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CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

**TESTIMONY
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

**OVERSIGHT HEARING ON OFF-RESERVATION GAMING:
LAND INTO TRUST AND THE TWO-PART DETERMINATION**

**WASHINGTON, D.C.
FEBRUARY 28, 2006**

Good morning, Chairman McCain and members of the Committee. My name is Ron Suppah and I am Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon (“Warm Springs” or “Warm Springs Tribe”). I am appearing today to describe our Tribe’s efforts and activities regarding the land into trust and the Secretarial Two-Part Determination processes for our off-reservation casino project in the City of Cascade Locks, Hood River County, Oregon.

INTRODUCTION

The Warm Springs Tribe is now engaged in the process of seeking federal approval of a tribal gaming facility at a location within our aboriginal and Treaty ceded lands 38 miles from our Reservation and 17 miles from a parcel of Warm Springs trust land that is eligible for gaming. Our actions are based on unique circumstances, and we are well along in the process. In our efforts, which have been underway for several years and are based on a partnership forged with the surrounding community and with Oregon’s Governor, the Tribe has been diligent, open and fair, and we have scrupulously abided by all applicable laws, regulations and guidelines. Doing so has been expensive. Through 2005, we have spent \$4.2 million on the Indian Gaming Regulatory Act (“IGRA”) and land-into-trust processes. We have also spent about \$8 million for architecture, engineering and design services. All of this has been our own money. Although we do not know whether we will succeed in this effort, we believe we have been following a model process for pursuing gaming on after-acquired land and ask that, as the Committee considers revisions to the Indian Gaming Regulatory Act, you retain and clarify the Section 10 provisions in S. 2078 to allow us to complete the process as it is currently written.

In pursuing this project, we are following procedures based on IGRA for securing a Class III Gaming Compact with the Governor of the State of Oregon and for obtaining the Secretary of Interior’s “two-part determination” and the Governor’s concurrence in that determination under Section 20(b)(1)(A) of IGRA. We are also following regulatory procedures set forth in 25 CFR Section 151 for acquiring an off-reservation parcel of land in trust for gaming purposes. As we pursue the land-to-trust and “two-part determination” process we are guided by the Compact we

signed on August 6, 2005, with the Governor of Oregon and by the Memorandum of Agreement we executed on March 25, 2005, with the local host governments, Cascade Locks and Hood River County. Both of these agreements address in great detail the impacts and benefits of the project to the surrounding community and to the State of Oregon.

Before examining these particular processes in more detail, I would like to provide some background on the dire financial circumstances that have led us to pursue this project. I would also like discuss how we gained the support of Oregon's Governor and the local community for the project, and the costly and time-consuming efforts we have been making to pursue the project to this late stage in the existing IGRA process.

DECLINING TRIBAL ECONOMY

Warm Springs Background

The Warm Springs Indian Reservation is a beautiful but remote expanse of 650,000 acres in north Central Oregon. The Warm Springs Reservation is almost entirely trust land and, as the only reservation in Oregon excluded from Public Law 280, 67 Stat. 588 (1953), the Tribe is the governmental entity primarily responsible for public safety and other essential governmental services on the reservation. For many years, the Warm Springs tribal government has relied on timber and hydroelectric revenues to support governmental services to our more than 4,400 enrolled members. But in recent years, these revenues have declined and have been insufficient to meet our governmental needs.

Declining Tribal Revenues

The dramatic decline in our timber revenues illustrates the problem we are facing. In 1994, timber revenues contributed \$23.8 million toward our total tribal revenues of \$37.6 million. By 2002, timber revenue had plummeted to just \$5.7 million, bringing total tribal revenues down to \$25.3 million. Thus, over this recent eight-year period a 74% drop in tribal timber revenue resulted in a 33% decline in total tribal revenues.

The long-term outlook for timber income continues to be pessimistic as our tribal forest resource adjusts to conservative sustained yield forest management practices and the national and global wood products markets continue to remain depressed. As a result, the decade-long decline in the Tribe's revenue picture is projected to only worsen in the years ahead. Tribal revenue projections show 2002 actual revenues of \$25,594,000 declining steadily to 2011 forecasted revenues of just \$19,404,000. The Tribe's cash flow forecasts show that, beginning in 2006, basic operational expenditures are likely to exceed revenues. This means the Tribe will be required to dip further into its Revenue Reserve ("Rainy Day") Fund, just to try to provide minimum governmental services to the tribal members and reservation residents, or, alternatively, impose very painful budget cuts in tribal operations. Indeed, just recently the Tribe's revenue decline forced us to slash our 2006 base budget by \$2 million, which was accomplished only by eliminating entire tribal departments such as the Tribal Economic

Development Department. We anticipate that the 2007 budget will require an additional \$2 million cut and a further \$1.5 million reduction will be needed for the 2008 tribal budget.

Consequences

As tribal revenues decline over time, essential services and needs go unmet and additional needs accrue. In addition, while essential governmental needs go unmet, tribal enterprises are deprived of capital to grow their enterprises and provide on-reservation job and training opportunities. Because of the shrinking job base and high unemployment, a sizable portion of the reservation population depends entirely on federal and tribal social service programs, which have experienced budget cuts in each of the last ten years.

