

AGENDA COVER MEMO

DATE: July 30, 2003

TO: Lane County Board of Commissioners

DEPT.: Public Works

PRESENTED BY: Bill Morgan, Senior Engineering Associate
(Materials prepared by Sonny Chickering, County Engineer)

AGENDA ITEM TITLE: REPORT / Casino-Hatch Tract Near Florence

I. MOTION

NA.

II. ISSUE OR PROBLEM

The Board has requested a staff report concerning possible impacts to the County road system from casino development proposed near Florence, Oregon.

III. DISCUSSION**A. Background**

The State of Oregon and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (Tribes) entered into a compact in January 2003. The Secretary of the Interior approved the compact in February 2003. Regarding transportation impacts and site access, the compact indicates the Tribes will provide a traffic impact study prepared by a qualified traffic engineer registered in the State. Standards and requirements for this study are to be set by the State and appropriate local officials in consultation with the Tribes.

The Tribes are obligated to comply with local road improvement requirements, and agree to pay the reasonable cost of improvements determined to be necessary by the traffic study. The Tribes also agree to fund an appropriate proportion of local road improvements if any are necessary to mitigate or reduce impacts on surrounding roads to the extent the gaming facility directly contributes to traffic impacts on surrounding roads. For a review of the compact and information on County and Tribe relations, see July 15, 2003 memo from David Williams, Asst. County Counsel (Attachment A).

B. Analysis

The State has initiated discussion of Traffic Study requirements. A meeting was held April 11, 2003 with representatives of ODOT, the City of Florence and the County (Tom Stinchfield, Transportation Planning Engineer). Following additional electronic communications among State and local transportation staff, ODOT issued a "Traffic Impact Analysis Work Scope" to the Tribes on June 20, 2003 (Attachment B).

Tom Stinchfield spoke with Tony Martin, ODOT Access Management Engineer for Region 2 on July 11, 2003. A summary of ODOT's current efforts appears in the form of a memo from Tom (Attachment C). Bill Morgan, Senior Engineering Associate in our Transportation Planning Section has been assigned this issue and will be reviewing the Traffic Impact Analysis once the Tribes submit the document.

C. Alternatives / Options

NA.

D. Recommendation

Staff should periodically provide the Board with updates on the Traffic Impact Analysis, our review of any development plans, and possible conditions of approval we intend to attach to Facility Permits for modifications or access to existing County roads.

E. Timing

ODOT has not given the Tribes a deadline for submission of the Traffic Impact Analysis. Engineering staff is available to update the Board upon request.

IV. IMPLEMENTATION / FOLLOW-UP

NA.

V. ATTACHMENTS

- A. Memo from David Williams, Asst. County Counsel, July 15, 2003
- B. ODOT "Traffic Impact Analysis Work Scope", June 20, 2003
- C. Status Memo from Tom Stinchfield, Trans. Planning Engr., July 11, 2003

Date: July 15, 2003

To: Board of Commissioners

From: David B. Williams, Asst. Co. Counsel

Re: Casino—Hatch Tract near Florence

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Overview. This memo provides an overview of County authority in relation to development and gaming activity at the proposed casino on the Hatch tract in the Florence area. I have used the term "tribe" when intending only a generic reference and the capitalized "Tribes" when referring specifically to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

In summary form, the County has no legal authority to prevent a casino on the Hatch tract. The County may have some role in addressing transportation issues.

For most regulatory purposes, a federally-recognized Indian tribe has a status like that of an independent, sovereign state. The general principle of sovereignty means that state and local governments have little authority over non-criminal, regulatory matters on Indian lands. If conduct is prohibited throughout a state as criminal, then the state's law might prohibit the conduct on Indian land within the state. On the other hand, if the conduct is only regulated in the particular state, then the conduct on Indian land is generally exempt from state regulation due to the principle of sovereignty.

The national phenomenon of gaming on Indian lands has generated extensive litigation and political debate. As might be expected, much of the litigation has focused on whether gambling involved conduct that was prohibited by the criminal law of the state or whether the conduct was only regulated by the state. In 1988, Congress provided some guidance for the debate by enacting the Indian Gaming Regulatory Act (IGRA). For purposes related to the proposed casino at Florence, the IGRA generally permits traditional casino-type gambling if (1) the casino is located in a state that permits such gaming for any purpose by any person, organization or entity, and (2) the gaming is conducted in accordance with a compact between the Indian tribe and the state.

