴ 25 U.S.C. § 2719(b)(1)(B)(ii) and 25 C.F.R. § 292.6.

⁵ 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. §§ 292.7-.12.

1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or

(2) If the legislation does not provide a specific geographic area for the restoration of lands [or the land is outside the specific geographic area], the tribe must meet the requirements of §292.12.⁶

Section 292.12 requires the tribe to demonstrate modern, significant historical, and temporal connections to the subject land.⁷ For clarity, we refer to these two categories for restored lands as “Statute-Based Restored Lands” and “Connection-Based Restored Lands.”

If none of the three exceptions apply, the land may still be used for gaming purposes, but only under a “Two-Part Determination,” whereby the Secretary,

after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary’s determination . . .⁸

Nothing in IGRA or its regulations changes the process by which Indian tribes, generally pursuant to the Indian Reorganization Act (“IRA”) and its regulations,⁹ apply to the Department to have land taken into trust. When not specified in some other legislation, such as a restoration act, land must be taken into trust for the benefit of an Indian tribe pursuant to the IRA. Whether that land, once taken into trust (after October 17, 1988), is eligible for gaming is determined pursuant to IGRA and its exceptions, as outlined above.

“The [restored lands] exception was not intended to give restored tribes an open-ended license to game on newly acquired lands. Rather, its purpose was to promote parity between established tribes, which had substantial land holdings at the time of IGRA’s passage, and restored tribes, which did not.”¹⁰ As one court put it, the term “restoration may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.”¹¹

Though its application to transfer the Medford Parcel into trust was made explicitly “pursuant to the IRA,” Coquille subsequently changed its position. Coquille now asserts the legal fiction that the

⁶ 25 C.F.R. § 292.11.

⁷ 25 C.F.R. § 292.12.

⁸ 25 U.S.C. § 2719(b)(1)(A) and 25 C.F.R. §§ 292.13-.18.

⁹ 25 U.S.C. § 461, et. Seq. and 25 C.F.R. Part 151.

¹⁰ *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015).

¹¹ *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Atty for the W.D. Mich.*, 198 F. Supp. 2d, 920, 935 (W.D. Mich. 2002).

Statute-Based Restored Lands Exception applies, based on an unsupportable reading of the Coquille Restoration Act (“CRA”).

The Cow Creek Tribe respectfully requests you reject Coquille’s contorted reading of the CRA and subject its application to take the Medford Parcel into trust to a Two-Part Determination, as intended by Congress.

B. Coquille is Already Gaming on Restored Lands.

Coquille is a “restored tribe.” Though affirmed by Treaties in 1851 and 1855, their recognition by and trust relationship with the federal government was terminated in 1954. In 1989 – just eight months after passing IGRA – Congress passed the CRA, restoring Coquille’s trust relationship with the federal government, including all rights and services appurtenant thereto, and providing for the creation of a Coquille reservation.

The CRA states, in pertinent part,

SEC. 3. RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES.

(a) FEDERAL RECOGNITION. -- Notwithstanding any provision of law, Federal recognition is hereby extended to the Coquille Indian Tribe. Except as otherwise provided herein, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this Act shall be applicable to the [Coquille Indian] Tribe and its Members.¹²

...

(e) INDIAN REORGANIZATION ACT APPLICABILITY.—The Act of June 18, 1934 (48 Stat. 984), as amended, shall be applicable to the Tribe and its Members.¹³

SEC. 5. TRANSFER OF LAND TO BE HELD IN TRUST.

(a) LANDS TO BE TAKEN IN TRUST.--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: ... The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the [Indian Reorganization] Act of June 18, 1934.¹⁴

The “‘service area’ means the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon.”¹⁵

Pursuant to the CRA, Coquille acquired extensive acreage in Coos County and established their reservation in the early 1990s. That land, in Coos County, qualified as Statute-Based Restored Lands. Coquille negotiated a gaming compact with then-Oregon Governor Barbara Roberts, in 1995, and

¹² 25 U.S.C. § 715a(a) (omitted).

¹³ 25 U.S.C. § 715a(e) (omitted).

¹⁴ 25 U.S.C. § 715c(a) (omitted).

¹⁵ 25 U.S.C. § 715(5) (omitted).

subsequently opened The Mill Casino, a class III gaming facility in North Bend, Coos County, Oregon. The Mill Casino is still in operation and successful. (Thus, Coquille has already benefitted from the Restored Lands Exception. Further expansion of Coquille’s gaming portfolio is exactly the sort of “open-ended license to game on newly acquired lands” IGRA sought to prohibit.¹⁶)

In 2012, Coquille purchased a 2.42-acre parcel in Medford, Jackson County, Oregon, and petitioned the Department to take the land into trust on their behalf. Coquille’s stated intention is to open a class II gaming facility on the parcel. Coquille has since purchased or leased multiple other parcels around the initial 2.42-acre parcel, built a one-hundred-plus room “Margaritaville Hotel,” and evinced an intention to develop an extensive gaming, golf, and recreational facility.

C. Coquille Asserts the Language in the CRA Permits it to Circumvent the IRA and IGRA’s Two-Part Determination for the Medford Parcel.

Coquille originally submitted its application to take the Medford Parcel into trust “pursuant to the IRA.”¹⁷ When the BIA asked Coquille to provide documentation showing it qualifies for the Connection-Based Restored Lands Exception, Coquille, likely because it realized it could not do so,¹⁸ changed its legal theory. On January 23, 2013, Coquille attorney, Brett Kenney, wrote to the Office of Indian Gaming (“OIG”) to request an opinion that the Medford Parcel qualifies as “restored lands” under IGRA. While continuing to emphasize that its application was made pursuant to the IRA,¹⁹ Coquille then abandoned the IRA entirely and asserted the legal fallacy it now relies on: that the CRA’s language alone qualifies the Medford Parcel as Statute-Based Restored Lands. A plain reading of the CRA and a review of its legislative history belie this fallacy, which you should now reject.

According to 25 C.F.R. Part 292, the Restored Lands Exception applies when a tribe (a) was at one time recognized; (b) subsequently lost its recognition; (c) had its recognition restored; and (d) “[t]he

¹⁶ *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015).

¹⁷ See Letter from Brenda Meade, Chairperson of the Coquille Indian Tribe, to Regional Director Stan Speaks (November 2, 2012) (the letter “requests the United States to accept title to approximately 2.4 acres of land and improvements (the ‘Subject Property’) to be held in trust for the Tribe . . . **The Tribe makes this request under the provisions of the Indian Reorganization Act...**”) (emphasis added). Moreover, in prior Interior Board of Indian Appeals briefing that we have shared with your office, Coquille admitted that its acreage in Medford, for example, “**is expressly subject to the normal IRA and 25 C.F.R. Part 151 process.**” Brief of Intervener, *Confederated Tribes of Coos v. Portland Area Director*, Nos. IBIA 94 168 A, IBIA 94 169 A, at 13 (Oct. 27, 1994) (emphasis added).

¹⁸ Coquille cannot meet the Connection-Based Restored Lands exception for two reasons. First, 25 C.F.R. § 292.12(b) requires a demonstration of “significant historical connection to the land,” which Coquille does not have. Second, pursuant to 25 C.F.R. § 292.12(c), in order to establish requisite temporal connection to the land, it (1) must “be included in the tribe’s first request for newly acquired lands since the tribe was restored to Federal recognition; or (2) [t]he tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe *is not gaming on other lands.*” (emphasis added.) Coquille’s request to take the Medford Parcel into trust is not its first such application. Moreover, while it was submitted within 25 years of Coquille’s restoration, the Coquille is already “gaming on other lands” in Coos Bay and evinces no intention to close its successful Mill Casino. Indeed, expansion of the Mill Casino was one of the alternatives considered in the Draft Environmental Impact Statement issued in November 2022.

¹⁹ Letter from Brett Kenney, Tribal Attorney for the Coquille Indian Tribe, to Paula Hart, Office of Indian Gaming, and Stan Speaks, Regional Director of the Bureau of Indian Affairs (January 23, 2013) (“By this letter, the Coquille Indian Tribe (the ‘Tribe’) requests an opinion that certain lands described below (the ‘Coquille Parcel’) will qualify as ‘restored lands’ eligible for gaming purposes . . . As summarized below, the Restoration Act decisively resolves all questions regarding the Tribe’s eligibility for the fee-to-trust process . . . The Restoration Act clearly states that the IRA applies to the Tribe . . .”).

newly acquired lands meet the criteria of ‘restored lands’ in § 292.11.”²⁰ Conditions (a) through (c) are met by Coquille. Condition (d) is not.

Section 292.11 describes the two kinds of Restored Lands: Statute-based and Connections-Based. For Statute-Based Restored Lands, the regulations say that if a tribe was restored by a Congressional enactment of legislation restoring the government-to-government relationship between the United States and the tribe, “the tribe must show” the legislation restoring it (not some other legislation) “requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area.”²¹ Coquille’s legal fallacy is that the CRA itself, and independently of the IRA, “requires or authorizes the Secretary to take [the Medford Parcel] into trust.” It does not.

i. The CRA is Clear and Unambiguous.

The CRA is unambiguous. First, Section 3 extends application of the IRA to Coquille in two separate clauses.²² Second, Section 5(a) of the CRA “specifies a geographic area” of Coos and Curry counties, where land acquisitions taken into trust for Coquille satisfy the Statute-Based Restored Lands exception.²³ While the first clause of Section 5(a) of the CRA requires the Secretary to “accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the [Coquille Indian] Tribe,” the Medford Parcel is not located in either Coos or Curry Counties and is therefore not subject to this clause. Instead, the Medford Parcel is subject to the next clause of Section 5(a) of the CRA, which clarifies: “The Secretary **may** accept any additional acreage in the Tribe’s service area **pursuant to his authority under the [Indian Reorganization Act of June 18, 1934 (48 Stat. 984)].**”²⁴

Therefore, by the plain text of the CRA, it is the IRA—not the CRA—that “authorizes the Secretary” to acquire trust acreage in Jackson County, where Medford is located. The Secretary “may” do so, and if she does, she may do so “pursuant to” the IRA under the authority thereby granted to her by Congress. The opposite must also be true: without the IRA, the CRA does not independently authorize the Secretary to take the Medford Parcel into trust. This distinction makes clear that it is the IRA that provides the Secretary her authority regarding the Medford Parcel and not the CRA. Language clarifying that the authority to take these lands into trust was derived from the IRA would be meaningless if the CRA itself gave this authorization.

ii. The CRA’s Legislative History is Inconsistent with Coquille’s Position.

As the U.S. Supreme Court explains: “in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”²⁵ Only

²⁰ 25 C.F.R. § 292.7.

²¹ 25 C.F.R. § 292.11(a).

²² CRA SEC. 3(a) and (e); 25 U.S.C. § 715a(a) and (e) (omitted).

²³ 25 U.S.C. § 715c(a) (omitted).

²⁴ 25 U.S.C. § 715c(a) (omitted) (emphasis added).

²⁵ *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992)(quoting, *Rubin v. United States*, 449 U.S. 424, 430 (1981) (citations omitted)).

“[w]here [statutory] language is not dispositive, [do courts] look to the congressional intent revealed in the history and purposes of the statutory scheme.”²⁶ Here, the CRA’s language is dispositive. Moreover, were it not, a review of the legislative history confirms Congress’ intent: Coquille was provided Statute-Based Restored Lands in Coos and Curry County, but not precluded from seeking transfer of additional land into trust in Jackson County – just like any other tribe, restored or otherwise – pursuant to the IRA.

Many of the same legislators who passed IGRA in 1988 remained in Congress for amendment and passage of the CRA in June 1989. While Congress had been passing restoration legislation since the 1970s, the CRA was the first restoration legislation to be introduced after the passage of IGRA. The legislators were aware of the tensions IGRA created between tribes who already had land in trust in 1988 and those who did not but could in the future. They took their task of balancing those interests seriously, as evidenced by the CRA’s legislative history.

The original text of H.R. 881, which eventually became the CRA, provided in Section 5 that: “The Secretary shall accept real property in the service area for the benefit of the tribe if conveyed or otherwise transferred to the Secretary . . .”²⁷ The bill was amended in the House Resources Committee by deleting the original Section 5 language that appears above. The text that was eventually enacted reads in pertinent part as follows:

The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres . . . The Secretary may accept any additional acreage in the Tribe’s service area pursuant to his authority under [the IRA].²⁸

In adopting this change, the House Resources Committee made clear that any land within Coquille’s service area but beyond Coos and Curry Counties would be acquired pursuant to the Secretary’s authority under the IRA.²⁹ The Senate Select Committee on Indian Affairs also specified the purpose of the bill “to provide for the transfer of certain lands within Coos and Curry Counties to the Secretary of the Interior in trust for the benefit for the Coquille Tribe.”³⁰ The Select Committee also noted “[t]he Coquille Tribe today has approximately 550 members, most of whom remain in the Coos Bay area of Oregon,” and that local support for passage of the CRA included county, municipal, and church group support originating in Coos and Curry Counties.³¹

Sponsors of the CRA, Senator Wyden and Representative DeFazio, specifically stated to Secretary Jewell on January 25, 2016:

When first introduced, the CRA authorized the blanket acquisition of land in trust for Coquille within its service area – which included Coos, Curry, Douglas, Jackson, and Lane Counties in Oregon, and it did not include a reference to Indian Reorganization Act (IRA) land acquisition. However, before the CRA passed, the House Natural

²⁶ *Confederated Salish & Kootenai Tribes v. U.S. ex rel. Norton*, 343 F.3d 1193, 1196 (9th Cir. 2003).

²⁷ Coquille Restoration Act, § 5(a) (as introduced) (emphasis added).

²⁸ 103 Stat 91, § 5(a) (emphasis added).

²⁹ H.R. Rept. No. 101-61, at 4.

³⁰ S. Rept. No. 101-50, at 1.

³¹ *Id.*, at 4.

Resources Committee amended the bill to clarify that the Secretary of the Interior “shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres,” and “may accept any additional acreage in the Tribe’s service area pursuant to his authority under the [Indian Reorganization] Act of June 18, 1934 (48 Stat. 984).” **This discretionary language was added to ensure that the Secretary could use the authority under the IRA to take land into trust for the Coquille Indian Tribe, the same way it can for other Oregon tribes, to be in addition to the original one thousand acres of restored lands that were taken into trust under the CRA.**³²

In sum, the CRA authors and legislative history all reject Coquille’s current interpretation of the legislation. Courts “ordinarily will not assume that Congress intended “to enact statutory language that it has earlier discarded in favor of other language.””³³ The CRA does not provide additional authority to the Secretary to take non-Coos/Curry County land into trust; only the IRA does that. The language was intended to ensure that Coquille could continue to use the IRA for discretionary acquisitions beyond its mandatory 1,000 acres. And as you know, IRA discretionary acquisitions are not eligible for the Statute-Based Restored Lands Exception; a Two-Part Determination is instead required.

iii. The Purported Redundancies in the CRA do not Render it Ambiguous.

