

**Cheryle A. Kennedy
Tribal Council Chairwoman
Confederated Tribes of the Grand Ronde Community of Oregon**

**Testimony
Before the United States Senate Committee
on Indian Affairs**

**Oversight Hearing on Indian Gaming
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On behalf of the Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde” or “Tribe”), I respectfully submit the following comments on Senator John McCain’s bill, S. 2078, to amend the Indian Gaming Regulatory Act (“IGRA”). These comments address only the bill’s amendment to Section 20(b)(1)(A) of IGRA containing the “two-part determination” exception to the prohibition against gaming on lands acquired in trust after October 17, 1988. I thank the distinguished members of the Committee for providing Grand Ronde the opportunity to submit testimony as part of this hearing on Senator McCain’s proposed legislation. Please make these comments part of the official hearing record.

Since 1996, Grand Ronde has opposed efforts by tribes to have land taken into trust for gaming outside original reservation boundaries or not adjacent to a current reservation. Grand Ronde’s opposition to off-reservation gaming stems from our concern that off-reservation casinos (1) weaken public and government support for Indian gaming (2) undermine the purpose of IGRA - to promote development of strong reservation economies through on-reservation casinos, and (3) invite disputes among tribes when located in areas where more than one tribe has a significant historical connection.

Our concerns are not speculative. Public opinion polls in Oregon¹ show that Oregonians currently support Indian gaming on reservation lands. However, the polls also show that Oregonians are concerned about the expansion of gaming and fear, as does Grand Ronde, that approval of an off-reservation casino under the two-part determination process will lead to a proliferation of casinos near urban areas. A gaming initiative was, in fact, recently filed in Oregon by private developers seeking to operate a casino in Troutdale, a city near Portland. These developers were no doubt encouraged by the Governor’s recent approval of Oregon’s first off-reservation casino at Cascade Locks, the Cowlitz Tribe’s efforts to build a casino sixteen miles north of Portland, and the Yakama Nation’s statements about locating a casino near Portland.

¹ See attached Oregon Statewide Survey conducted by Mercury Public Affairs on May 10, 2005.

In light of our concerns, and consistent with our historic opposition to off-reservation gaming, Grand Ronde supports legislation eliminating the two-part determination exception. This legislation, however, should be evenhanded, without loopholes - like the one contained in S. 2078 - which would allow continued consideration of two-part determination trust applications for some tribes and not others. Grand Ronde therefore opposes, and urges the Committee to reject, language in S. 2078 which permits the Secretary to continue processing two-part determination trust applications under review at the BIA Central Office prior to November 18, 2005.

Specifically, Grand Ronde objects to Section 10(A)(i) of the bill, which provides that the prohibition against gaming on lands acquired in trust after October 17, 1988, “will not apply when, before November 18, 2005, the Secretary reviewed, or was in the process of reviewing, at the Central Office of the Bureau of Indian Affairs, Washington, DC, the petition of an Indian tribe to have land taken into trust for purposes of gaming” This language is ambiguous; it is unclear at what point in time a petition to take land into trust becomes a petition that the Secretary “*was in the process of reviewing, at the Central Office.*” We believe it to mean when a complete acquisition package is submitted by a Regional Director to the Central Office (See Office of Indian Gaming Management’s Checklist for Gaming Acquisitions and IGRA Section 20 Determinations, March 2005). However, some might read “the process of reviewing” to include earlier Central Office involvement with gaming-related trust acquisitions. For example, Acting Assistant Secretary Skibine and his office work with Regional BIA offices to review draft environmental impact statements well before a complete acquisition package is submitted to the Central Office.

Of equal, if not greater, concern, is the bill’s failure to treat gaming tribes evenhandedly. The bill would permit some tribes to pursue off-reservation casinos in lucrative urban markets, while depriving other tribes the same opportunity. This disparity in treatment is especially egregious in a state like Oregon where tribes have invested millions of dollars in on-reservation casinos under a state policy which, until recently, prohibited off-reservation gaming. Grand Ronde has invested approximately \$150 million in its on-reservation Spirit Mountain Casino.