Since Oregon permits, for example, a state-run lottery, charitable bingo and social gambling, the first condition does not present an insurmountable hurdle to Indian casinos in Oregon. Limitations on the types of gambling permitted can be included by agreement in the state-tribe compact. As to the need for a compact, the state has an obligation to negotiate in good faith with the tribe. IGRA permits the state-tribe compact to include any subjects that are directly related to the operation of gaming activities. The IGRA provides

administrative and judicial remedies in the event that the state and tribe are unable to reach an agreement.

There is, to the best of my knowledge, no legal requirement for a state to invite local government representatives to the table as participants in the state's negotiation of a compact with a tribe, nor any legal requirement for the state to give any preference or priority to local concerns. That is not to say that the negotiating state and tribe will not care about local concerns, but only to say that the extent to which local concern is reflected in a state-tribe compact is more likely to be the result of persuasion, advocacy and policy considerations than the result of legal compulsion.

The Secretary of the Interior must approve the state-tribe compact, but the Secretary may disapprove a compact only if it violates IGRA, other federal law or the trust obligations of the United States to Indians.

Unless the Tribes want to enter into some type of inter-governmental agreement with the County related to the development, we would have little regulatory authority over the development of a casino or the activities on the Hatch tract. For example, existing law creates no requirement for the Tribes to comply with our land use, zoning or building code requirements. Access from the development to a public road could require a facilities permit from the County. In all likelihood, and based on numerous reported court cases of creative but unsuccessful attempts by state and local governments to do so, the County would not be successful in attempting to tax the casino, directly or indirectly, for potential increases in service demands on, for example, law enforcement or counseling for problem gamblers.

State-Tribes compact. The State of Oregon and the Tribes entered into a compact in January 2003. The compact was approved by the Secretary of the Interior in February 2003. The compact is 61 pages long, with a 90+ page appendix, so I have not attached it to this memo. If you need or want more detail, Zoe Gilstrap has a copy in the County Administration office.

The compact left open the question of whether the Hatch tract was eligible for gaming use. The present state of the litigation related to that issue is discussed below under the heading of "State litigation." The compact is structured so that if the Hatch tract is not legally eligible for gaming use, the compact would apply to the Tribes' trust land in Coos Bay.

The compact generally permits the type of casino gaming that has been approved in Nevada, except for sports bookmaking. The State's criminal jurisdiction applies to offenses committed at the gaming facilities. The State and the Tribes agree that local law enforcement will provide the first-response for criminal or public safety issues that are not related to the operation of gaming

activities. The Tribes agree to adopt and apply health, safety and environmental regulations that are at least as rigorous as State standards.

If local government officials believe that off-site public safety issues are created by the existence of the gaming facility, the Tribes agree to meet with the mayor or the county commission to develop mutually agreeable measures to alleviate the problem. The burden of proof is on local government.

The determination of whether the gaming facility will be served directly by a state highway or county road will be made by the State and appropriate local officials in consultation with the Tribes. The Tribes will provide a traffic impact study prepared by a qualified traffic engineer registered in the State. The Tribes are obligated to comply with local road improvement requirements. The Tribes agree to pay the reasonable cost of improvements determined to be necessary by the traffic study. The Tribes agree to fund an appropriate proportion of local road improvements if any are necessary to mitigate or reduce impacts on surrounding roads to the extent the gaming facility directly contributes to traffic impacts on surrounding roads.

The Tribes agree to set up a Community Benefit Fund for the benefit of the public primarily within Coos, Curry, Lane, Douglas and Lincoln Counties. Grants may be made to charities or local governments for a broad range of purposes. Contributions to the fund will be based on a percentage of net income of the gaming facility (six percent on full implementation). The fund will be administered by an eight-person board.

The decision to use the compact's dispute-resolution mechanisms to enforce these obligations rests with the Tribes and the State.