In its January 23, 2013, letter to OIG, Coquille points to two sections of the CRA that “definitively resolve any question of the Tribe’s eligibility for IRA treatment in general, and particularly the provisions for trust land acquisition.”³⁴ There are actually three sections of the CRA that do so,³⁵ and the fact that the IRA is referenced and invoked multiple times does not create a redundancy. Moreover, though canons of construction disfavor readings of a statute that result in surplusage or redundancies, “[s]urplusage does not always produce ambiguity and our preference for avoiding surplusage constructions is not absolute.”³⁶ “For one thing, canons are not mandatory rules. They are guides that “need not be conclusive.” They are designed to help judges determine the Legislature’s intent as embodied in particular statutory language. And other circumstances evidencing congressional intent can overcome their force.”³⁷ Where “rigorous application of the canon does not seem a particularly useful guide to a fair construction of the statute,” it should not be applied.³⁸ This is particularly true where a statute “contains more than a few examples of inartful drafting.”³⁹

The CRA, as a whole, “contains more than a few examples of inartful drafting,” an unfortunate hallmark of the ad hoc nature of Indian restoration legislation. Nevertheless, when considered in the

³² Letter from Ron Wyden, U.S. Senator, Peter DeFazio, U.S. Representative to Sally Jewell, Secretary of Interior (Jan. 25, 2016) (bracketing and underlining emphasis in original; bold emphasis added).

³³ *Chickasaw Nation v. United States*, 534 U.S. 84, 93 (2001) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 443, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

³⁴ January 23, 2013, letter from Brett Kenney, Coquille Tribal Attorney, to Office of Indian Gaming, at p. 2.

³⁵ Sec. 3(a) extends “all laws of general application” to Coquille; Sec. 3(e) specifically extends the IRA to Coquille; and Sec. 5(a) clarifies that the IRA, not the CRA, is the authority for taking land into trust in Jackson, Curry, and Lane Counties. 25 U.S.C. §§ 715a(a) and (e), and 715c(a) (all omitted).

³⁶ *Lamie v. U.S. Trustee*, 540 U.S. 526, 536 (2004).

³⁷ *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001)(citation omitted).

³⁸ *King v. Burwell*, 576 U.S. 473, 491 (2015).

³⁹ *Id.*

full context of the statute, what may appear to be redundancies at first glance, do not render it ambiguous. After all, the CRA does much more than provide for restored lands in Coos and Curry counties. The CRA also provides for the restoration of the tribe to federal recognition, makes federal laws of general applicability to Indian tribes applicable to Coquille (notably, the IRA's provision of Secretarial authority to take lands into trust for Indian tribes is only a small part of what that statute provides), extends federal benefits and services to tribal members, calls for the compilation of a tribal roll and development of an economic development plan, and creates an interim tribal council to govern the tribe until a tribal constitution is adopted.

Given the broad overarching goals of the CRA, it is unsurprising that it both makes "all laws and regulations of general application to Indians" applicable to the Coquille "Tribe and its Members," and specifically invokes two such general application laws: the IRA and the Indian Tribal Government Tax Status Act.⁴⁰ While inartful, these clauses do not create ambiguity.

iv. Whether or not Indian Land has Reservation Status is Irrelevant to this Inquiry.

The fact that, pursuant to Section 5(b) of the CRA, land taken into trust within Coquille's service area "shall be a part of" Coquille's reservation is irrelevant to this inquiry. It does not, as Coquille argues, "bolster" its contorted reading of the CRA.⁴¹ This argument, which conflates the "Initial Reservation" and "Restored Lands" exceptions, is a red herring.

As Coquille pointed out in its January 23, 2013, letter to OIG, "IGRA does not require lands to be 'reservation' status to qualify for gaming."⁴² In fact, IGRA makes no distinction between reservation land and trust land. Both are included in the statute's definition of "Indian lands"⁴³ and IGRA regulates "gaming on Indian lands."⁴⁴ Land taken into trust for the benefit of a tribe after October 17, 1988, is ineligible for gaming, whether it be reservation or simply held in trust, unless an exception applies or a successful Two-Part Determination occurs.

Because the status of land as "reservation" or simply held in trust for the benefit of a tribe is irrelevant to whether or not that land is eligible for gaming under IGRA, Section 5(b) of the CRA must have been included for another purpose. Reading the statute as a whole, the purpose becomes clear: it is meant to guarantee that tribal members residing in the service area will be eligible for federal services that are only available to individual Indians who are "living on a reservation." While this reveals another potential redundancy in relation to benefits and services available to Coquille tribal members, it does not create ambiguity.⁴⁵

⁴⁰ 25 U.S.C. §§ 715a(a), (c), and (e) (all omitted). The Indian Tribal Government Tax Status Act, like the IRA, is a statute of general application to Indian tribes. "General rule.--An Indian tribal government shall be treated as a State—" for certain purposes. 26 U.S.C. § 7871.

⁴¹ January 23, 2013, letter from Brett Kenney, Coquille Tribal Attorney, to Office of Indian Gaming, at p. 3.

⁴² *Id.*

⁴³ 25 U.S.C. §2703(4).

⁴⁴ 25 U.S.C. §2702(3).

⁴⁵ The CRA, in restoring Coquille to federal recognition, extends "federal benefits and services" to its Members. Such benefits are generally available for Indian individuals "living on a reservation," thus the CRA defines "reservation" as "those lands subsequently acquired and held in trust by the Secretary of the benefit of the tribe" (without specifying the authority under

v. Even if the CRA were Ambiguous, the Indian Canons of Construction Would Not Apply.

Given the clarity of the CRA itself, and the legislative history rejecting Coquille’s strained reading of it, there is no ambiguity and the Indian canons of construction do not apply. It is a “settled principle of statutory construction” that the first step of the inquiry is to “determine whether the statutory text is plain and unambiguous. If it is, we must apply the statute according to its terms.”⁴⁶ “The canon of construction regarding the resolution of ambiguities in favor of Indians, however, does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress.”⁴⁷

Moreover, if the CRA were ambiguous, the Indian canons of construction would still be inapplicable because of the Federal Government’s trust obligations to all federally recognized tribes. “The canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians.”⁴⁸ Where, as here, the Department’s decision has the potential to negatively affect the interests of other tribes to which it owes trust obligations, the Indian canons do not apply.

This is because all tribal interests are not aligned. An interpretation of the restored lands exception that would benefit this particular tribe, by allowing unlimited use of restored land for gaming purposes, would not necessarily benefit other tribes also engaged in gaming. It might well work to their disadvantage.

The canon should not apply in such circumstances. The canon has been applied only when there is a choice between interpretations that would favor Indians on the one hand and state or private actors on the other. ... This court has explained that the [Indian canon] does not apply when tribal interests are adverse because “[t]he government owes the same trust duty to all tribes.” *Confederated Tribes of Chehalis Indian Reservation v. Washington*, 96 F.3d 334, 340 (9th Cir.1996). It cannot favor one tribe over another.⁴⁹

Thus, even if the CRA *were* ambiguous, and the legislative history didn’t sufficiently address the clear legislative intent, the Indian canons of construction would not apply in this instance.

vi. Adopting Coquille’s Interpretation of the CRA Would Violate the IRA’s Privileges and Immunities Clause.

Congress amended the IRA in 1994 to add:

which the lands are taken into trust or the counties in which such land must be located), Sec. 2(7); 25 U.S.C. § 715(7) (omitted), specifies that Coquille Members living in the service area “shall be deemed to be residing on a reservation,” Sec. 3(c); 25 U.S.C. 715a(c) (omitted), and repeats that lands taken into trust for the Tribe “shall be part of its reservation,” Sec. 5(b); 25 U.S.C. § 715c(b) (omitted).

⁴⁶ *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009).

⁴⁷ *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 and FN 16 (1986)(emphasis added).

⁴⁸ *Oneida Cnty., N.Y. v. Oneida Indian Nation of New York State*, 470 U.S. 226, 247 (1985).

⁴⁹ *Redding Rancheria v. Jewell*, 776 F.3d 706, 713 (9th Cir. 2015).

(f) Privileges and immunities of Indian tribes; prohibition on new regulations

Departments or agencies of the United States shall not promulgate any regulation or **make any decision or determination** pursuant to the [Indian Reorganization] Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.⁵⁰

The purpose of the clause is to prohibit “disparate treatment between similarly situated recognized tribes.”⁵¹ It applies to the Department’s decisions under both the IRA and IGRA, as IGRA is an “other Act of Congress” and “gaming activities on Indian lands under IGRA’s restored lands exception certainly are ‘privileges . . . available to the Indian tribe’ by virtue of a tribe’s status as a recognized Indian tribe.”⁵² A Department decision that violates the privileges and immunities clause—enhancing, for instance, the gaming privileges of one tribe relative to other tribes—is arbitrary and capricious.⁵³

“In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes’ gaming operations.”⁵⁴ Treating the Medford Parcel as Statute-Based Restored Lands would constitute a “decision or determination” that enhances Coquille’s gaming privileges relative to Cow Creek, Klamath Tribes, Karuk Tribe and all other affected tribes, would run afoul of the IRA’s privileges and immunities clause, and would be arbitrary and capricious.

D. No Restoration Act Has Been Interpreted in the way Coquille asks the CRA be Interpreted.

A number of restored tribes throughout the United States have language in their restoration acts similar to the “lands to be taken into trust” section of the CRA. Should you accept Coquille’s legal fallacy that its CRA, alone, qualifies the Medford Parcel for the Statute-Based Restored Lands Exception, the proliferation of off-reservation gaming across the country will be swift, inexorable, and entirely outside of the legislative scheme instituted by Congress. Courts have rejected such readings of similar restoration acts and will, we believe and if it should come to that, reject Coquille’s as well.

i. The Ponca Tribe’s Restoration Act does not Qualify Lands Outside of Geographic Area as Statute-Based Restored Lands.

Most recently, the 8th Circuit determined that the Ponca Tribe of Nebraska’s similar restoration act language, because it specifically invokes the IRA for such parcels, neither permits, requires, nor

⁵⁰ 25 U.S.C. §5123(f) (emphasis added).

⁵¹ *Koi Nation of Northern California v. United States Department of the Interior*, 361 F.Supp.3d 14, 54 (2019).

⁵² *Id.*, at 53.

⁵³ *Id.*, generally; see also *Scotts Valley Band of Pomo Indians v. United States Dep’t of the Interior*, No. CV 19-1544 (ABJ), 2022 WL 4598687 (D.D.C. Sept. 30, 2022) (Department decision placing one Indian tribe in a disadvantageous position as to other tribes found arbitrary and capricious.)

⁵⁴ *Redding Rancheria*, at 711.

precludes the Department from taking land into trust for gaming purposes outside of the specific geographic area. The Ponca Restoration Act of 1990 (“PRA”) states: “The Secretary shall accept not more than 1,500 acres of any real property located in Knox or Boyd Counties, Nebraska, that is transferred to the Secretary for the benefit of the Tribe . . . The Secretary may accept any additional acreage in Knox or Boyd Counties pursuant to his authority under the [IRA].”⁵⁵

The Ponca Tribe purchased a parcel of land in Carter Lake, Iowa in 1999, which was subsequently transferred into trust by the Department for non-gaming purposes. In 2007, the Ponca Tribe sought an opinion from the NIGC that the parcel was eligible for gaming under the Restored Lands Exception. (The Ponca Tribe’s factual situation is quite different and involves a purported agreement between the Ponca Tribe, the State of Iowa, and the Department. That distinction is not explored here and does not change the legal analysis as it applies to Coquille’s position.)

In 2007, the parameters of Restored Lands Exception were based on IGRA, common law, and a Department “Checklist for Gaming Acquisitions.” The comprehensive regulatory framework now found at 25 C.F.R. Part 292 did not become effective until June 19, 2008, and has never been applied to the Ponca Tribe’s Carter Lake parcel. Applying common law (a similar test to what we now call Connection-Based Restored Lands under Part 292), the NIGC determined that the Carter Lake parcel met the requirements of the Connection-Based Restored Lands Exception. The States of Nebraska and Iowa and City of Council Bluffs, Iowa, appealed the NIGC’s decision and the issue made its way up to the 8th Circuit Court of Appeals for the first time in 2010.

While the majority remanded the case back to the NIGC on other grounds, declining to address whether the PRA limits restored lands for the Ponca tribe to land in Knox and Boyd Counties, Nebraska, the dissent found: “While the Secretary may, pursuant to the Indian Reorganization Act, 25 U.S.C. § 465, take any land into trust for the benefit of an Indian tribe, such land so taken cannot qualify for the ‘restored lands’ exception to the general prohibition of gaming on trust lands.”⁵⁶ In other words, Judge Kornmann, dissenting, rejected any argument that land taken into trust pursuant to the IRA is land taken into trust pursuant to the PRA. Essentially, Judge Kornmann examined the discretionary acquisition provision of the PRA, which permits the Secretary to take land into trust under the IRA, and rejected the very interpretation Coquille is now advancing.

On remand, the Solicitor and NIGC sought briefing from the Ponca Tribe, States of Nebraska and Iowa, and City of Council Bluffs, Iowa, “on the threshold question of whether the PRA limits the Tribe’s restored lands to Knox and Boyd Counties in Nebraska.”⁵⁷ As part of the process, “[t]he Solicitor provided the [NIGC] an opinion concluding that, although the PRA provides for mandatory and discretionary trust acquisitions in Boyd and Knox Counties, the plain language of the statute allows Interior to take additional land into trust outside those counties under the Indian Reorganization Act and that land may qualify as restored land.”⁵⁸ Noting that “the Solicitor’s opinion concludes that the Carter Lake parcel, which is outside Boyd and Knox Counties, may qualify for restored lands status, it

⁵⁵ 25 U.S.C. § 983b(c) (omitted).

⁵⁶ *Nebraska ex rel. Bruning v. U.S. Dep’t of Interior*, 625 F.3d 501, 515 (8th Cir. 2010).

⁵⁷ *In re: Gaming Ordinance of the Ponca Tribe of Nebraska*, National Indian Gaming Commission, November 13, 2017, Amendment to [December 31, 2007] Final Decision and Order, at p. 8.

⁵⁸ *Id.*, at p. 30.

does not address whether the parcel does qualify,”⁵⁹ the NIGC went through the common law test for determining whether a parcel constitutes connection-based “restored lands” and determined that the Carter Lake Parcel did so.⁶⁰

[T]he Commission finds and concludes that: ...

2) The Ponca Restoration Act does not limit the Tribe’s “restored lands” to Knox and Boyd Counties, Nebraska.

3) The temporal, geographic, and factual circumstances factors of the [pre-Part 292, common law connection-based] restored lands analysis support the conclusion that the Carter Lake parcel is restored lands for a restored tribe.⁶¹

Unhappy with this outcome, the City of Council Bluffs, Iowa, appealed the NIGC’s decision on remand. The issue made its way back to the 8th Circuit Court of Appeals in 2021.

“The issue on appeal [wa]s whether the Ponca Restoration Act *restricts* land that can qualify as part of ‘the restoration of lands’ for the Tribe to land located in Knox and Boyd Counties, Nebraska”⁶² (emphasis added). The issue was not, and has never been, whether the PRA permits or requires, independent of the IRA, the Secretary to take land into trust outside of Knox and Boyd Counties. After noting that the PRA specifically provides, like the CRA, “that ‘[a]ll Federal laws of general application to Indians and Indian tribes,’ including the Indian Reorganization Act, ‘shall apply with respect to the Tribe,’”⁶³ the 8th Circuit went on to determine that the specific geographic location in the PRA does not preclude the Tribe from seeking application of the Connection-Based Restored Lands Exception to land outside of that location.

