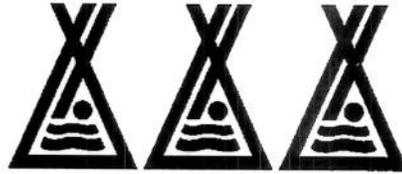


# THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Warm Springs Gaming Commission  
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January 12, 2010

Brad Mehaffy  
National Indian Gaming Commission  
1441 L Street, NW, Suite 9100  
Washington, D.C. 1005

Re: Proposed National Environmental Policy Act ("NEPA") Procedures Manual

Dear Mr. Mehaffy:

This letter constitutes the official comments of the Warm Springs Tribal Gaming Commission ("WSGC") on the National Indian Gaming Commission's ("NIGC") proposed NEPA procedures manual. The proposed NEPA procedures manual was published in the Federal Register (Vo. 41, No. 232) on December 4, 2009, at pages 63765-63787. The Warm Springs Gaming Commission is the regulatory body established by the Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs Tribe" or "Tribe") to regulate Class II and Class III gaming on the Tribe's gaming eligible trust lands.

The WSGC's comments are directed to an issue that is not addressed in the proposed NEPA procedures manual. The issue we are concerned about involves situations where a proposed tribal casino project is the subject of a NEPA process undertaken by a federal agency other than NIGC. For example, many tribal casino projects require a Bureau of Indian Affairs ("BIA") fee-to-trust approval under 25 CFR Part 151, or an approval by the Department of Interior under Section 20 of the Indian Gaming Regulatory Act ("IGRA") to make the project site eligible for gaming, or both. The Department of Interior Office of Indian Gaming Management requires full NEPA compliance, almost always with an Environmental Impact Statement ("EIS"), for any fee-to-trust for gaming purposes and also for IGRA Section 20 determinations. Under NIGC's proposed NEPA procedures manual, if a proposed tribal gaming project involving a fee-to-trust action and an IGRA Section 20 determination, both of which are BIA actions requiring NEPA compliance, also involves a management contract with a third party developer to finance, construct, and operate the proposed facility, NIGC's approval of the management contract would also require NEPA compliance. Under federal law, a single EIS is sufficient to provide NEPA compliance for several federal actions taken by different federal agencies where the various federal actions are required to permit, construct and operate a single project.

The proposed NEPA manual should specifically address the situation described above where NIGC's consideration of a proposed management contract is just one of several federal actions requiring NEPA compliance. The proposed NEPA manual should describe the circumstances under which NIGC would be the lead agency for developing the EIS and the circumstances where NIGC would be a cooperating agency with another federal agency, such as the BIA, which takes the lead in preparing the EIS.

Although the proposed NEPA manual states in Section 5.18.2 that NIGC may adopt, "in whole or in part", a draft or final EIS developed by another federal agency, no details are included in the section describing the circumstances under which NIGC would adopt another agency's EIS. In particular, we believe this section should state that NIGC must adopt an EIS prepared by the BIA for a fee-to-trust application, or an IGRA Section 20 determination, or both, if the BIA's EIS covers the same gaming project that is the subject of the management contract submitted to NIGC for approval.

Let us put our comments on the proposed NEPA procedures manual in the context of a real life situation. The Warm Springs Tribe has, for several years, been pursuing an off-reservation casino project at Cascade Locks, Oregon, 37 miles north of the Warm Springs Indian Reservation. The Tribe's fee-to-trust application to take 25 acres of the Cascade Locks Industrial Park into trust and to have the land determined eligible for gaming pursuant to Section 20(b)1(A) of IGRA has been pending with the BIA since April 2005. Shortly after the Tribe's fee-to-trust and Section 20 applications were filed, the Tribe, the BIA, and an environmental contractor began the NEPA process. Currently, the final EIS for the Cascade Locks project, which examines not only the proposed action (a casino at the Cascade Locks site) but also looks at three other casino alternatives as well as a "no action" alternative, is awaiting approval by the Department of Interior for publication in the Federal Register. The Tribe has self-funded the Cascade Locks project to this point and, when the final fee-to-trust and Section 20 approvals are granted, it is expected that the project will be constructed through conventional financing. No third party management company has been involved to this point, and the Tribe does not contemplate bringing in a management company to finance and operate the facility. Thus, according to NIGC's proposed NEPA procedures manual, no NIGC action requiring NEPA compliance is involved in this project. However, if the Tribe's plans should change, and it decides to use a management company to help finance and operate the Cascade Locks facility, it is evident that the NEPA compliance needed for NIGC's approval such a management contract would already have been provided by the BIA's EIS. (The BIA's EIS also provides NEPA compliance for the Federal Highway Administration's approval of a new Interstate highway interchange that will be part of the project). In this situation, NIGC should adopt the BIA's EIS—rather than develop its own separate but duplicative EIS-- to provide NEPA compliance for NIGC's approval of a management contract.

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In sum, the Warm Springs Gaming Commission would like assurances in the final NEPA procedures manual that the EIS prepared by the BIA (at considerable expense to the Tribe) for the Cascade Locks project provides full NEPA compliance for all federal agency actions necessary to permit, construct, and operate the Tribe's proposed Cascade Locks gaming facility. A further explanation in the final NEPA procedures manual of NIGC's role as a lead agency and as a cooperating agency when several federal agencies are involved in preparing a single EIS, and a requirement in Section 5.18.1 that NIGC adopt the EIS prepared by a separate federal agency that fully covers the proposed project that is the subject of NIGC's approval, would address our concerns and comments.

The Warm Springs Gaming Commission appreciates your consideration of our comments and would respectfully request that you respond back to us in written form.

Thank you.

A handwritten signature in black ink, appearing to read "William D. Fuentes", with a long horizontal flourish extending to the right.

William D. Fuentes, Chairman  
Warm Springs Gaming Commission