State litigation. The State of Oregon sued the Secretary of the Department of the Interior and the Tribes over the question of whether the Hatch tract was eligible for gaming use under the IGRA. Under that act, land acquired after the passage of the act in 1988 is generally not eligible for gaming use. There is an exception for land taken into trust as part of the restoration of previously terminated tribal status. The statutory exception for restoration lands invites debate over two competing concepts: does restoration land refer only to land restored to the tribe at the time Congress restores tribal status? Or can it also include land acquired by the tribe later as part of a restoration process that may continue for some time after Congress acts to restore tribal status?

The Tribes' status had been terminated in 1954. Congress restored the Tribes to recognized Indian tribe status in 1984. The 1984 restoration act included reference to three tracts of land, not including the Hatch tract. A subsequent amendment identified an additional tract of land adjacent to the Hatch tract. In 1998, the Secretary of the Interior accepted the Hatch tract in trust for the benefit of the Tribes. In 1999, the Secretary determined that the

Hatch tract was not part of the Tribes' restored lands for IGRA purposes. The Tribes sued the Secretary in federal court. The district court (in Washington, D.C.) determined that the Secretary had construed the terms "restore" and "restoration lands" in a manner that was unduly restrictive and did not adequately consider principles of construction of laws applicable to Indians. The district court remanded the case to the Secretary. In December 2001, following the district court opinion, the Secretary determined that the Hatch tract did qualify as restoration land and was therefore eligible for gaming use.

In response to that determination, the State of Oregon sued the Secretary in federal court in Oregon in April 2002. Federal Magistrate Coffin issued his opinion on July 1, 2003 upholding the Secretary's determination. The crux of Judge Coffin's decision is that the statutory terms "restored" and "restoration land" are ambiguous, so the determination of whether the land is or is not restored or restoration land lies within the administrative authority of the Secretary of the Interior. Judge Coffin applied principles of judicial review of administrative decisions in concluding that the court does not have the authority to substitute its judgment for the permissible construction of the terms by the Secretary. Judge Coffin noted in a footnote that "[i]t is beyond the court's jurisdiction to consider the merits or wisdom of constructing a gaming facility on the Hatch Tract."

The Governor is the named plaintiff. He announced on July 14 that he would not appeal Judge Coffin's decision.

Proposed resolution in opposition. You have received correspondence asking you to adopt a resolution, copy attached. Point 2 of the resolution would adopt a County policy of taking no action to facilitate the development of a casino near Florence unless and until there is a determination of no detriment to either the City of Florence or the County. But for point number 2 of the resolution, you have the usual range of choices, e.g., to adopt or reject that resolution, to consider any of the many possible variations of it, to do nothing. As to point number 2, federal law allocates the authority to approve the development to the Tribe, the Secretary of the Interior, and the State. There is no express legal requirement for a prior determination of no detriment. Consequently, a County policy requiring a determination of no detriment would have no legal effect. Adoption of a County policy to that effect could also create an unrealistic expectation that the County is legally prohibited from taking actions, cooperatively or otherwise, that may be required of the County under federal law and the compact.



Oregon

Theodore R. Kilgus, Governor

Department of Transportation

Region 2

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June 20, 2003

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SUBJECT: Traffic Impact Analysis Work Scope
Three Rivers Casino, Florence (Lane County), Oregon
Florence-Eugene Highway, OR126, Highway No. 62 at Milepoint 1.00 +/-

Dear Rick and Jon:

Oregon Department of Transportation (ODOT) met with the City of Florence, and Lane County to discuss the proposed Three Rivers Casino. We developed this scope of work for the Traffic Impact Analysis to evaluate the impacts of the casino to the transportation system.

The affected jurisdictions agreed that ODOT would be the lead agency regarding the traffic study coordination, so any questions or comments will be coordinated through this office. The traffic scope is as follows:

Analysis Area

- US101 (Oregon Coast Highway) @ Munsel Lake Road
- US101 (Oregon Coast Highway) @ OR126 (Florence – Eugene Highway)
- US101 (Oregon Coast Highway) @ Rhododendron Drive
- OR126 (Florence – Eugene Highway) @ Any Proposed Direct Access (if requested)
- OR126 (Florence – Eugene Highway) @ North Fork Siuslaw Road
- North Fork Siuslaw Road (Lane County) @ Munsel Lake Road (Lane County)