That Congress specified a geographic area in which the Secretary is required to accept land for the Tribe under the Ponca Restoration Act does not mean that only land within that area can be part of the restoration of lands for the Tribe. Lands expressly granted to a tribe in the tribe’s restoration act may be the “paradigm” of restored lands, see *City of Roseville v. Norton*, 348 F.3d 1020, 1025 (D.C. Cir. 2003), but lands acquired for a tribe through means other than a restoration act also can qualify. See *Oregon v. Norton*, 271 F. Supp. 2d 1270, 1278-80 (D. Or. 2003); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 162-64 (D.D.C. 2000).⁶⁴

“Means other than the restoration act” are, primarily, the IRA. Lands acquired pursuant to the IRA can only qualify for the Connection-Based Restored Lands Exception if either the pre-Part 292 common law connection-based test (for Ponca) or 25 C.F.R. § 292.12 (for Coquille) is satisfied. Nothing about the 8th Circuit’s decisions in regards to the Ponca Tribe’s Carter Lake parcel equates to a finding

⁵⁹ *Id.*

⁶⁰ Though Part 292 had been adopted by the time of this inquiry, the NIGC did not apply 25 C.F.R. § 292.12 (Connection-Based Restored Lands Exception) based on Part 292’s grandfather clause, found at 25 C.F.R. § 292.26.

⁶¹ *In re: Gaming Ordinance*, see fn. 8, at p. 3.

⁶² *City of Council Bluffs, Iowa v. United States Department of Interior*, 11 F.4th 852, 858 (8th Cir. 2021).

⁶³ *Id.*, at 859.

⁶⁴ *Id.*, at 858.

that the PRA, alone, qualifies lands outside of the specific geographic area as Statute-Based Restored Lands. “Congress guaranteed a certain amount of trust land to the [Ponca] Tribe without otherwise infringing on the Secretary’s typical discretion to accept land in trust for Indian tribes [pursuant to the IRA].”⁶⁵ That is all. And the same is true for Coquille.

ii. Other Courts have Likewise Rejected Coquille’s Reading of Similar Restoration Acts.

Other courts looking at similar scenarios foreshadowed Judge Kornmann’s 2010 Ponca dissent. In *Kickapoo Tribe of Oklahoma v. Superintendent, Shawnee Agency* (1985), Interior’s Board of Indian Appeals held that a similar provision mandated that the BIA take one hundred acres of land in Maverick County, Texas, into trust for the tribe, and, in addition, that the “Bureau of Indian Affairs, acting for the Secretary, has authority to take more than 100 acres in Maverick County, Texas, into Indian trust status for the benefit of the Texas Band of Kickapoo Indians . . . by, in effect, reaching back and exercising the authority of Section 5 of the Indian Reorganization Act.”⁶⁶ Just like the CRA, the Kickapoo language was meant to ensure “that this subsection is not construed as a limitation on the general authority provided in subsection (a).”⁶⁷ It is not an independent basis within a restoration act for acquiring land, but rather an “exercise[e of] the authority of Section 5 of the [IRA].”⁶⁸

City of Roseville v. Norton (2003) is also instructive.⁶⁹ There, the Court examined the following identical language in the Auburn Indian Restoration Act: “The Secretary may accept additional acreage in the tribe’s service area pursuant to the Secretary’s authority under [the Indian Reorganization Act].” The court held in *City of Roseville*:

In addition, plaintiffs argue that, if all of subsection (a) is taken as a “restoration” clause, the restoration necessarily encompasses land throughout the service area of the Tribe. The Tribe, however, argues for a different interpretation of subsection (a). The Tribe suggests that the second clause of the subsection, which provides that the Secretary may take additional acreage in the Tribe’s service area pursuant to the Indian Restoration Act, simply emphasizes that the section should not be read to limit the Secretary’s more general authority under the Indian Restoration Act. Such a construction is both logical and persuasive.⁷⁰

In sum, no court (or agency) has adopted Coquille’s novel and contrary interpretation of its restoration act. You shouldn’t either.

iii. Accepting Coquille’s Untenable Reading of the CRA will set a Dangerous Precedent.

A decision adopting Coquille’s interpretation of the CRA would catalyze off-reservation gaming not only in Oregon, but also in Michigan and Northern California, adversely affecting several

⁶⁵ *Id.*, at 860.

⁶⁶ 13 IBIA 339, 342 (1985).

⁶⁷ *Id.*

⁶⁸ *Id.* at 341.

⁶⁹ 219 F. Supp. 2d 130 (D.D.C. 2002), *aff’d*, 348 F.3d 1020 (D.C. Cir. 2003).

⁷⁰ *Id.*, at 162.

tribes and casinos in those areas. The Little River Band of Ottawa Indians,⁷¹ Little Traverse Bay Bands of Odawa Indians,⁷² United Auburn Indian Community,⁷³ and Paskenta Band of Nomlaki Indians⁷⁴ all have restoration acts with language similar to the CRA. Were Coquille to obtain a positive Restored Lands opinion based solely on the language in the CRA, it would set a precedent that would allow each of these tribes to game off-reservation without any of the safeguards that Congress purposefully included in the Two-Part Determination process (i.e., non-detriment to the local community and gubernatorial concurrence) and 25 C.F.R. § 292.12 (i.e., significant historic, modern, and temporal connections to the land).

Given the threat, Coquille's position poses to other tribes throughout Michigan, California, and Oregon, in particular, tribes such as the Klamath Tribes, Karuk Tribe, Elk Valley Rancheria, Tolowa Dee-i' Nation, Shingle Springs Band of Miwok Indians, Saginaw Chippewa Indian Tribe, and the Confederated Tribes of the Grand Ronde Community of Oregon have each urged you to reject that position.⁷⁵

Moreover, Coquille's service area in Coos, Curry, Douglas, Lane, and Jackson Counties undoubtedly (1) overlaps with Grand Ronde, Siletz, Cow Creek, Coos, and Lower Umpqua & Siuslaw Tribes' service areas; and (2) includes other tribes' ancestral lands and lands to which Coquille has no historic connection. If the Department accepts Coquille's position, Coquille would not be obliged to stop with a Class II casino in Medford; they could franchise Class II casinos on trust land throughout Southern Oregon. The intent of the Part 292 regulations is to fill the gaps in the implementation of IGRA "in light of the purposes Congress sought to serve."⁷⁶ When the Part 292 regulations were promulgated, the Department saw fit to explain that a "tribe's service area is often based on factors not connected with the DOI's Section 2719 analysis and is often ill-defined, overlapping, and potentially inconsistent."⁷⁷ Coquille's service area is therefore certainly not the type of "specific geographic area" that the Department envisioned when promulgating the regulations.⁷⁸ Interpreting the CRA as urged by Coquille would be antithetical to Congress's and the Department's intent, and harmful for Indian gaming across the country.

⁷¹ Pub. L. No. 103-324, 108 Stat. 2156 (Sept. 21, 1994).

⁷² *Id.*

⁷³ Pub. L. 103-434, 108 Stat. 4533 (Oct. 31, 1994).

⁷⁴ Pub. L. 103-454, 108 Stat. 4796 (Nov. 2, 1994).

⁷⁵ Letter from Steven Pego, Chief of the Saginaw Chippewa Indian Tribe of Michigan, to Kevin Washburn, Assistant Secretary of the Bureau of Indian Affairs (Aug. 5, 2015); Letter from Dale A. Miller, Chairman of the Elk Valley Rancheria, to Kevin Washburn, Assistant Secretary of the Bureau of Indian Affairs (Aug. 4, 2015); Letter from Russell Attebery, Chairman of the Karuk Tribe, to Kevin Washburn, Assistant Secretary of the Bureau of Indian Affairs (May 13, 2013); Letter from Nicholas Fonseca, Chairman of the Shingle Springs Band of Miwok Indians, to Kevin Washburn, Assistant Secretary of the Bureau of Indian Affairs (Nov. 19, 2015); Letter from Cheryle A. Kennedy, Chairwoman of the Confederated Tribes of the Grand Ronde Community of Oregon, to Bryan Mercier, Bureau of Indian Affairs, Northwest Regional Director (February 23, 2023); Letter from Karuk Chairperson Russell Attebery to Bryan Newland, Assistant Secretary-Indian Affairs and Bryan Mercier, Northwest Regional Director (February 22, 2023); and Transcript of December 15, 2022 Comment Hearing, 83:18-22 ("And I, [Gail Hatcher, Vice Chair for the Klamath Tribes], would like to say that the Klamath Tribes are opposed to a casino in Medford by the Coquille Tribe[... which] would be devastating to our tribe...").

⁷⁶ *Roberts v. Austin*, 632 F.2d 1202, 1208 (5th Cir. 1980) (quoting *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608 (1979)).

⁷⁷ 73 Fed. Reg. 29354, 29365 (May 20, 2008).

⁷⁸ *Id.*, at 29364.

Again, Coquille has already benefited from the Statute-Based Restored Lands Exception and currently operates the Mill Casino as a result. The Cow Creek Tribe urges you to reject Coquille's novel and unsupportable reading of its restoration act and subject its application to transfer the Medford Parcel into trust to a Two-Part Determination.

Very truly yours,



Anthony Broadman
General Counsel
Cow Creek Band of Umpqua Tribe of Indians

ATTACHMENT F

United States Senate

WASHINGTON, DC 20510

December 1, 2023

Secretary Deb Haaland
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Haaland,

We write today to urge you to reject the Coquille Indian Tribe's application to have land taken into trust under the restored lands exception to the Indian Gaming Regulatory Act (IGRA), for the development of a new Class II casino in Medford, Oregon.

Congress carefully drafted and passed IGRA to strike a balance between supporting Tribal communities through the pursuit of gaming revenues, while limiting the risks associated with gaming in communities across the country. Allowing the Coquille Indian Tribe to use the Medford land for gaming undermines that balance and is indisputably contrary to IGRA. Consideration of this application under the restored lands exception threatens the economic self-sufficiency and sovereignty of numerous Tribal governments and will lead to a harmful explosion of gaming in Oregon and across the region. Therefore, we urge you to reject this application. It must instead be subjected to a two-part determination, through which local governments and communities will have a voice in the process, as Congress intended.

The purpose of the restored lands exception is to ensure restored Tribes are treated equally to Tribes who already had property in trust when IGRA was passed, not to unfairly benefit certain Tribes to the detriment of others. Accordingly, when Congress passed the Coquille Restoration Act (CRA) – shortly after passing IGRA - it allowed the Coquille Indian Tribe to open one gaming facility, in Coos or Curry Counties, pursuant to the restored lands exception. The Tribe opened its Mill Casino in Coos County in 1995 and continues to operate the casino successfully today. A decision allowing the Coquille Indian Tribe to operate a second casino in Medford under the restored lands exception would run directly counter to the legislative intent of both IGRA and the CRA. Nothing in the CRA supersedes the requirements of IGRA, which requires the Department of the Interior to apply a two-part determination process to the Coquille Indian Tribe's application regarding a second casino. To suggest that it was the intent of Congress to allow the Coquille Indian Tribe to open a second casino in Medford requires willful disregard of the legislative history of the CRA and abuse of the restored lands exception. Accepting the Coquille Indian Tribe's application for the Medford property under the restored lands exception, when the Coquille Indian Tribe has already established a casino in Coos County, undermines Congressional intent and will harm numerous other Tribes.

According to economic analysis included in the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project Draft Environmental Impact Statement, a casino in Medford will irreparably

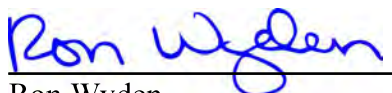
deprive at least three other Tribes of significant gaming revenues from their existing casinos, which will directly impair their ability to provide critical services to their Tribal members. As a result, the devastating economic impact of this decision would pit some of our country's most marginalized communities against each other, forcing them to compete in a "race to the bottom" and setting back progress in State-Tribal relations by decades.

Approving this application under the restored lands exception would not only harm Tribes but set a precedent that could lead to a deeply harmful proliferation of gaming in Oregon and across the region. An unfettered expansion of gaming would upset a careful balance that has been struck in Oregon and undoubtedly harm communities, particularly socially-disadvantaged communities, and communities of color.

Under your leadership, this Administration has taken historic steps to support Tribal Nations and Native communities. We appreciate your commitment to upholding the federal government's trust and treaty responsibilities and commitment to advancing equity—both for and among Tribes. A decision to give an advantage to one restored Tribe at the expense of so many other Tribes would stand in stark contrast to that commitment.

We urge you to continue your leadership in upholding the promises made to Tribal Nations and Native communities by not providing one Tribe unfair treatment to the detriment of Tribes and communities across the country—and to immediately reject this application under the restored lands exception.

Sincerely,



Ron Wyden
United States Senator



Jeffrey A. Merkley
United States Senator

cc: Bryan Newland
Assistant Secretary - Indian Affairs

ATTACHMENT G

NCTCA

NORTHERN CALIFORNIA TRIBAL CHAIRPERSONS ASSOCIATION



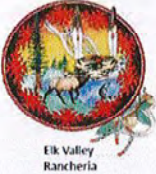
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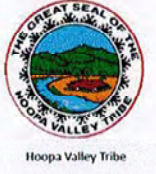
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Secretary Deb Haaland
United States Department of the Interior
1849 C. Street, N.W.
Washington, DC 20240



RE: Coquille EIS



Dear Secretary Haaland,

Please accept this letter on behalf of the Northern California Tribal Chairperson's Association (NCTCA). The NCTCA opposes the proposal by the Coquille Indian Tribe to construct a new gaming facility in Medford Oregon. This proposal is being considered under a deeply irregular process which disregards congressional intent, negatively impacts a number of Tribes located in the region, and could set a damaging precedent by allowing gaming a vast distance from the Coquille Indian Tribe's existing reservation and gaming facilities. NCTCA urges you to reject the proposal on these grounds and respect the views of the Tribes already located within that region.



The Coquille Indian Tribe currently operated a Class III gaming facility in North Bend, Oregon. The Tribe's administration, cultural, healthcare, education and housing offices are all located within Coos and Curry Counties. However, the new facility proposed by Coquille would be located approximately 170 miles away in Medford Oregon.



The Coquille Restoration Act, enacted in 1989, authorized the Secretary to take into trust property in Coos and Curry Counties and identifies those counties and the Coquille Service Area. This Act also include Douglas, Jackson, and Lane Counties in Oregon as part of the Coquille service area, but notably did not direct the Secretary to take land into trust in those counties. NCTCA supports the right of Tribal Governments to provide services to member wherever they are located, however, the ability to provide services does not equate to a right to have land taken into trust for gaming.