Until last year, the State of Oregon had an Indian gaming policy limiting each Oregon tribe to one on-reservation casino. The compact between the State of Oregon and Grand Ronde, as well as the gaming compacts with other Oregon tribes, reflects this policy. This policy changed last May when Oregon’s Governor signed a new gaming compact with the Confederated Tribes of Warm Springs, authorizing the State’s first off-reservation casino in the Columbia River Gorge town of Cascade Locks. Warm Springs filed a two-part determination application to take lands in Cascade Locks into trust for gaming. To our knowledge, no other Oregon tribe negotiated a gaming compact for an off-reservation casino between the time the Governor changed the State’s off-reservation gaming policy and the time S. 2078 was introduced. Warm Springs would therefore be the only tribe in Oregon that could benefit from the recent change in the State’s off-reservation gaming policy if S. 2078 is adopted in its current form.

In building and investing in Spirit Mountain Casino, Grand Ronde based significant economic decisions on the State’s long-standing policy against off-reservation casinos. An off-reservation

casino in Cascade Locks would have significant adverse impacts on Grand Ronde's reservation economy. Cascade Locks is forty miles from the Portland, Oregon metropolitan area - the market from which Spirit Mountain Casino draws most of its customers. Our analysis indicates that an off-reservation casino in Cascade Locks would result in a loss of revenue at Spirit Mountain of at least twenty-two percent, if not more. The loss of Spirit Mountain Casino's customers and revenue to an off-reservation casino in Cascade Locks would have a devastating impact on the Tribe's ability to provide critical services and meaningful employment opportunities to Tribal members, particularly if the Tribe is foreclosed from pursuing an off-reservation casino of its own in order to protect its investment.

Warm Springs has the largest reservation in Oregon² at more than 640,000 acres. It has a diverse economic base that includes forest products, hydroelectric power, ranching, recreation, and tourism. In contrast, Grand Ronde is a restored tribe with a small reservation of approximately 11,000 acres. Our on-reservation casino is the only significant source of revenue for the Tribe. It would be unfair to permit Warm Springs, with their large reservation, to pursue an off-reservation casino that would so severely impact Grand Ronde's investment in on-reservation gaming.

As a final point, we believe off-reservation casinos invite disputes between tribes when more than one tribe has a historical connection to a proposed gaming site. Grand Ronde has a long historical and cultural connection to the Cascade Locks area. The ancestors of Grand Ronde tribal members lived along the Columbia River since time immemorial. In the Treaty of January 22, 1855, antecedent bands and tribes of Grand Ronde ceded lands along the Columbia River, from Oak Point east to Cascade Falls. Chief Tamolth signed this treaty on behalf of the Watlala Tribe ("of Tumawaters") of the Gorge. His descendants are well represented among the Grand Ronde people today.

Grand Ronde understands and supports Warm Springs' desire to meet the needs of its membership, but meeting the needs of its membership should not come at the expense of the on-reservation economy of another Oregon tribe. This is particularly true when Warm Springs could pursue a viable on-reservation alternative to meet its needs. We believe a casino on the Warm Springs Reservation, near the town of Warm Springs, is an economically viable alternative to an off-reservation casino in Cascade Locks, and one the Confederated Tribes of Grand Ronde could support. Such a casino would draw a significant number of patrons from and around the City of Bend. Bend is located in Deschutes County, the fastest growing county in the State of Oregon for the past ten years. Bend is the largest city in Central Oregon with an adult population expected to exceed 123,000 by 2009.

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In sum, IGRA's two-part determination exception to the prohibition against gaming on lands acquired in trust after October 17, 1988, should be eliminated. However, the elimination of this exception should be done without a loophole which allows continued consideration of some

² See attached map depicting reservations of Oregon tribes.

two-part determination applications and not others.

Grand Ronde appreciates your efforts to consult with Indian Country regarding gaming issues as they are critical to the economy and welfare of our Tribe, our Reservation and our members. Thank you for your consideration of these comments. Please do not hesitate to call me with any questions at (503) 879-2352. Your staff should also feel free to call our Tribal Attorney, Rob Greene, at (503) 879-2270 with any questions.