As the Tribe's membership grows and its revenues decrease, needs continue to go unmet and increase in number and magnitude. This is an unsustainable cycle that the Tribe seeks to remedy with revenues from the Cascade Locks gaming facility. Increased tribal income is needed to provide services and infrastructure to help reverse this negative trend, especially in the areas of education, health care and economic opportunity programs.

WARM SPRINGS GAMING, HOOD RIVER AND CASCADE LOCKS

Our Current Casino

In an effort to address this growing financial crisis, in 1995 the Tribe opened a small Class III casino on the reservation as part of the Tribe's existing Kah-Nee-Ta Resort. However, the Kah-Nee-Ta casino is isolated from Oregon's major population centers, and its revenues have done little to span the growing gap between our Tribe's income and our governmental requirements. As a result, our tribal budgets have continued to decline and we have been forced to cut services as well as draw upon our limited emergency reserve funds.

Under the terms of our Compact with Oregon's Governor for the Cascade Locks casino, which we signed on April 6, 2005, we are required to close the casino at Kah-Nee-Ta when we open our facility at Cascade Locks.

The Columbia River

To address the Tribe's increasingly difficult financial circumstances, in the late 1990s we conducted a survey of potential alternative gaming sites. This process led to a tribal referendum, approved by nearly 80% of the tribal voters, directing the Tribal Council to pursue development of a casino on our traditional lands along the Columbia River. We initially focused on a 40 acre parcel of pre-IGRA tribal trust land, which is eligible for gaming, on a wooded hillside overlooking the Columbia River just outside the City of Hood River, Oregon.

Since time immemorial, the Columbia River has been the home of our people. Its salmon, eels and other foods have nourished untold generations, and when we agreed in our 1855 Treaty to move from our traditional homes along the Columbia River and its Oregon tributaries to our current reservation south of the Columbia, our forefathers were careful to reserve our rights to continue to fish on the river as well as hunt, graze and gather traditional foods throughout our

Treaty ceded lands. Fishing on the Columbia River remains at the core of our culture, and many of our people continue to fish today for ceremonial, subsistence, and commercial purposes. Indeed, many of our tribal members live year-round on the Columbia's banks, and thousands of acres of individual Indian and tribal trust allotments are scattered along the Columbia.

Hood River and Cascade Locks

As the Tribe moved forward with preparations to develop a casino on the Hood River trust land, the City of Hood River and others in the area expressed concerns about locating a casino there. At that time, 1998 and 1999, the struggling community of Cascade Locks, Oregon, seventeen miles to the west, approached the Tribe about the possibility of locating a facility in the mostly vacant Cascade Locks Industrial Park, which was created in the 1970's along the banks of the Columbia River out of fill material from construction at nearby Bonneville Dam. The Cascade Locks site is within the Tribe's Treaty ceded lands along the Columbia River in which Warm Springs holds federally protected off-reservation treaty reserved fishing, hunting and gathering rights. The Cascade Locks site is also within the area determined by the Indian Claims Commission in *Confederated Tribes of the Warm Springs Reservation of Oregon v. United States* (Docket No. 198) to be the Warm Springs Tribe's aboriginal lands exclusive of the claims of any other tribe or tribes.

Shifting the Tribe's Columbia River casino development plans from the gaming-eligible Hood River site to the Cascade Locks Industrial Park site will be beneficial for both the Cascade Locks and Hood River communities as well as the State of Oregon. Cascade Locks, like our Tribe, desperately needs an economic boost. Based on binding commitments made in our Compact and in ancillary agreements with the State, developing a casino at the Cascade Locks Industrial Park preserves the pristine and undeveloped Hood River trust lands, thus alleviating Hood River's concerns about a casino in their community. Forgoing development of the Hood River trust lands also means the trust land's scenic values will be retained and the land, otherwise exempt from State and federal Columbia River Gorge National Scenic Area Act restrictions, will be managed consistent with an adjacent Oregon State Park.

PROCESSES

When Warm Springs decided to work with Cascade Locks in pursuing a casino, we fully recognized the off-reservation site posed new and very significant challenges. Unlike the Hood River trust lands site, which is already gaming eligible, we understood that we would have to pursue the IGRA Section 20 (b)(1)(A) "two-part determination" and the 25 CFR Part 151 fee-to-trust process to take the Industrial Park site into trust for gaming. We recognized we would have to be exceptionally diligent and careful in addressing these challenges, that we would have to, in fact, conduct a model process that would be very expensive. In examining this process below, we divide its elements into four distinct procedural parts, which we discuss in turn: 1) Pursuing the Compact with the Governor and the Memorandum of Agreement with the local governments, 2) Undertaking the 25 CFR 151 land into trust process and the IGRA Section 20(b)(1)(A) two-part determination process, 3) working with the BIA on preparation of the Environmental Impact Statement, and 4) On-going casino architectural, design and engineering

activities.