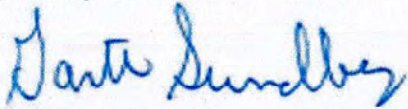
The Coquille proposal not only exceeds congressional intent as expressed in the Coquille Restoration Act, but it would negatively impact existing Tribal gaming facilities in the region. The Coquille Draft Environmental Impact Statement clearly identifies substantial revenue losses to 11 existing Tribal gaming facilities, impact which will damage the ability of those Tribes to provide key services to their members. Three of these gaming facilities would experience revenue declines well able 10%, upending the economic factors considered when Tribes made the decision to construct them. The negative impacts to these



existing facilities would result in decreased employment and harm the economies of local governments.

Rather than a natural expansion of trust lands in the area in which Coquille is located, the Medford gaming proposal is an effort to secure a more economically advantageous location. The Department has rightly viewed such proposals skeptically in the past, recognizing that allowing decisions to be made based upon purely economic factors would negatively impact Tribal gaming economies across the nation. NCTCA urges you to withdraw the Coquille Draft EIA, maintain the Department's existing processes and procedures, and reject this proposal.

Sincerely,



Garth Sundberg
NCTCA Chairman

Trinidad Rancheria
P.O Box 630
1 Cher-Ae Lane
Trinidad, CA 95570

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Secretary Deb Haaland
United States Department of the Interior
1849 C. Street, N.W.
Washington, DC 20240

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ATTACHMENT H



August 10, 2023

Bryan Newland
Assistant Secretary – Indian Affairs
1849 C Street, N.W.
Washington, D.C. 20240

RE: CNIGA's Opposition to the Coquille Indian Tribe's Medford Project

Dear Assistant Secretary Newland,

The purpose of the California Nations Indian Gaming Association (CNIGA) is to protect the sovereign right of California tribal governments to operate gaming on their lands. The Coquille Indian Tribe's application to transfer fee land in Medford, Oregon into trust for gaming using the restored lands exception directly threatens those sovereign rights.

Since 2015, our member Tribes, the Karuk Tribe, Elk Valley Rancheria, and the Tolowa Dee-Ni Nation have each urged your office to reject Coquille's position. CNIGA supports this request and asks that you work with Coquille to resubmit their application using the two-part determination process. Unlike the restored lands process the Department is currently using, the two-part determination process will allow the Department to consult with all impacted tribes, including those in California.

Thank you for your consistent support of Indian Country and we look forward to working with you to ensure that all tribes have an equitable opportunity to benefit from gaming.

Respectfully,

A handwritten signature in black ink, appearing to read 'James Siva', is written over a light blue horizontal line.

James Siva
Chairman, CNIGA

ATTACHMENT I



TRIBAL ALLIANCE OF SOVEREIGN INDIAN NATIONS

An intergovernmental association of tribal governments throughout Southern California

November 8, 2023

Bryan Newland
Assistant Secretary- Indian Affairs
1849 C Street, N.W.
Washington, D.C. 20240

TRIBAL GOVERNMENTS:

AGUA CALIENTE BAND OF CAHUILLA INDIANS

AUGUSTINE BAND OF CAHUILLA INDIANS

CABAZON BAND OF CAHUILLA INDIANS

CAHUILLA BAND OF INDIANS

CHEMEHUEVI INDIAN TRIBE

MORONGO BAND OF MISSION INDIANS

PECHANGA BAND OF INDIANS

SAN MANUEL BAND OF MISSION INDIANS

SANTA ROSA BAND OF CAHUILLA INDIANS

SANTA YNEZ BAND OF CHUMASH INDIANS

SOBOBA BAND OF LUISEÑO INDIANS

TORRES MARTINEZ DESERT CAHUILLA INDIANS

TWENTY-NINE PALMS BAND OF MISSION INDIANS

Dear Assistant Secretary Newland,

On behalf of the Tribal Alliance of Sovereign Indian Nations (TASIN), an intergovernmental association of federally recognized tribal governments throughout Southern California, we write to urge you to work with the Coquille Indian Tribe to resubmit their application using the two-part determination process. The Coquille Indian Tribe's application to transfer fee land in Medford, Oregon into trust for gaming using the restored lands exception directly threatens the sovereign rights of tribal governments to operate gaming on their lands.

Since 2015, the Karuk Tribe, Elk Valley Rancheria, and the Tolowa Dee-Ni Nation have each urged your office to reject Coquille's position. TASIN fully supports this request and strongly recommends that Coquille should be required to resubmit their application using the two-part determination process. Unlike the restored lands process the Department is currently using, the two-part determination process will allow the Department to consult with all impacted tribes, including those in California.

Thank you for your consistent support of Indian Country and we look forward to working with you to ensure that all tribes have an opportunity to benefit from gaming.

Sincerely,

LYNN VALBUENA
Chairwoman

CATALINA CHACON
Vice Chairwoman

STEVEN ESTRADA
Secretary

ROSEMARY MORILLO
Treasurer

cc: Tribal Chairman Dale Miller, Elk Valley Rancheria
Chairman Russell Attebery, Karuk Tribe
Chairperson Jeri Lynn Thompson, Tolowa Dee-Ni' Nation

ATTACHMENT J



Meister Economic Consulting, LLC
59 Promesa Avenue
Rancho Mission Viejo, CA 92694



Pyramid Associates, LLC
2112 W. University Drive, Suite 1251
Edinburg, TX 78539

December 18, 2024

Carla Keene, Chair
Michael Rondeau, CEO
Cow Creek Band of Umpqua Tribe of Indians
2371 NE Stephens Street, Suite 100
Roseburg, OR 97470

Re: Economic Impact of Proposed Medford Casino

Dear Chair Keene and Mr. Rondeau:

Meister Economic Consulting, LLC ("MEC"), in partnership with its affiliate Pyramid Associates, LLC ("Pyramid"), were retained by the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Band") to provide ongoing economic research and analysis of the likely economic impacts of the Proposed Coquille Tribe Casino in Medford, Oregon ("Proposed Medford Casino" or "proposed casino").

In November 2024, the Bureau of Indian Affairs ("BIA") published in the Federal Register a Notice of Availability for the Final Environmental Impact Statement ("FEIS") for the Proposed Medford Casino project.¹ Subsequently, the FEIS dated November 2024 became available for public review and comment.²

Set forth below are our observations and comments on the FEIS. Note that all of our critiques of the Draft Environmental Impact Statement ("DEIS") set forth in our DEIS comment letter dated February 23, 2023 still apply as they were not adequately addressed.³ As discussed further below, it is our qualified opinion that *the competitive effects conclusions of the FEIS are erroneous as they underestimate the true cannibalization by the Proposed Medford Casino.*

¹ Bureau of Indian Affairs, U.S. Department of Interior, "Final Environmental Impact Statement for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon," *Federal Register*, Vol. 89, No. 226, November 24, 2024.

² Acorn Environmental on behalf of the Bureau of Indian Affairs, U.S. Department of Interior, "Final Environmental Impact Statement" (<https://coquille-eis.com/final-environmental-impact-statement/>), November 2024.

³ Meister Economic Consulting, LLC, Letter submitted to the Cow Creek Band of Umpqua Tribe of Indians, February 23, 2023.

I. FEIS Competitive Effects Analysis Fails to Account for All Relevant Factors

First, we wish to be clear that we stand by our original conclusion that Seven Feathers Casino Resort will “lose approximately 28.5% of its total annual gross gaming revenues to the Proposed Medford Casino mainly due to the loss of much of its southern Oregon customer base, but also due to the loss of some of its pass-through traffic (i.e., tourists, business travelers, and long-haul trucks).”⁴ Whether this magnitude of loss occurs in Year 2 of the Medford Casino’s operation, as we projected, or in Year 6 due to a longer phase-in, as GMA now projects, it does not alter the magnitude of the final impact. At best, a longer phase-in period for the proposed Medford Casino merely delays the total impact, but it does not change the magnitude of the substitution effect.

Consequently, we reiterate our conclusion that “[l]osses of this magnitude would inevitably result in significant employment reductions in every department of Seven Feathers Casino Resort’s operations, including gaming, food and beverage, hotel, retail, and general administration. Overall, these losses may threaten the viability of Seven Feathers Casino Resort.”⁵ Furthermore, and more importantly, we reiterate our conclusion that:

“the aforementioned annual gaming and non-gaming revenue losses at Seven Feathers Casino Resort resulting from the introduction of the Proposed Medford Casino would cause detriment to the Cow Creek Band. A reduction in casino revenue, and the corresponding reduction in casino profit, will result in a direct loss of governmental revenue to the Cow Creek Band. The loss of governmental revenue would eliminate or drastically reduce funds available to the Cow Creek Band to fund essential government programs and services for its tribal membership.”⁶

To arrive at these conclusions in our original February 2023 report, we conducted a market impact analysis based on well-established demand analysis techniques that incorporate standard assumptions about the gaming market and the proposed gaming facilities. The analysis and conclusions were derived from a *custom designed gravity model*,⁷ which is a modeling technique commonly utilized for forecasting visits and revenues at casinos. Inputs to the model consisted of secondary public data sources for population (U.S. Census), disposable personal income (U.S. Bureau of Economic Analysis), and drive times between different locations (Bing Maps). The model was further refined using players club data from Seven Feathers Casino Resort, which was made available by the Cow Creek Band on a confidential basis, although our final report was quite transparent in showing how that data affected our analysis (see below).

As we noted in our report, the size (mass) of a gaming facility is a critical element in any casino’s ability to attract customers in a competitive environment. Most gravity models measure a casino’s mass exclusively in terms of gaming positions.⁸ However, it is known that customer decisions about

⁴ Meister Economic Consulting, LLC, *The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort*, submitted to the Cow Creek Band of Umpqua Tribe of Indians (February 2023), p. 19.

⁵ *Ibid*, p. 20.

⁶ *Ibid*, p. 20.

⁷ *Ibid*, pp. 13-18.

⁸ One slot machine equals one gaming position, while one table game is typically six positions.

competing facilities are also influenced by the types of gaming options available (i.e., video lottery terminals, slot machines, table games, poker, bingo, keno), parking availability, and the availability of non-gaming amenities, such as a hotel, food and beverage offerings, spa, entertainment venues, retail outlets, a golf course, etc. Nevertheless, non-gaming entertainment and resort amenities are not usually incorporated into most gravity models, including the one utilized by GMA.⁹ However, our model explicitly and transparently incorporates these amenities into the calculation of gravity factors.¹⁰ Consequently, *the full array of Seven Feathers Casino Resort's gaming and non-gaming amenities was incorporated into our analysis* of the proposed Medford Casino's competitive impact on Seven Feathers Casino Resort.

In light of these facts, the FEIS is 100% wrong in its responsive comments asserting that our competitive impact analysis “does not adequately consider the impact of the additional amenities present at the existing Seven Feathers facility in terms of its overall level of attraction in comparison to the Medford project,”¹¹ and “fails to explain that gaming facility size is only one factor that is important to include in a complex gravity model.”¹²

These statements are not only false, they misrepresent GMA's own analysis, which is not comprehensive, nor is it based on objective, comparative metrics of the gaming facility's relative competitiveness. In our report, we explicitly note and quantitatively incorporate into our gravity model that “Seven Feathers Casino Resort is owned and operated by the Cow Creek Band in Canyonville, Oregon...The 381,500 square foot facility includes:

- Approximately 68,400 square feet of gaming space, with 890 Class III slot machines and 24 table games;
- A 300-room hotel (including 12 suites) with a fitness room and indoor pool;
- 7,000 square foot spa;
- 456-seat bingo hall;
- 6 food and beverage outlets;
- A cabaret lounge with live entertainment;
- A gift shop;
- 22,000 square feet convention center;
- 182-space and 9-cabin Recreational Vehicle resort; and
- 1,200 parking spaces.”¹³

⁹ FEIS, Appendix E, p. 70 states that GMA's gravity model relies primarily on “the number of gaming positions provided within each [casino],” and while it purports to incorporate non-gaming amenities, its model relies exclusively on a subjective “attraction factor” that consists of nothing more than “visiting each facility to understand their relative aesthetic attractiveness.” The exact same methodology is found in FEIS, Appendix O, p. 5.

¹⁰ Meister Economic Consulting, LLC, *The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort*, submitted to the Cow Creek Band of Umpqua Tribe of Indians (February 2023), pp. 15-18, especially, Table 3.

¹¹ FEIS – Volume I Response to Comments, p. 3-46, Comment T13-27.

¹² Ibid, p. 3-46, Comment T13-28.

¹³ Meister Economic Consulting, LLC, *The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort*, Submitted to the Cow Creek Band of Umpqua Tribe of Indians (February 2023), pp. 2-3.

We further note in our report that “across the highway, the Cow Creek Band also owns and operates the 73-room Creekside Hotel & Suites. Adjacent to Creekside Hotel & Suites, the Band owns and operates 7 Feathers Truck & Travel Center, which includes a gas station, truck stop and lounge, coffee bar, deli, and convenience store.”¹⁴

However, our analysis did not merely take note of all these gaming and non-gaming amenities, but explicitly incorporates them into our transparent gravity model. Our gravity model uses objective quantitative metrics to generate a “gravity factor.” The gravity factor is a quantitative comparison of the relative competitiveness of different gaming facilities based on the quantity of these amenities and their weighted importance to the financial operations of a casino.¹⁵

Ironically, it is GMA that is not comprehensive because they do not objectively incorporate non-gaming amenities in their gravity model. Rather than including non-gaming amenities in an objective, quantitative manner in its gravity model, GMA instead merely throws in its model a subjective, qualitative “attraction factor” to try to account for the comparative attractiveness of competing gaming facilities.¹⁶ In contrast to our objective, transparent gravity factor that uses quantitative data for each non-gaming amenity, GMA’s attraction factor is solely based on “detailed property evaluations during the site visit,” which means it is a purely subjective assessment made by GMA during one-time walkthroughs of each casino. A subjective factor of this type is not objective or transparent, and therefore, it is easily manipulated by the consultant to generate any preferred result. GMA’s failure to properly include an objective, quantitative measure of non-gaming amenities is another reason why their gravity model underestimates the competitive impact of the proposed Medford Casino’s cannibalization of gaming and non-gaming revenues at Seven Feathers Casino Resort.

II. FEIS Competitive Effects Analysis Fails to Capture Proper Sizing of Seven Feathers Casino Resort

In its gravity model, GMA incorrectly attributes 950 Class III slot machines to Seven Feathers Casino Resort. However, this is old, inaccurate data, and another reason why GMA underestimates the impact of the proposed Medford Casino on Seven Feathers Casino Resort. In the gravity model used in our February 2023 report, we incorporated the correct number of Class III slot machines, 890. Slot machines account for approximately 46% of a casino’s mass – gravity factor – and, therefore, by overestimating the number of slot machines at Seven Feathers Casino Resort by nearly 7%, GMA injects another significant source of error into its competitive effects conclusions. This is on top of the error created by GMA not properly incorporating non-gaming amenities in an objective and quantitative manner in its gravity model.

¹⁴ Ibid, p. 3.

¹⁵ Clyde W. Barrow and David R. Borges, “Gravity Models and Casino Gaming: A Review, Critique, and Modification,” *Gaming Research and Review Journal*, Vol. 18, No. 1 (Spring 2014): 49-82.

¹⁶ FEIS, Appendix O, p. 29.

