

# Elk Valley Rancheria, California



2332 Howland Hill Road  
Crescent City, CA 95531

Phone 707.464.4680  
Fax: 707.465.2638  
[www.elk-valley.com](http://www.elk-valley.com)

October 26, 2022

## VIA E-MAIL & POSTAL SERVICE

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Alex Padilla  
United States Senate  
112 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Jared Huffman  
U.S. House of Representatives  
1527 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Doug LaMalfa  
United States Senate  
408 Cannon House Office Building  
Washington, D.C. 20510

Re: Coquille Indian Tribe Gaming Application for Lands in Medford, Oregon

Dear Senators Feinstein and Padilla and Reps Huffman and LaMalfa:

The Elk Valley Rancheria, California, (the “Tribe”) writes to you with regard to the Coquille Indian Tribe (“Coquille”) application to take land near Medford, Oregon, into trust for gaming purposes pursuant to 25 C.F.R. § 292.11(a) and the Coquille Restoration Act (the “Act”). The Tribe is concerned that the Act does not expressly authorize the Coquille to acquire in trust the land for gaming purposes in Medford pursuant to 25 C.F.R. § 292.11(a). Instead, the Tribe believes that the Coquille’s application must be considered under 25 C.F.R. § 292, Subpart C, if at all.

In 2012, the Coquille Tribe purchased a tract of land in south Medford that includes the Roxy Ann Lanes bowling center – the proposed location for the gaming facility. The Coquille Tribe subsequently submitted a request to the Secretary of the Interior to have the land transferred into trust for the Tribe. The proposed 2.4-acre *discretionary* fee-to-trust transfer and gaming facility project is in the City of Medford, Jackson County, Oregon, adjacent to the northeastern boundary of Highway 99, between Charlotte Ann Lane and Lowry Lane.

The Roxy Ann site is within the Tribe’s service area, as defined by the Coquille Restoration Act of 1989 (“Act”). The Act also provides that lands taken into trust by the



Secretary within the Tribe's five-county (Coos, Curry, Douglas, Jackson, and Lane) service area "shall be part of its reservation" (25 U.S.C.A. §§ 715 to 715H).

There is no Indian gaming facility within a 50-mile radius of the Roxy Ann site. Beyond a 75-mile radius (a 90-minute drive away), there are two Class III casinos, Seven Feathers (owned by the Cow Creek Band of Umpqua Tribe of Indians) and Kla-Mo-Ya (owned by the Klamath Tribes).

The Notice of Intent to prepare an EIS was published in January 2015.

The Coquille Tribe seeks to acquire land in Medford, Oregon for a gaming facility. The Coquille casino in North Bend is about 165 miles northwest of Medford, Oregon. The Coquille Tribe operates the Mill Casino located in North Bend, Oregon.

The Coquille Tribe chose Medford, Oregon because "at the time of the Coquille Tribe's restoration, Jackson County had the second-largest population of Tribe members. The Tribe has a strong desire to continue to provide services to its members in Jackson County."

We understand that Governor Kate Brown wrote to the Bureau of Indian Affairs opposing the Medford casino proposal. In her letter, Brown cited to a policy Gov. John Kitzhaber laid out in a 1997 white paper entitled "Gambling in Oregon": that Oregon's nine recognized tribes should each be allowed one casino. The Coquille tribe already operates a casino in North Bend.

The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719(a), prohibits gaming on land acquired after 1988, unless a tribe can meet one of four exceptions: (1) the two-part determination, found at 25 U.S.C. § 2719(b)(1)(A); (2) the "restored lands" exception, found at 25 C.F.R. § 292.11; (3) the "initial reservation" exception, found at 25 C.F.R. § 292.6; or (4) the settlement of a land claim exception, found at 25 C.F.R. § 292.5.

Importantly, the regulations addressing the restored lands exception, located at 25 C.F.R. §292.11, require that a tribe show a modern, historical, and temporal connection to the subject land, unless Congress recognized the tribe and designated a specific area for land acquisition. A tribe that cannot meet the requirements of the restored lands provisions of 25 C.F.R. §292.11, would have to meet the requirements of 25 C.F.R. Part 292, Subpart C, otherwise known as the "two-part determination," to be able to game on newly acquired lands.

Here, the Coquille were recognized by Congress, and Congress designated a very specific area for Coquille *mandatory land acquisition in Coos and Curry Counties*. Land acquired in these counties, of course, would meet the requirements of 25 C.F.R. §292.11(a)(1).

Congress separately authorized the Secretary to exercise *discretion* to acquire additional land in trust in the tribe's "service area" pursuant to authority granted by the Indian Reorganization Act. Land acquired under this provision must follow the regulatory provision

outlined 25 C.F.R. §11(a)(2), or 25 C.F.R. Part 292, Subpart C.

If Congress intended to direct the Secretary to accept land within the Coquille's service area in trust as a mandatory acquisition, it would have done so explicitly and included the service area along with Coos and Curry Counties when it directed the acquisition of land pursuant to the Act. Instead, Congress declined to direct the Secretary to acquire land in the Coquille's service area.

The bill that became the Coquille Restoration Act, Pub. L. No. 101-42, originally contained the following provision: "The **Secretary shall accept real property within the service area** for the benefit of the Tribe . . ." H.R. 881, *as introduced*, 101<sup>st</sup> Cong. (emphasis added). But that the language was changed. The Act, as enacted, provides for the following:

(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: *Provided*, That, at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages, or taxes owed. The **Secretary may accept any additional acreage in the Tribe's service area** pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984).

25 U.S.C. 715(c) (emphasis added).

The Department of Interior has also recognized, as a general matter, that service area has little to do 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:

[S]ervice 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, 1988*, 73 Fed. Reg. 29354, 29365 (May 20, 2008) (emphasis added).

If the Act is read to require the Secretary to take land within a service area into trust for the benefit of Coquille, there is a threat that other similar restoration acts will be interpreted in this manner as well. This would mean that, for instance, a tribe with no aboriginal or historic connections to the subject land would be allowed to game in another tribe's aboriginal lands. *See e.g. Kickapoo Tribe of Oklahoma v. Superintendent, Shawnee Agency*, 13 IBIA 339 (1985). It would also mean that surrounding communities and governments would have no say in the matter. *Id.*

October 26, 2022

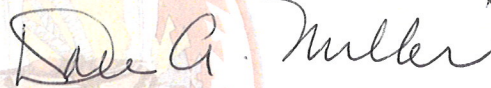
Page 4

We recommend the Department interpret the Act in a manner that is consistent with its plain language and legislative intent and that respects other tribes, i.e., the land does not qualify as “restored lands”.

The Tribe fully understands that acquisition of land in trust for the Coquille is not mandatory in Medford and is not limited to the two identified counties in the Restoration Act. Rather, the Tribe understands that the Restoration Act provides for discretionary acquisition under the Indian Reorganization Act within the Coquille’s service area and that the *Oregon v. Norton* and *City of Roseville v. Norton* cases essentially held that the remedy for termination could include acquisition of lands outside of identified areas, but that the acquisition of such land is not limitless. Acquisition of land in trust for gaming purposes in Medford, Oregon, 165 miles away from the primary territory of the Coquille will have adverse regional impacts and stretches those limits and reasonable discretion described in those court decisions.

We urge you to oppose the Coquille application for acquisition of land in trust for gaming purposes in Medford, Oregon and inform the Department of the Interior of said opposition.

Sincerely,



Dale A. Miller  
Chairman