Analysis Period

- Counts during the Weekend and Weekday Peak Hours. Our review coastal traffic shows the peak hours occur Friday (2-6 PM), Saturday (11AM-3PM), and Sunday (1-5 PM).
- Year of Opening, Each Subsequent Phase of Development, and Full Build-Out (20-years)

Traffic Counts

- Current traffic counts are required at each of the listed intersections.
- Highway counts must be adjusted to reflect Design Hour Volumes. The methodology can be reviewed at <http://www.odot.state.or.us/tddtpau/SysAnalysis.html>

- Background growth rates to apply are:

US101 @ Munsel Lake Road	3.9% per year
US101 @ OR126	2.1% per year
US101 @ Rhododendron Drive	1.6% per year
OR126 @ North Fork Siuslaw Road	1.5% per year
North Fork Siuslaw Road @ Munsel Lake Road	1.5% per year

Trip Generation and Distribution

- 80% to and from the east, 10% to and from the north, and 10% to and from the south.
- Distribution may be adjusted with additional information and refinement.
- ODOT is currently reviewing existing Trip Generation information for Tribal Casinos and will provide you with this information when it becomes available.

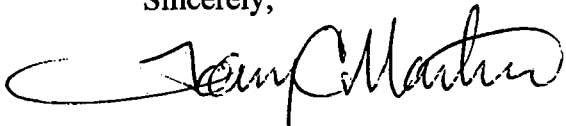
Analysis Methodology and Performance Standards

- Analysis shall be conducted using the Highway Capacity Manual (HCM2000) methodology.
- ODOT uses the volume to capacity ratio (v/c) as the measure of performance for the highway system. Lane County's standard is currently Level of Service (LOS) D, but will be switching to a v/c standard.
- Both the Oregon Coast Highway (US101) and the Florence – Eugene Highway (OR126) are on the National Highway System and are classified as Statewide.
- The maximum v/c for the ODOT highways is 0.75 within the Urban Growth Boundary and 0.70 outside the Urban Growth Boundary. Lane County's v/c standard will be 0.75.

If it is anticipated the intersection of OR126 and North Fork Siuslaw Road may warrant a signal, a separate signal warrant analysis will be required, and approval by the State Traffic Engineer is necessary before installation.

I hope this provides you with enough information to get you started on the analysis. We are working on the Trip Generation information and will provide it to you as soon as we have reviewed the documentation available and make a reasonable estimation. If you have any questions, please contact me directly at (503) 986-2655.

Sincerely,



Tony C. Martin, P.E.
Region 2 Access Management Engineer

cc: Sandi Young, Florence
Tom Stinchfield, Lane County
Tom Boyatt, ODOT Area 5
Don Ehrich, ODOT District 5

CHICKERING Sonny A

From: STINCHFIELD Tom A
Sent: Friday, July 11, 2003 4:01 PM
To: CHICKERING Sonny A
Cc: MORGAN Bill F
Subject: Casino

I put the file on your desk. It now has a signed copy of Tony Martin's letter in it (with an extra copy for you).

I called Tony Martin this afternoon and got the following report:

1. ODOT staff is working on trip generation numbers to give the consultant to use. They have a staff person reviewing traffic information from other casinos sites in Oregon. They expect to have that done next week. Tony will write them another letter then.
2. Tony would guess that they would have a draft traffic study done by perhaps late August or September.
3. Tony says that he has heard that the North Fork Siuslaw bridge replacement on 126 will be delayed some due to cash flow. Ann Sanders in the Spfd office is the project manager and can give you an update if needed. Tony did not have the revised schedule handy.
4. In that context, he brought up moving N. Fork Siuslaw again as perhaps a less expensive option than widening the bridge if needed for turn lanes, etc. I said we would not dismiss that option now, as long as we didnt pay and the road met our standards.
5. He is not sure where the Governor is on the appeal. Tom Boyatt (or Don Ehrich) might be able to find out something if we need to know.
6. Regarding access permits, he said that ODOT has issues access permits in other parts of state. At Spirit Mountain, they made them do a new permit for a change of use for a gas station. The tribe complied and ended up building some kind of grade separation. So, I am not sure if it has been rigorously discussed from a legal point of view, but the tribes seem to be in the mode of complying with traffic study requirements. I assume it is for community relations and because they want traffic to work at their business.

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