III. FEIS Competitive Effects Analysis Fails to Properly Account for the Contribution of the Existing Hotel to the Proposed Medford Casino's Cannibalization of Gaming Revenue

GMA fails to incorporate in any way the 111-room Compass by Margaritaville Hotel owned by the Coquille Indian Tribe directly adjacent to the site of the Proposed Medford Casino, and which will be used by the Proposed Medford Casino for their casino patrons. While we noted in our report that this hotel is not technically part of their land-in-trust application, it "should be considered part of the project when estimating the market and competitive effects of the proposed casino."¹⁷ It is disingenuous for GMA to pretend that the hotel will not be marketed in conjunction with the casino to enhance its attractiveness to potential casino patrons. Thus, a comprehensive and accurate gravity model *must* include the hotel. The hotel's omission from GMA's gravity model is another reason why GMA underestimates the competitive impact of the proposed Medford Casino's cannibalization of gaming and non-gaming revenues at Seven Feathers Casino Resort.

IV. FEIS Competitive Effects Analysis Relies on Irrelevant Data

In its revised analysis in Appendix O, GMA incorporates into its gravity model players club data from The Mill Casino, Hotel & RV Park, the Coquille Tribe's existing casino elsewhere in the State of Oregon, possibly to compensate for the fact that GMA did not in its original analysis in Appendix E include any actual market data, such as players club data for any of the tribal casinos that will be negatively affected by the Proposed Medford Casino.¹⁸ However, The Mill Casino is not located in or competing in the relevant market area as it is 169 miles and 3 hours from the Proposed Medford Casino site, which would place it outside the designated market area of even a large resort casino with a full array of non-gaming amenities. The Mill Casino data is not just irrelevant to measuring the impact of the proposed Medford casino on Seven Feathers Casino Resort, it generates an additional source of error and inaccuracy with regard to measuring that impact.

V. FEIS Competitive Effects Analysis Underestimates Total Competitive Impact Given it Erroneously Focuses Only on Local Market Gaming Revenue, Ignoring Outer Market Revenue

As documented in our February 2023 report, Seven Feathers Casino Resort generates a meaningful share of its gross gaming revenue from drive-through and pass-by traffic and these are the types of customers who are likely to stay overnight at the hotel and spend on money on food and beverage, unless intercepted by another gaming facility, such as the Proposed Medford Casino. This is another reason why the adjacent Compass Margaritaville Hotel must be incorporated into GMA's gravity model for purposes of accurately assessing the competitive impact of the Proposed Medford Casino.

GMA is aware of this out-of-market source of revenue, but for reasons unexplained, they do not incorporate this lost revenue into their estimates of the Proposed Medford Casino's competitive impacts. What GMA typically calls "outer market" revenue in its studies includes gaming and non-gaming revenue from tourists to the region, long-haul truck traffic, and other pass-through traffic.

¹⁷ Meister Economic Consulting, LLC, *The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort*, Submitted to the Cow Creek Band of Umpqua Tribe of Indians (February 2023), p. 4.

¹⁸ FEIS, Appendix O, p. 30.

However, GMA's competitive impact analysis simply ignores this outer market revenue, as the GMA report notes that "[f]or the purposes of the Substitution Effect Analysis, GMA focused its analysis on local market gaming revenue."¹⁹ Elsewhere, they confirm that "GMA compared each market participant's projected local market revenue levels (as the gravity model only projects the distribution of local market gaming revenue)."²⁰

There is no reason for GMA to make these statements if there is no other gaming revenue outside of local gaming revenue for the Proposed Medford Casino. Furthermore, it is only reasonable to assume that if outer market gaming revenue exists, a portion of it would come at the expense of existing casinos, just like the portion that would come from within the local market. At least a portion of their visitation to the Proposed Medford Casino would be cannibalization of existing casinos' revenues. This dynamic is especially relevant for tourists with extended stays in the area or those planning to visit multiple destinations throughout the region. By excluding outer market revenue from consideration in the competitive impact assessment, GMA has again underestimated the competitive impacts on the numerous existing tribal casinos.

VI. FEIS Competitive Effects Analysis Fails to Account for Non-Gaming Revenue Losses

As documented in our February 2023 report, Seven Feathers Casino Resort stands to lose approximately 52.1% of its total annual non-gaming revenues (i.e., food and beverage, hotel, retail, and other) to the Proposed Medford Casino if it were to be opened.²¹ However, the financial statements show that promotional allowances are only about 4% of gross non-gaming revenue (only food and beverage revenue). GMA claimed that "projected losses are overstated due to the fact that a large portion of food and beverage revenue at Seven Feathers Casino Resort would likely stem from comped revenue."²² GMA was merely assuming that a large percentage of food and beverage revenue was comped and they are incorrect. Further, GMA did not address other lost non-gaming revenue, which was not comped at all. Thus, significant non-gaming revenue losses will be incurred, and GMA still does not even attempt to compute those losses.

VII. Without Explanation, FEIS Competitive Effects Analysis Presents Different Results than the DEIS Competitive Effects Analysis

In the DEIS (GMA's 2016 study), GMA estimated that the Proposed Medford Casino would generate \$32.2 million in gross gaming revenue, 72.5% of which would be cannibalized from existing casinos and VLTs.²³ Notably, Seven Feathers Casino Resort would experience a 13.2% substitution effect.

In the FEIS (GMA's 2023 study), GMA estimated that the Proposed Medford Casino would generate \$49.4 million in gross gaming revenue, 75.2% of which would be cannibalized from existing casinos and VLTs.²⁴ Notably, Seven Feathers Casino Resort would experience a 21.3% substitution effect.²⁵

¹⁹ Ibid, p. 2.

²⁰ Ibid, p. 31.

²¹ Meister Economic Consulting, LLC, *The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort*, Submitted to the Cow Creek Band of Umpqua Tribe of Indians (February 2023), p. 19.

²² FEIS – Volume I Response to Comments, p. 3-46, Comment T13-27.

²³ DEIS, Appendix E, pp. 87-88.

The GMA estimates have changed over the last seven years, and GMA does not offer any explanation for these differences, although they use essentially the same model with the same assumptions in both studies (changing the years of the model would not explain the vast majority of the differences). Despite increasing their estimate of the substitution effect on Seven Feathers Casino Resort and the market as a whole, their model continues to underestimate the substitution effect on Seven Feathers Casino Resort for the numerous reasons documented elsewhere in this letter and our DEIS comment letter.²⁶ In our February 2023 report, we estimated that the Proposed Medford Casino would generate \$45.9 million in GGR and it would have cannibalize 28.5% of gross gaming revenues from Seven Feathers Casino Resort, and we used the best data possible in the form of their players club data.

VIII. FEIS Competitive Effects Analysis Significantly Underestimates Detrimental Economic Impact to Seven Feathers Casino Resort and Cow Creek Band

While GMA does not provide all the details, data, and underlying assumptions of the FEIS competitive effects analysis, there is enough set forth in Appendix O from which we can easily identify several reasons why *the detrimental economic impact on the Seven Feathers Casino Resort and the Cow Creek Band will be more severe than what is estimated in the FEIS*:

- Seven Feathers Casino Resort has reduced its number of gaming machines over time, adjusting to market conditions. It went from 955 in 2019 to 890 in 2023.²⁷ *This reduction in the number of gaming positions at Seven Feathers Casino Resort has the effect of reducing the comparative gravity of Seven Feathers Casino Resort relative to the Proposed Medford Casino, and thus, adding to the competitive advantage of the proposed casino.*
- Something not initially planned as part of the Proposed Medford Casino was the inclusion of a 111-room Compass by Margaritaville Hotel directly adjacent to the site of the Proposed Medford Casino. The hotel was not included in the Notice of Intent as a planned specification of the Proposed Medford Casino.²⁸ However, at the time of the publication of the FEIS, it was known that the hotel was already built and operational directly adjacent to the proposed casino site.²⁹ Despite this fact, the FEIS does not include in its competitive effects analysis the contribution of the hotel to gaming revenue at the Proposed Medford Casino and its competitive effects on other existing casinos, like Seven Feather Casino

²⁴ FEIS, Appendix O, pp. 2-3. At full build, GMA estimates total local gaming revenue of \$48,167,993, with a substitution effect of \$36,218,686 (75.2%).

²⁵ Ibid, p. 32.

²⁶ Meister Economic Consulting, LLC, Letter submitted to the Cow Creek Band of Umpqua Tribe of Indians, February 23, 2023.

²⁷ The count of 890 gaming machines was obtained from Seven Feathers Casino Resort in 2023. The count of 950 gaming machines came from the FEIS (Appendix O, p. 15). Note that table games increased slightly at Seven Feathers Casino Resort, from 19 in 2019 to 24 in 2023 (same sources).

²⁸ Bureau of Indian Affairs, U.S. Department of Interior, "Intent to Prepare an Environmental Impact Statement for Proposed Coquille Indian Tribe Fee-To-Trust and Casino Project, City of Medford, Jackson County, Oregon," *Federal Register*, Vol. 80, No. 10, January 15, 2015.

²⁹ Margaritaville, "Compass by Margaritaville Hotel Opens in Medford, Oregon," *Margaritaville Blog*, July 15, 2022, accessed January 2023 (<https://blog.margaritaville.com/2022/07/compass-by-margaritaville-hotel-opens-in-medford-oregon%EF%BF%BC/>); FEIS, pp. 2-1, 3-67, and 4-78.

Resort. Even if not technically part of the land-in-trust application, the hotel must be included in the market and competitive effects analyses because it affects the performance of the proposed casino. The FEIS even admits that “the adjacent hotel would be available to serve patrons of the proposed class II gaming facility.”³⁰ This statement is accurate but the failure to include the hotel in the competitive effects analysis ignores the fact that the presence of an adjacent hotel will further strengthen the Proposed Medford Casino’s “gravity” relative to the Seven Feathers Casino Resort, and other existing casinos as well. The added gravity will allow the Proposed Medford casino to attract more customers from longer distances, and therefore, penetrate more deeply into Seven Feathers’ market area. Overnight customers typically gamble for longer periods of time, and thus, spend more per visit. These customers will include drive-through traffic consisting of truckers and tourists, as well as Oregon and California residents who stay overnight at the adjoining hotel. *The addition of the adjacent Compass by Margaritaville Hotel further reduces the comparative gravity of Seven Feathers Casino Resort and other existing casinos relative to the Proposed Medford Casino, and thus, adds to the competitive advantage of the proposed casino.*

- The absence of Seven Feathers’ players club data from GMA’s gravity model is a significant source of error in estimating competitive effects. Standard gravity models make assumptions about the propensity to gamble at different distances from competing casinos based on Newton’s law of gravity. However, our February 2023 report documents that Seven Feathers Casino Resort’s customer base and revenue generation do not conform to a standard gravity model of the type employed by GMA. Seven Feathers Casino Resort’s geographic sources of revenue deviate from a standard gravity model due to the high proportion of its customer base that originates outside a 30-minute drive-time radius. Thus, as we stated in our February 2023 report:

“The Proposed Medford Casino will be strategically positioned to capture a significant percentage of Seven Feather Casino Resort’s local and regional customer base. As the casino will be located adjacent to I-5, the Coquille Indian Tribe’s Business Plan for the proposed casino observes that the site is ‘conveniently accessible to potential customers.’”³¹

As shown in Table 1 of that report, the residents of 10 Census Civil Divisions (CCD) accounted for 72.0% of the casino’s annual gross gaming revenues in 2021.³²

³⁰ FEIS, p. 2-28.

³¹ Meister Economic Consulting, LLC, *The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort*, submitted to the Cow Creek Band of Umpqua Tribe of Indians (February 2023), p. 4.

³² Ibid, p. 5.

Table 1

Major Sources of Seven Feathers Casino Resort Gross Gaming Revenue, 2021		
Census Civil Division	% of GGR	Minutes from Seven Feathers
Northwest Josephine CCD	15.0%	58
Sutherlin CC	14.7%	45
Medford CCD	12.6%	66
South Umpqua CCD	8.7%	32
Southwest Jackson CCD	6.7%	95
Eugene-Springfield CCD	4.9%	91
Tenmile CCD	2.8%	55
North Umpqua CCD	2.6%	84
Shady Grove CCD	2.3%	79
Cottage Grove CCD	1.7%	93
GGR from Top 10 CCDs	72.0%	

Source: Seven Feathers Players Club data (2021).

The residents of these CCDs have to travel between 32 and 95 minutes to reach Seven Feathers Casino Resort. Thus, for those Oregon residents who live to the south of Seven Feathers Casino, the proposed Medford Casino is a much shorter drive time and the loss of these customers will disproportionately affect Seven Feathers Casino Resort beyond what a standard gravity model would estimate for competitive impact. Notably, our February 2023 report shows that Seven Feathers Casino Resort generates approximately 63.1% of its annual gross gaming revenue from customers who live at a drive-time distance of 31-90 minutes, and a large proportion of these customers, particularly those living in southern Oregon, would be in the Proposed Medford Casino Resort’s primary market area (0-30 minute drive time). GMA has never addressed this fact in its response, nor has it adjusted its gravity model to account for this fact.

Seven Feathers Casino Resort also generates a significant share (6%) of its gross gaming revenue from drive-through and pass-by traffic.

*Our separate report, **The Competitive Impact of Proposed Medford Casino on Seven Feathers Casino Resort, dated February 2023, estimates that Seven Feathers Casino Resort would lose approximately 28.5% of its total annual gross gaming revenues and 52.1% of its total annual non-gaming revenues (i.e., food and beverage, hotel, retail, and other) to the Proposed Medford Casino.***³³

³³ Ibid, p. 19.

IX. FEIS Erroneously Claims Detrimental Economic Impact to Seven Feathers Casino Resort is Acceptable and Recoverable

The FEIS suggests that the gaming revenue losses to existing casinos, including an alleged 21.3% loss to Seven Feather Casino Resort, are acceptable and recoverable. For a variety of reasons, this conclusion is *speculative and fundamentally flawed*:

- The FEIS claims that “[a] typical properly managed facility should have the ability to streamline operations to absorb the magnitude of impacts described in Table 4.7-6 and remain operational.”³⁴ *There is no way that the FEIS can definitively draw this conclusion without data from the affected casinos.* It is our understanding that the BIA and its consultants do not have and did not use data from Seven Feathers Casino Resort or the Cow Creek Band, nevermind any of the other casinos that will be cannibalized by the proposed Medford Casino. Furthermore, GMA’s claimed reliance on players club data for an out-of-market casino, the Mill Casino, is completely irrelevant and does not help determine competitive impacts on Seven Feathers Casino Resort, or any other casino.
- Regardless of whether Seven Feathers Casino Resort can absorb the impact and remain operational, *the gaming and non-gaming revenue losses are real and significant.* The FEIS invokes a court decision not relevant to this matter that “competition...is not sufficient, in and of itself, to conclude [there would be] a detrimental impact on” a tribe.³⁵ With such a sizable decrease in revenue to the Seven Feathers Casino Resort, *this will directly translate into less governmental revenue to the Cow Creek Band, thus preventing it from being able to continue to (a) completely support existing tribal operations, (b) fully fund existing tribal programs, services, and economic development, and/or (c) provide for the current level of general welfare of its tribal members, the fundamental usages allowed by the Indian Gaming Regulatory Act.* Competition *per se* is not the detrimental impact to the Cow Creek Band, but instead it is the loss of Tribal government revenues that is the detrimental impact to the Cow Creek Band.
- The FEIS claims that “[e]stimated substitution effects are anticipated to diminish after the first year of project operations because local residents will have experienced the casino and will gradually return to more typical and more diverse spending patterns.”³⁶ This conclusion is *purely speculative.* It is *not supported by any data or analyses* in the main text of the FEIS, nor is this conclusion made or supported at all in studies completed by GMA in Appendices E or O. Moreover, in our extensive experience, while we have seen a wide variety of outcomes regarding the length of substitution effects, it does not diminish for many casinos, and in any case, depends on the specific circumstances of each situation. *In the case of the Proposed Medford Casino, given its close proximity to a significant portion*

³⁴ FEIS, p. 4-23. As noted elsewhere in this letter, the gaming competitive impact on Seven Feathers Casino Resort will be much higher than 21.3% given its ability to draw patrons from further than average distances (Source: Seven Feathers Casino Resort players club database).