1) The Compact and Local Government Agreements

In our discussion of the procedures we are following to pursue our off-reservation facility, we are including a discussion of our Compact and ancillary agreements with the State, and our Memorandum of Agreement with the local governments, because we firmly believe that reaching those agreements first plays an essential role in our subsequent pursuit with our partners of the Secretarial two-part determination and the land into trust process. In negotiating and achieving these agreements, the parties have developed a trust and commonality of purpose. Moreover, this effort has allowed the Tribe to forge a formal partnership with the State and local governments, based on the Compact and the Memorandum of Agreement, that has greatly facilitated the consultations required by the fee-to-trust and two-part determination processes. Our partners know our plans, understand how we will mitigate impacts and agree on how the project will benefit the local community and the State of Oregon. Accordingly, they have been able to participate in the fee-to-trust and two-part determination processes based on certainly and a shared commitment to the project. In short, we discuss these agreements because they are an essential component in the Cascade Locks effort.

Informing the Oregon Governor's Office and the Department of the Interior of the Tribe's intention to develop a casino at the Cascade Locks site in lieu of the Hood River trust lands site, in 1999 the Tribe initiated what became years-long discussions with Cascade Locks and the State that resulted in a series of agreements signed in March and April, 2005 between Cascade Locks, the Tribe and the State. These agreements include a Class III gaming Compact with the State, a separate agreement with the State regarding preservation of the Hood River trust lands and a Memorandum of Agreement with the City of Cascade Locks and Hood River County addressing impacts of the casino on the local community. Our approach of entering into these agreements before taking the land into trust for gaming was intended to address any local concerns about developing a casino in the Cascade Locks Industrial Park and to secure the Governor's commitment to concur in the Secretary's two-part determination pursuant to Section 20(b)(1)(A) based on the Tribe's obligations regarding environmental protection, working conditions, the Community Benefit Fund and revenue sharing as set out in the Compact. This approach has led to unanimous governmental acceptance of the Cascade Locks site, as indicated by the thirty-two federal, State and locally elected officials who have endorsed and embraced the Cascade Locks site in an April 29, 2005, letter to Interior Secretary Norton and based on the positive responses from the local governments in Oregon and Washington and the Governor of Oregon in the BIA consultations required by the two-part determination and the 25 CRF Part 151 processes.

Regarding the Compact, in March of 2004, we entered into formal negotiations with the State that concluded over a year later when the Governor and the Tribe signed the Compact on April 6, 2005. In reality, however, we began informal discussions with the State on the terms of a Cascade Locks compact almost a year and a half earlier in the fall of 2002, which is about the same time that we started work on the Memorandum of Agreement with the City of Cascade

Locks and Hood River County. The product of these lengthy and time-consuming negotiations is a Compact that is unusually comprehensive and fair, and is supported by the local counties, nearby cities and towns in Oregon and Washington, Congressman Greg Walden (R-Ore) who represents Cascade Locks and Hood River, and State legislators from the area, in addition to the Governor, Cascade Locks, and our Tribe. The Compact provides the public in Oregon and Washington with an advanced notice of the environmental benefits to Cascade Locks and nearby Columbia River Gorge communities should the contingency of taking the Cascade Locks land into trust become a reality. Specifically, approximately 40 acres of tribal trust lands near Hood River would be perpetually protected against development; an additional 175 acres of adjacent scenic Columbia River Gorge lands currently owned by our Tribe would be perpetually protected and conveyed to the Oregon State Parks Division; environmental protection, energy efficiency and sustainable building standards would define and control our casino/resort development; and millions of dollars from a tribally established Community Benefit Fund would be used to protect and enhance the Columbia River Gorge National Scenic Area. The Compact also provides very significant benefits to the State as a whole through revenue-sharing payments of up to seventeen percent of the casino's annual "net win" to a Warm Springs Tribe/Oregon Benefit Fund to be used primarily for college scholarships as well as for protection of the Columbia River Gorge and for economic development projects throughout Oregon.

The Tribe expended approximately \$2 million between the fall of 2002 and April, 2005 negotiating the Compact and related agreements with the State and developing the Memorandum of Agreement with Cascade Locks and Hood River County that addresses project impacts and mitigation and sets up a Community Benefit Fund.

Compact Disapproved by Interior Policy Change.

On April 8, 2005, the Tribe and the Governor submitted the Compact to the Secretary of the Interior for the 45-day review provided under IGRA. As usual, the Secretary's review team asked for clarification regarding several sections of the Compact. When the Governor and Warm Springs submitted a response, we requested a meeting to go over the questions and responses. On the afternoon of May 17, four days before the end of the 45 day review period, we met with personnel from the Office of Indian Gaming Management, the Secretary's Office and the Solicitor's Office. In the meeting, we proceeded through our responses to the Department's questions, and while not all issues were resolved, there were no significant objections. Then, in the final ten minutes of the meeting, the Director of the Office of Indian Gaming Management informed us that the Secretary's Office had a fundamental concern about approving the Compact before the land was taken into trust, and was considering whether to disapprove the Compact on