³⁵ Ibid, p. 4-23.

³⁶ Ibid, p. 4-23.

of Seven Feathers Casino Resort's existing players, the substitution effect is going to be permanent.

- The FEIS claims that “substitution effects also tend to diminish after the first full year of operations because, over time, growth in the total population and economic growth tend to increase the dollar value of demand for particular good and services.”³⁷ This is improper for several reasons:
 - 1) The claim is *purely speculative*.
 - 2) The claim is *unsupported by any data or analyses* in the entirety of the DEIS and FEIS, including GMA's Appendices E and O.
 - 3) *The claim mistakenly equates growth in a market with a diminution of substitution effects*. These are two separate concepts. While there is likely to be natural growth each year in the market in which Seven Feathers Casino Resort exists, it will still continue to suffer the substitution effects as long as the Proposed Medford Casino is in operation. The substitution effects do not disappear just because the market grows. As such, given the ongoing nature of the substitution effects, *Seven Feathers Casino Resort will never get to the revenue level it otherwise would be at in any year after the introduction of the Proposed Medford Casino*.
 - 4) Given all of the above reasons, *the substitution effect is unrelated to and unaffected by growth in the market. Thus, there will be a permanent substitution effect on Seven Feather Resort Casino, as well as other existing casinos*.
- The DEIS suggests that a revenue loss is acceptable because Seven Feathers Casino Resort's gaming revenue will allegedly recover to the 2023, pre-Medford Casino level in 16.1 years (approximately 2040).³⁸ *It is impossible to verify this claim, but even if true, 16.1 years is an extremely long time to recovery and the losses for each of those 16.1 years are a loss that can NEVER be recovered by the Cow Creek Band, nor can the impacts on tribal members be repaired retroactively*.
- Even if revenue at Seven Feathers Casino Resort were to return to its 2023, pre-Medford Casino revenue level after 16.1 years, as claimed in the DEIS, it does not mean that the casino will have recovered and there are no longer substitution effects because during the 16.1 years gross gaming revenue at Seven Feathers would likely have naturally grown at approximately 2% to 3% per year. Thus, *at the end of 16.1 years, when the DEIS claims that Seven Feathers Casino Resort would allegedly return to its 2023, pre-Medford Casino revenue level, its gross gaming revenues will still be significantly below the level they would have been absent the Proposed Medford Casino. At 2% to 3% growth per year for 16.1 years, gross gaming revenues at Seven Feathers Casino Resort should have grown a*

³⁷ DEIS, p. 4-22 and Appendix E, p. 67.

³⁸ DEIS, p. 4-22 and Appendix E, pp. 89-90.

total of 32.2% to 48.3% above the 2023 pre-Medford Casino level,³⁹ and this lost growth can never be recovered by Seven Feathers Casino Resort or the Cow Creek Band.

X. FEIS Confirms Proposed Medford Casino Will Yield Only a Small Net Economic Benefit to the Region Because It Largely Cannibalizes Existing Casinos

Despite all its aforementioned shortcomings, the FEIS still admits that the Proposed Medford Casino will only grow the existing gaming market by a small amount, 24.8%.⁴⁰ This means that *the vast majority of the proposed Medford Casino's gross gaming revenues, 75.2%, will be cannibalized from existing gaming facilities in the market area, of which a large proportion will be cannibalized from Seven Feathers Casino Resort.* This means that *the Proposed Medford Casino will bring very little net economic benefit to the region because the proposed casino is largely just replacing economic activity that already exists in the casino's market area.*

If you have any questions regarding this letter, please do not hesitate to contact us at (949) 390-0555 or ameister@meistereconomics.com.

Sincerely,



Alan Meister, Ph.D.
CEO & Principal Economist
Meister Economic Consulting
(formerly with Nathan Associates)



Clyde W. Barrow, Ph.D.
Affiliate, Meister Economic Consulting
Principal Investigator, Pyramid Associates, LLC

³⁹ Applying 2% per year for 16.1 years equals 32.2% for the entire time period. Applying 3% per year for 16.1 years equals 48.3% for the entire time period.

⁴⁰ FEIS, p. 4-22, and Appendix O, p. 3. At full build, GMA estimates total local gaming revenue of \$48,167,993, with new market growth of \$11,949,308 (24.8%) and a substitution effect of \$36,218,686 (75.2%).

EXHIBIT 2 – ALL COMMENT LETTERS

EXHIBIT 3 – GMA RESPONSE TO COMMENTS



To: Acorn Environmental
From: GMA
Date: January 7, 2025
RE: Coquille Final EIS Comment Response

OVERVIEW

GMA was engaged by Analytical Environmental Services (“AES”) to conduct a Gaming Market Assessment (2018) and a subsequent Impact and Substitution Effects Analyses (2019), for the potential Cedars at Bear Creek Casino in Medford, Oregon (“Project”). As part of these analyses, GMA projected the sources of local market gaming revenue for the Project and evaluated the substitution effects the Project might have on local market gaming revenue for other tribal gaming facilities in the regional market.

In 2023, at the request of Acorn Environmental, GMA conducted an updated Substitution Effects Analysis, specifically addressing how these impacts would vary during each phase of construction if the Project opted for a phased opening approach, as well as providing current projections of the analysis at the time.

This document has been prepared to address comments surrounding GMA’s analysis being outdated, as well as specific comments made by Meister Economic Consulting (“Meister” or “MEC”) dated December 18, 2024 on the Final Environmental Impact Statement (Final EIS). In reference to MEC’s comments, the consultant made multiple critiques to GMA’s analysis regarding the proposed Medford casino. These critiques include, but are not limited to, the following items:

1. FEIS Competitive Effects Analysis Fails to Account for All Relevant Factors
2. FEIS Competitive Effects Analysis Fails to Capture Proper Sizing of Seven Feathers Casino Resort
3. FEIS Competitive Effects Analysis Fails to Properly Account for the Contribution of the Existing Hotel to the Proposed Medford Casino’s Cannibalization of Gaming Revenue

4. FEIS Competitive Effects Relies on Irrelevant Data
5. FEIS Competitive Effects Analysis Underestimates Total Competitive Impact Given it Erroneously Focuses Only on Local Market Gaming Revenue, Ignoring Outer Market Revenue
6. FEIS Competitive Effects Analysis Fails to Account for Non-Gaming Revenue Losses
7. Without Explanation, FEIS Competitive Effects Analysis Presents Different Results than the DEIS Competitive Effects Analysis
8. FEIS Competitive Effects Analysis Significantly Underestimates Detrimental Economic Impact to Seven Feathers Casino Resort and Cow Creek Band
9. FEIS Erroneously Claims Detrimental Economic Impact to Seven Feathers Casino Resort is Acceptable and Recoverable
10. FEIS Confirms Proposed Medford Casino Will Yield Only a Small Net Economic Benefit to the Region Because It Largely Cannibalizes Existing Casinos

This memorandum was prepared in response to claims made surrounding concerns of the analysis being outdated, as well as comments from MEC regarding GMA's methodologies and modeling practices.

RESPONSE TO CONCERNS SURROUNDING THE ANALYSIS BEING OUTDATED

GMA, the leading authority in gaming consultancy, employs rigorous, objective, and data-driven methodologies to ensure the accuracy and reliability of its findings. At the core of GMA's analysis for this engagement is the gravity model, which evaluates the Project's potential local market gaming revenue impact by assessing changes by assumed scenario. This overarching methodology is the industry standard framework for examining the effects of new developments. GMA has made numerous proprietary enhancements to its gravity model to more accurately and effectively evaluate gaming markets. For the purposes of this analysis, three primary sources of local market gaming revenue were identified for the Project: new market growth, substitution effects on regional competitors, and impacts to the VLT market.

The results provided within GMA's report remain substantively accurate, with its key findings unchanged since the studies were initiated. The competitive impacts are expected to remain consistent due to the stability of the regional gaming landscape. Social impacts are anticipated to be minimal, as gaming is already deeply integrated into the area, and the proposed facility is unlikely to contribute significantly to problem gambling. Additionally, the local labor force is sufficient to meet increased demand, and no adverse effects on housing availability are expected. These conclusions remain valid, even as minor adjustments to specific outputs may occur over time due to evolving economic factors.

Social impacts—including labor market disruptions, housing shortages, or increases in problem gambling—are expected to remain negligible. The region’s established gaming culture and sufficient workforce should allow the proposed facility to integrate seamlessly within the market without creating undue strain on existing resources. These findings are supported by robust analysis and support that the societal effects of the Project are unlikely to change materially, even with periodic updates to economic conditions.

RESPONSE TO COMMENTS FROM MEISTER ECONOMIC CONSULTING ON BEHALF OF THE COW CREEK TRIBE

Regarding specific comments provided by Meister Economic Consulting, GMA adheres to a disciplined approach grounded in empirical evidence and proven economic models. GMA does not rely upon “subjective” modeling practices when establishing its gaming factors. GMA’s proprietary methodologies have been fine-tuned through decades of practice, ensuring results that are consistent, replicable, and tailored to the unique characteristics of each market.

The firm has completed over 500 gravity model analyses throughout its tenure, leveraging robust knowledge of gaming market dynamics, with equal weighting from Oregon and the western United States. GMA’s insights extend beyond raw data to encompass a deep understanding of the factors that drive gaming facility performance, from non-gaming amenity mix to competitive pressures. This disciplined approach minimizes variability and inconsistencies often found in subjective analyses, ensuring that clients receive clear, objective, and defensible results.

GMA’s reputation as one of the most trusted consultants in the gaming and hospitality industry stems from its steadfast commitment to transparency, accuracy, and rigorous testing. Clients consistently rely on GMA’s analyses for their precision and reliability. While some consultants may attempt to discredit findings based on alternative methodologies, GMA’s proven track record and expertise stand as a testament to the validity of its approach.

Furthermore, MEC’s critiques of GMA’s use of data—specifically regarding alleged inaccuracies in the reported number of slot machines at Seven Feathers—are unfounded when considering the inherent sensitivity tribal casinos maintain with their data. Minor differences of these often occur due to one consultant utilizing data available in the public domain versus another being privy to the actual slot count at the facility. These are assumptions that are necessary in any gravity model that is constructed for the gaming industry. Further, the claim that GMA’s inclusion of 950 slot machines, as opposed to the actual 890, in its gravity model significantly impacts the results, lacks merit. This level of discrepancy is insufficient to meaningfully alter the model’s outcomes as it is one of many factors that drives the output of the model.

Moreover, the assertion that GMA attempted to “overcompensate” by incorporating Mill Casino’s players club data while excluding similar data from tribal casinos that would be impacted by the Project is a misrepresentation of the realities of data availability in this context. Players’ club data is widely recognized as highly sensitive and is rarely accessible for analysis unless provided by the subject client. To criticize GMA’s methodology on the basis of unavailable data from competing tribal casinos misleads the audience and demonstrates a disregard for the practical constraints of such analyses.

Again, although economic conditions may evolve over time, the percentage impacts of the proposed Medford facility are expected to remain consistent. GMA reiterates its confidence in its findings and stands firmly behind the integrity of its methodologies and the validity of its results. The company’s commitment to objectivity and excellence ensures it remains a trusted partner for clients seeking dependable and actionable analysis in the gaming industry.

CONCERNS SURROUNDING INCONSISTENT REPRESENTATION OF GMA METHODOLOGIES BY MEC

GMA would like to highlight the contradictions in MEC's claim from one project to the next. In this letter Meister explicitly states, “What GMA typically calls “outer market” revenue in its studies includes gaming and nongaming revenue from tourists to the region, long-haul truck traffic, and other pass-through traffic.” However, in another active BIA submission project Meister states that GMA credits the proposed facility with new markets from “nowhere” in reference to GMA’s outer market revenue projections. In this, MEC shows that it is aware of GMA’s usage of the outer market when it is convenient for their argument; however, claims that this revenue is created out of “nowhere” at other times when it is convenient for them.



Attachment 4

Tribal Resolution Adopting BMPs and Mitigation Measures



COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

RESOLUTION CY24128

BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES— MEDFORD PROJECT

WHEREAS, the Coquille Indian Tribe ("Tribe") is a federally recognized Indian tribe pursuant to the Coquille Indian Restoration Act of June 28, 1989, 25 U.S.C. §§ 715, et seq. ("the Act"); AND

WHEREAS, the Tribe is governed by the Coquille Tribal Council pursuant to the Tribal Constitution adopted by eligible voters of the Tribe on August 27, 1991, and approved by the Secretary of the Interior on September 9, 1991; and the Tribal Council is empowered to establish Tribal policies, enact Tribal laws and act for the Tribe; AND

WHEREAS, through a wholly owned subsidiary, the Tribe has acquired real property (the "Parcel") in Medford, Oregon for which it has applied to the Department of Interior's Bureau of Indian Affairs ("BIA") seeking trust and reservation status and requesting a determination for eligibility under the Indian Gaming Regulatory Act (25 U.S.C §§ 2701 et seq.) ("IGRA"); AND

WHEREAS, upon the BIA's approval of the Tribe's application, the Parcel will comprise a portion of the Tribe's reservation upon which the Tribe intends to develop and operate a gaming facility (the "Medford Project"); AND

WHEREAS, subject to Coquille Indian Tribal Code ("CITC") 315.150 the Tribal Council previously adopted the following to provide, among other things, for the regulation of construction, repair, maintenance, expansion, modification, operation or renovation of all structures on Tribal Land, including the Medford Project, in order to ensure that all such activities are conducted in a safe manner to protect persons, property, and the Tribe, and to provide for the regulation and oversight of workplace safety and personal safety on Tribal lands:

1. International Building Code, as amended and updated;
2. International Residential Code, as amended and updated;
3. International Mechanical Code, as amended and updated;
4. International Plumbing Code, as amended and updated; and
5. International Fire Code, as amended and updated.

; AND

WHEREAS, the Tribe has cooperated with the BIA’s process to prepare a Final Environmental Impact Statement (“FEIS”) pursuant to the National Environmental Policy Act (“NEPA”) in order to identify potentially significant environmental impacts related to the BIA’s acquisition of the Parcel as tribal reservation lands and the Tribe’s development of the Medford Project as described in Alternative A under the FEIS; AND

WHEREAS, the FEIS describes certain mitigation or protective measures and Best Management Practices as described in Exhibit A, to be implemented and specific to the Medford Project described in Alternative A under the FEIS (“BMPs”); AND

WHEREAS, it is in the Tribe’s best interests to affirmatively commit to performing the BMPs in and at the Medford Project; NOW

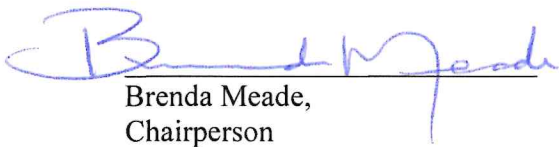
THEREFORE, BE IT RESOLVED, that the Tribal Council commits to adopting and implementing the BMPs identified in Exhibit A during the development and operation of the Medford Project as described in Alternative A of the FEIS; AND

THEREFORE, BE IT FINALLY RESOLVED, that the Tribal Council Chairperson or in her absence or unavailability, the Tribal Council Vice Chairperson, shall have the authority to sign all documents needed to give this resolution full force and effect.

CERTIFICATION

The foregoing Resolution was duly adopted at the Tribal Council Meeting held on the Coquille Indian Tribe Reservation in North Bend, Oregon, on December 13, 2024, with the required quorum present by a vote of

5 For; 0 Against; 1 Absent; 0 Abstaining.


Brenda Meade,
Chairperson

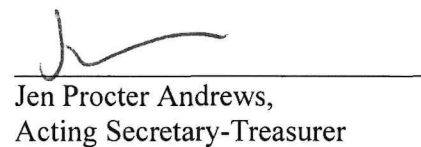

Jen Procter Andrews,
Acting Secretary-Treasurer

Exhibit A

BEST MANAGEMENT PRACTICES (BMPS)

Resource Area	Best Management Practices
Water Resources	<p>Hazardous Material BMPs shall be followed for filling and servicing construction equipment and vehicles.</p> <p>Fertilizer use shall be limited to the minimum amount necessary and shall be adjusted for the nutrient levels in the water used for irrigation. Fertilizer shall not be applied immediately prior to any anticipated rain events.</p> <p>The runoff from trash collection areas shall be directed to the sanitary sewer system for treatment at a wastewater treatment plant (WWTP) prior to discharge.</p> <p>Landscape irrigation shall be adjusted based on weather conditions and shall be reduced or eliminated during the wet portion of the year in order to prevent excessive runoff.</p> <p>Water conservation measures shall be implemented, including low-flow fixtures and electronic dispensing devices in faucets.</p>
Air Quality (Construction)	<p>The following dust suppression BMPs shall be implemented by the Tribe to control the production of fugitive dust (PM₁₀ and PM_{2.5}) and prevent wind erosion of bare and stockpiled soils.</p> <ul style="list-style-type: none"> ○ Spray exposed soil with water or other suppressant two times per day. ○ Restrict traffic speeds on site to 15 miles per hour to reduce soil disturbance. ○ Minimize dust emissions during transport of fill material or soil by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, and/or covering loads. ○ Promptly clean up spills of transported material on public roads. ○ Restrict traffic on site to reduce soil disturbance and the transport of material onto roadways. ○ Locate construction equipment and truck staging areas away from sensitive receptors as practical and in consideration of potential effects on other resources. ○ Cover dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris. <p>The following BMPs shall be implemented by the Tribe to reduce emissions of criteria pollutants, greenhouse gases (GHGs) and diesel particulate matter (DPM) from construction.</p> <ul style="list-style-type: none"> ○ It is recommended that the Tribe control criteria pollutants and GHG emissions whenever reasonable and practicable by requiring all diesel-powered equipment be properly maintained and minimize idling time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation. ○ Require at least 85% of construction equipment with a horsepower rating of greater than 50 be equipped with diesel particulate filters, which would reduce approximately 85% of DPM.
Air Quality (Operation)	<p>The Tribe shall reduce emissions of criteria air pollutants and GHGs during operation through the following actions, as applicable.</p> <ul style="list-style-type: none"> ○ The Tribe shall use clean fuel vehicles in the vehicle fleet where practicable. ○ The Tribe shall provide at least 20% of parking spaces with electric service capacity to enable future installation of electric vehicle (EV) charging stations. ○ The Tribe shall provide preferential parking for vanpools and carpools, which would reduce criteria pollutants and GHGs. ○ The Tribe shall offer employee incentives/benefits for alternatives to single occupancy use trips to the casino, such as subsidies/reimbursements for public transit use, biking, or carpooling/vanpooling. ○ The Tribe shall use low-flow appliances where feasible and utilize non-potable water to the extent practicable. The Tribe shall use drought resistant landscaping where practicable and provide "Save Water" signs near water faucets throughout the development. ○ It is recommended that the Tribe control criteria pollutants, GHG, and DPM emissions during operation whenever reasonable and practicable by requiring all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use; unless per engine manufacturer's

Exhibit A

Resource Area	Best Management Practices
	<p>specifications or for safety reasons more time is required. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.</p> <ul style="list-style-type: none"> ○ The Tribe shall use energy efficient lighting (e.g., light emitting diodes [LEDs]), which would reduce indirect criteria pollutants and GHG emissions. Using energy efficient lighting would reduce energy usage, thus, reducing indirect GHG emissions from the project. ○ The Tribe shall use energy-efficient appliances. ○ The Tribe shall install recycling bins throughout the casino for glass, cans, and paper products. Decorative trash and recycling receptacles shall be placed strategically outside to encourage people to recycle and not to litter. Security guards shall be trained to discourage littering on site.
Socioeconomic Conditions	<p>The Tribe shall prominently display (including on any automatic teller machines [ATMs] located on-site) materials describing the risk and signs of problem and pathological gambling behaviors. Materials shall also be prominently displayed (including on any ATMs located on-site) that provide available programs for those seeking treatment for problem and pathological gambling disorders, including but not limited to a toll-free hotline telephone number.</p> <p>The Tribe shall conduct annual customer surveys in an attempt to determine the number of problem and pathological gamblers and make this information available to state or federal gaming regulators upon request.</p> <p>The Tribe shall undertake responsible gaming practices that at a minimum require that employees be educated to recognize signs of problem gamblers, that employees be trained to provide information to those seeking help, and that a system for voluntary exclusion be made available.</p> <p>Procedures shall be implemented to allow for voluntary self-exclusion, enabling gamblers to ban themselves from the gaming establishment for a specified period of time.</p> <p>Responsible gaming policies currently in place at the Mill Casino shall be instituted by the Coquille Indian Gaming Commission at the proposed gaming facility, including monitoring customers for signs of problem gaming, providing information about problem gaming to customers suspected of having an unhealthy gaming habit, and maintaining and enforcing policies to monitor and respond to problem gaming, including the most stringent possible self-ban rule (a lifetime ban from the facility grounds).</p>
Land Use	<p>Light fixtures would not extend above 30 feet in height, and the lighting would be designed to confine direct rays to the premises.</p> <p>Signage would be architecturally compatible with the buildings and would be of appropriate size and content.</p>
Solid Waste	<p>Construction waste shall be recycled to the fullest extent practicable by diverting green waste and recyclable building materials (including, but not limited to, metals, steel, wood, etc.) away from the solid waste stream.</p> <p>Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.</p> <p>During construction, the site shall be cleaned daily of trash and debris to the maximum extent practicable.</p>
Law Enforcement	<p>Parking areas shall be well lit and monitored by parking staff and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other similar criminal activity.</p> <p>Areas surrounding the gaming facilities shall have “No Loitering” signs in place, be well lit, and be patrolled regularly by roving security guards.</p> <p>The Tribe shall conduct background checks for all gaming employees and ensure that all employees meet licensure requirements established by IGRA and the Tribe’s Gaming Ordinance.</p> <p>The Tribe shall adopt a Responsible Alcoholic Beverage Policy that shall include, but not be limited to, checking identification of patrons and refusing service to intoxicated individuals.</p> <p>The Tribe shall provide an adequate level of on-site security at the site during all hours of operation.</p> <p>The Tribe shall use best efforts to assist the City of Medford and/or Jackson County in law enforcement matters and to detain individuals when requested by either municipality, to the extent allowable under applicable law. As is current practice at the Mill Casino, the Tribe shall not tolerate any criminal act or attempted criminal act on the facility’s premises, and any such act shall be investigated, and when practical, charges shall be brought against suspects to the fullest extent of the law; in cases of suspected criminal activity calls will be made to local dispatch for law enforcement assistance.</p>

Exhibit A

Resource Area	Best Management Practices
	Employees shall be trained in the proper involvement of law enforcement officials in disturbances on-site.
Fire Protection and Emergency Medical	<p>During construction, any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.</p> <p>The Tribe will provide medical and fire training to staff (i.e., cardiopulmonary resuscitation and fire extinguisher training).</p>
Electricity and Natural Gas	<p>The selected heating, ventilation, and air conditioning (HVAC) system shall minimize the use of energy by means of using high efficiency variable speed chillers, high efficiency low emission steam and/or hot water boilers, variable speed hot water and chilled water pumps, variable air volume air handling units, and air-to-air heat recovery where appropriate.</p> <p>Energy-efficient lighting (e.g., LEDs) shall be installed throughout the facilities. Dual-level light switching shall be installed in support areas to allow users of the buildings to reduce lighting energy usage when the task being performed does not require all lighting to be on. Day lighting controls shall be installed near windows to reduce the artificial lighting level when natural lighting is available. Controls shall be installed for exterior lighting, so it is turned off during the day.</p>
Hazardous Materials	<p>Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. The BMPs, that are designed to reduce the potential for incidents involving the hazardous materials, shall include the following:</p> <ul style="list-style-type: none"> ○ To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment and shall not be stored on site. ○ Catch pans shall be placed under equipment to catch potential spills during servicing. ○ Refueling shall be conducted only with approved pumps, hoses, and nozzles. ○ All disconnected hoses shall be placed in containers to collect residual fuel from the hose. ○ Vehicle engines shall be shut down during refueling. ○ No smoking, open flames, or welding shall be allowed in refueling or service areas. ○ Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill. ○ Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents. ○ Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, state, and federal regulations. ○ All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance, refueling, and storage areas shall be inspected monthly. ○ Results of inspections shall be recorded in a logbook that shall be maintained on site. <p>Hazardous materials must be stored in appropriate and approved containers in accordance with applicable regulatory agency protocols.</p> <p>Potentially hazardous materials, including fuels, shall be stored away from storm drainage systems, and secondary containment shall be provided for all hazardous materials stored during construction and operation.</p> <p>In the event that contaminated soil is encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, representatives of the Tribe shall consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Any and all contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.</p> <p>The Tribe shall ensure, through the enforcement of contractual obligations, that all contractors prepare hazardous materials business plans and that they transport, store, and handle construction and remediation-related hazardous materials in a manner consistent with applicable regulations and guidelines. Recommendations may include, but are not limited to, transporting and storing materials</p>

Exhibit A

Resource Area	Best Management Practices
	<p>in appropriate and approved containers, maintaining required clearances, and handling materials in accordance with the applicable federal, state, and/or local regulatory agency protocols.</p> <p>Prior to demolition activities associated with renovations to the Roxy Ann Lanes building, all construction areas will be inspected and tested for the presence of potentially asbestos containing materials, lead-based paint and polychlorinated biphenyls (PCBs) in accordance with EPA recommended testing procedures. Should potentially asbestos containing materials, PCBs, and/or lead paint be encountered during construction activities, construction personnel will follow proper federal regulations. This includes properly identifying, classifying, managing, and disposing of any hazardous materials or wastes in accordance with title 40 CFR parts 260 through 273.</p>
Aesthetics	<p>Placement of lights on buildings shall be designed so as not to cast light or glare offsite.</p> <p>Shielding, such as with a horizontal shroud, shall be used for all outdoor lighting so as to ensure it is downcast.</p> <p>Timers shall be utilized so as to limit lighting to necessary times.</p> <p>All exterior glass shall be non-reflective low-glare glass.</p>

FINAL EIS MITIGATION MEASURES (MM)

Mitigation Number and Resource Area	Proposed Mitigation
<p>MM 5.2 Geology and Soils</p>	<p>The following mitigation measure shall be implemented in accordance with federal regulatory requirements for Alternatives A and B:</p> <p>A. The Tribe shall obtain coverage under the USEPA General Construction NPDES permit under the federal requirements of the CWA. As required by the NPDES General Construction Permit, a SWPPP shall be prepared that addresses potential water quality impacts associated with construction of the project alternatives. The SWPPP shall make provisions for erosion prevention and sediment control and control of other potential pollutants.</p> <p>The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to assure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP</p> <p>To minimize the potential for erosion to occur on the site, the following items shall be addressed in the SWPPP and implemented pursuant to the NPDES General Construction Permit.</p> <ol style="list-style-type: none"> 1. Stripped areas shall be stabilized through temporary seeding using dryland grasses. 2. Conveyance channels and severe erosion channels shall be mulched or matted to prevent excessive erosion. 3. Exposed stockpiled soils shall be covered with plastic covering to prevent wind and rain erosion. 4. The construction entrance shall be stabilized by the use of rip-rap, crushed gravel, or other such material to prevent the track-out of dirt and mud. 5. Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap. 6. Filter fences shall be erected at all on-site stormwater exit points and along the edge of graded areas to stabilized non-graded areas and control siltation of onsite stormwater. 7. Dust suppression measures included in Section 2.3.3 shall be implemented to control the production of fugitive dust and prevent wind erosion of bare and stockpiled soils. 8. Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans. This can be done using construction fences or by creating buffer zones. 9. Construction traffic shall be limited in its access to the site to a single entrance if possible. Haul roads and staging areas shall be developed to control impacts to on-site soil. All access points, haul roads, and staging areas shall be stabilized with crushed rock. Any sediment shall be removed daily and the road structure maintained. 10. Downstream waterways and properties shall be protected during construction from increased flow rates due to the higher impervious nature of the site. During construction, detention ponds can be

Exhibit A

Mitigation Number and Resource Area	Proposed Mitigation
	<p>combined with sedimentation ponds as long as the detention volume is not impacted by a buildup of sediment.</p> <ol style="list-style-type: none"> 11. Concentrated flows create high potential for erosion; therefore, any slopes shall be protected from concentration flow. This can be done by using gradient terraces, interceptor dikes, and swales, and by installing pipe slope drains or level spreaders. Inlets need to be protected to provide an initial filtering of stormwater runoff; however, any sediment buildup shall be removed so the inlet does not become blocked. 12. The SWPPP shall address maintenance and repair of heavy equipment on the site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant. 13. Staging areas and haul roads shall be constructed to minimize future over-excavation of deteriorated sub-grade soil. 14. If construction occurs during wet periods, sub-grade stabilization shall be required. Mulching or netting may be needed for wet-weather construction. 15. Temporary erosion control measures (such as silt fence, gravel filter berms, straw wattles, sediment/grease traps, mulching of disturbed soil, construction stormwater chemical treatment, and construction stormwater filtration) shall be employed for disturbed areas. 16. Exposed and unworked soils shall be stabilized by the application of effective BMPs. These include, but are not limited to, temporary or permanent seeding, mulching, nets and blankets, plastic covering, sodding, and gradient terraces. 17. The SWPPP shall address the maintenance of both temporary and permanent erosion and sediment control BMPs. <p>The following measure shall be implemented for Alternative C:</p> <ol style="list-style-type: none"> B. The Tribe shall adopt a tsunami evacuation plan consistent with the State of Oregon Tsunami Evacuation Map for the Coos Bay Peninsula.
<p>MM 5.3 Water Resources</p>	<p>Construction Impacts</p> <p>The following mitigation measure shall be implemented in accordance with federal regulatory requirements for Alternatives A and B.</p> <ol style="list-style-type: none"> A. As described under MM 5.2 (A), prior to construction, an NPDES General Construction permit from the USEPA shall be complied with and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above. B. In accordance with the NPDES General Construction Permit, a sampling and monitoring program shall be developed and implemented to assess the quality of surface water entering and leaving the site. At a minimum, sampling sites shall include a location above all proposed development and a location downstream of all development. Analyses shall include total suspended solids (TSS), oils, and greases. <p>The following mitigation measure shall be implemented in accordance with federal regulatory requirements for Alternative B.</p> <ol style="list-style-type: none"> C. As described in detail under MM 5.5 (G), a 404 permit shall be obtained from the USACE prior to any discharge of dredged or fill material into waters of the U.S, and a 401 Water Quality Certification shall be obtained from the USEPA.
<p>MM 5.4 Air Quality Operation</p>	<p>The BMPs described in Section 2.3.3 will minimize potential effects to air quality resulting from construction and operation of the project alternatives; therefore, no mitigation is required.</p>
<p>MM 5.5 Biological Resources</p>	<p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements (MBTA and ESA) for Alternatives A and B.</p> <ol style="list-style-type: none"> A. In accordance with the MBTA, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the site for active nests should construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15). In addition, and in accordance with the Bald and Golden Eagle Act, a qualified biologist will conduct at least two preconstruction surveys for bald and golden eagles should construction activities commence during the nesting season for eagles (between January 1 and August 31). Following the preconstruction nesting bird surveys, if any active nests of migratory birds are located within 100 feet of the Action Area, a no-disturbance buffer zone shall be established around the nests to avoid disturbance or destruction of the nest. Following the preconstruction survey for nesting bald and golden eagles, if any active eagle nests

Exhibit A

Mitigation Number and Resource Area	Proposed Mitigation
	<p>are located within 330 feet of the Action Area, a no-disturbance buffer zone shall be established around the nests and nesting resources must also be protected (perching and fledging trees, replacement nest trees, and forested area around the nest tree) to avoid disturbance or destruction of the nest. The distance around the no-disturbance buffer for either migratory birds or eagles shall be determined by the biologist in coordination with the USFWS, if needed, and will depend on the level of noise or construction activity, the level of ambient noise in the vicinity of the nest, line-of-sight between the nest and disturbance, and the species at hand. The biologist shall delimit the buffer zone with construction tape or pin flags. The no-disturbance buffer will remain in place until after the nesting season (to be lifted in August or September) or until the biologist determines that the young birds have fledged. A report shall be prepared and submitted to the Tribe and the USFWS following the fledging of the nestlings to document the results.</p> <p>B. Trees anticipated for removal will be removed between September 15 and December 31, prior to the nesting season. If trees are anticipated to be removed during the nesting season, a preconstruction survey will be conducted by a qualified biologist. If the survey shows that there is no evidence of active nests, then the tree will be removed within 10 days following the survey. If active nests are located within trees identified for removal, a species-specific buffer will be installed around the tree and additional measures outlined in section A above shall be implemented.</p> <p>C. As described under MM 5.2 (A), prior to construction, the project shall obtain coverage under the NPDES General Construction permit from the USEPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.</p> <p>D. The site shall incorporate BMPs for stormwater runoff, including sedimentation basins, vegetated swales, and runoff infiltration devices if necessary, to ensure that the water quality of on-site or nearby waters does not degrade. Stormwater runoff from the site shall be monitored according to BMPs to assess the quality of water leaving the site.</p> <p>E. All equipment refueling and maintenance shall occur in an approved staging area and an agency-approved spill prevention plan will implemented by the contractor.</p> <p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternative B.</p> <p>F. A delineation of wetlands and waters of the U.S. shall be conducted within the Phoenix Site in accordance with Section 404 of the CWA and submitted to the USACE for verification. If it is determined that wetlands and/or Waters of the U.S. occur within the development footprint of Alternative B, the requirements of Mitigation Measure G shall apply.</p> <p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternatives B and C.</p> <p>G. A USACE 401 Water Quality Certification permit and a nationwide 404 permit shall be obtained from USACE prior to any discharge of dredged or fill material into Waters of the U.S. The Tribe shall comply with all the terms and conditions of the permit and compensatory mitigation shall be in place prior to any direct effects to Waters of the U.S. Minimal mitigation measures would require the creation of wetlands at a 1:1 ratio for any wetlands impacted. Full mitigation will be carried out in compliance with any permits.</p> <p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternative C.</p> <p>H. Reinforcement of the bulkhead shall occur in a timeframe agreed to with the USACE to minimize impacts to Oregon coast coho salmon (<i>Oncorhynchus kisutch</i>) egg and fry life stages, and Pacific eulachon (<i>Thaleichthys pacificus</i>) juveniles within the associated bay and estuarine waters.</p> <p>I. Consultation on Standard Local Operating Procedures for Endangered Species (SLOPES) with NMFS and the USACE shall occur to determine the BMPs required to minimize disturbance and mobilization of sediment during the bulkhead reinforcement. BMPs and sediment stabilization measures shall be implemented immediately after reinforcement of the bulkhead and the surrounding area to prevent erosion and discharge of sediment into Coos Bay. These measures include, but are not limited to, installation of erosion blankets, moveable silt or sediment containment curtains, and coffer dams, as well as other measures as outlined in MM 5.2 (A).</p>
<p>MM 5.6 Cultural and Paleontological Resources</p>	<p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternatives A and B.</p>

Exhibit A

Mitigation Number and Resource Area	Proposed Mitigation
	<p>A. All earth disturbing activities involving excavation greater than 2 feet in depth shall be monitored by a qualified archaeologist. If intact archaeological deposits and/or cultural features including human remains are discovered during project construction and monitoring activities, the following measures will apply.</p> <p>B. In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist can assess the significance of the find. If any find is determined to be significant by the archaeologist, then representatives of the Tribe shall meet with the archaeologist to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist according to current professional standards.</p> <p>C. If human remains are discovered during ground-disturbing activities on Tribal lands, the Tribal Official and BIA representative shall be contacted immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.</p> <p>D. In the event of accidental discovery of paleontological materials during ground-disturbing activities, a qualified paleontologist shall be contacted to evaluate the significance of the find and collect the materials for curation as appropriate.</p> <p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements for Alternative B.</p> <p>E. Prior to approval of Alternative B, a comprehensive cultural resources survey will be required, utilizing shovel tests or similar subsurface testing as surface soil visibility is very poor. If any cultural resources are detected during the shovel testing program, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Specifically, sufficient subsurface exploration, evaluation, and/or research in the case of historic-era finds shall be performed to allow an evaluation of the finds for NRHP eligibility. If sites are found and are eligible to the NRHP, a Treatment Plan will be prepared and implemented in order to mitigate project impacts. Appropriate treatment may include site sampling, testing, data recovery, documentation, or a combination of measures. Any recommended treatment shall be completed prior to project construction.</p>
<p>MM 5.7 Socioeconomic Conditions</p>	<p>The BMPs described in Section 2.3.3 will minimize potential effects related to socioeconomic conditions resulting from construction and operation of the project alternatives; therefore, no mitigation is required.</p>
<p>MM 5.8 Transportation/ Circulation</p>	<p>Opening Year 2022</p> <p>To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following mitigation measures shall be implemented for Alternative A, with paragraph A below subject to specific negotiations between the Tribe and ODOT:</p> <p>A. In accordance with OAR 734 -051 (Division 51) the Tribe shall enter into discussions with ODOT regarding the two accesses along Hwy 99 and the applicability of the “moving in the direction” criteria. The collaboration may conclude with issuance of access permits. Improvements to the existing accesses as a result of this collaboration may include, but may not be limited to.</p> <ol style="list-style-type: none"> 1. Install a narrow median island on Hwy 99 to limit the access to the northern driveway (South Pacific Highway/Human Bean Driveway) to right-in, right-out movements. 2. Restripe the southern driveway on Hwy 99 (South Pacific Highway / Roxy Ann Lanes) with one entry lane and separated right turn and left turn exit lanes. 3. Design truck access locations to accommodate vehicles with a wheel base of 67 feet (WB-67 vehicles). <p>To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the Tribe shall offer to pay a fair share contribution to the following mitigation measure for Alternative B.</p> <p>B. <u>North Phoenix Road and Juanipero Road</u>: Install traffic signal when signal warrants are met. Proportionate fair share of 2%.</p>

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	<p>C. <u>North Phoenix Road and E. Barnett Road</u>: Contribute to planned intersection improvements identified in 2018-2038 Medford Transportation System Plan. Proportionate fair share of 3%.</p> <p>Cumulative Year 2042</p> <p>To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the Tribe shall offer to implement and pay a fair share contribution to the following mitigation measure for Alternative A.</p> <p>D. <u>South Pacific Highway and Garfield Street</u>: Restripe the westbound right-turn lane to a shared through-right and making appropriate changes to the signal head, controller and signage. Proportionate fair share of 2%.</p> <p>E. <u>South Pacific Highway and Charlotte Ann Road</u>: Access management via turn movement restrictions. Right-out only of the private driveway and striping the westbound movements to be separate movements. Proportionate fair share of 3%.</p>
<p>MM 5.9 Land Use</p>	<p>MM 5.8, and MM 5.11 and BMPs in Section 2.3.3 will reduce incompatibilities with neighboring land uses due to air quality, traffic, noise, and aesthetic impacts.</p>
<p>MM 5.10 Public Services</p>	<p>Off-Site Water and Wastewater Services</p> <p>To prevent violation of federal, state, and local policies related to water and wastewater services imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following mitigation measures shall be implemented for Alternative B.</p> <p>A. The Tribe shall offer to enter into service agreement(s) prior to project operation to reimburse the MWC, RVSS, and/or other applicable service providers, as appropriate, for necessary new, upgraded, and/or expanded water and/or wastewater collection, distribution, or treatment facilities. This service agreement(s) shall include, but is not limited to, fair share compensation for new, upgraded, and/or expanded water supply and wastewater conveyance facilities necessary to serve development of the selected site, including development of appropriately sized infrastructure to meet anticipated flows. Such improvements shall be sized to maintain existing public services at existing levels. The service agreement shall also include provisions for monthly services charges consistent with rates paid by other commercial users.</p> <p>B. Field testing would be performed to verify the availability of sufficient fire flow (estimated to be 4,000 GPM). If sufficient flow is not achievable, additional design components consistent with RVSS standards, including but not limited to a secondary water pipeline, would be submitted and approved by RVSS prior to construction.</p> <p>Solid Waste</p> <p>The BMPs described in Section 2.3.3 will minimize potential effects related to solid waste resulting from construction of the project alternatives; therefore, no mitigation is required.</p> <p>Law Enforcement</p> <p>The following mitigation measure is recommended for Alternative A.</p> <p>C. Prior to operation, the Tribe shall offer to enter into agreements to reimburse the Medford Police Department for direct and indirect costs incurred in conjunction with providing law enforcement services. The agreement shall include a provision requiring the Tribe to meet with the City of Medford at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project. In addition, the Tribe shall offer to enter into an agreement with Jackson County to reimburse law enforcement costs associated with the increase in demand for the District Attorney, jail, and Community Justice Department services as a result of Alternative A.</p> <p>The following mitigation measure is recommended for Alternative B:</p> <p>D. Prior to operation, the Tribe shall offer to enter into agreements to reimburse the Jackson County Sheriff's Department, District Attorney, jail, and Community Justice Department for direct and indirect costs incurred in conjunction with providing law enforcement services. The agreement shall include a provision requiring the Tribe to meet with Jackson County at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project.</p> <p>Fire Protection and Emergency Medical Services</p> <p>Implementation of the mitigation measures below would minimize potential impacts related to fire protection and emergency services. The following measure is recommended for Alternative A.</p> <p>E. Prior to operation, the Tribe shall offer to enter into an agreement to reimburse the Medford Fire Department for additional demands caused by the operation of the facilities on trust property. The</p>

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	<p>agreement shall address any required conditions and standards for emergency access and fire protection system.</p> <p>The following measure is recommended for Alternative B.</p> <p>F. Prior to operation, the Tribe shall offer to enter into an agreement to reimburse Jackson County Fire District 5 for additional demands caused by the operation of the facilities on trust property. The agreement shall address any required conditions and standards for emergency access and fire protection system.</p> <p>Electricity and Natural Gas</p> <p>The BMPs described in Section 2.3.3 will minimize potential effects related to electricity and gas resulting from construction and operation of the project alternatives; therefore, no mitigation is required.</p>
<p>MM 5.11 Noise</p>	<p>The following mitigation measures shall be implemented during construction for Alternatives A, B, and C to prevent violation of federal noise abatement criteria standards.</p> <p>A. Construction shall not be conducted between the hours of 6:00 p.m. and 7:00 a.m. Additionally, the following measures shall be used to minimize impacts from noise during work hours (7:00 a.m. to 6:00 p.m.):</p> <ol style="list-style-type: none"> 1. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds, in accordance with manufacturers' specifications. 2. Haul trucks shall be operated in accordance with posted speed limits. 3. Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible. To the extent feasible, existing barrier features (structures) shall be used to block sound transmission between noise sources and noise sensitive land uses. 4. Equipment shall not be left idling for more than 5 minutes. 5. All diesel engine generator sets shall be provided with enclosures. 6. The Tribe shall monitor construction noise and will designate a disturbance coordinator (such as an employee of the general contractor or the project manager for the Tribe), post the coordinator's contact telephone number conspicuously around the project site, and provide the number to nearby sensitive receptors. The disturbance coordinator shall receive all public complaints, be responsible for determining the cause of the complaints, and implement any feasible measures to alleviate the problem. <p>The following mitigation measures shall be implemented during operation for Alternatives A and B to prevent violation of federal noise abatement criteria standards.</p> <p>B. HVAC systems for the gaming facility will be roof mounted and shielded to minimize noise.</p>
<p>MM 5.12 Hazardous Materials</p>	<p>The following mitigation measure is recommended during construction of Alternative A:</p> <p>A. The Tribe shall ensure, through the enforcement of contractual obligations, that all contractors require construction personnel to wear appropriate personal protective equipment (PPE) and follow proper decontamination procedures subsequent to working in areas where native soils have been disturbed.</p>
<p>MM 5.13 Aesthetics</p>	<p>The BMPs described in Section 2.3.3 will minimize potential effects related to aesthetics resulting from operation of the project alternatives; therefore, no mitigation is required.</p>