

FEE-TO-TRUST APPLICATION SUBMITTED; GOVERNOR ISSUES POSITION ON OFF-RESERVATION GAMING

The Tribe's request to have the property taken into trust by the Secretary was followed by a fully documented fee-to-trust application on June 22, 1992 which addressed every issue raised by the community. The application was considered by the BIA to be one of the most comprehensive ever submitted.

Governor Roberts had issued a statement two months earlier, before the Tribe had even submitted its application, not only opposing the Siletz proposal involving the Salem site, but any off-reservation acquisition of land for gaming by any tribe.

BUREAU RECOMMENDS APPROVAL OF THE FEE-TO-TRUST APPLICATION; SECRETARY ISSUES HIS TWO PART DETERMINATION

Despite Governor Roberts' position against off-reservation acquisition of land for gaming, the Superintendent and the Area Director, in turn, recommended that the Secretary approve the Tribe's application based on the strength of the Tribe's submission.

On November 6, 1992, Secretary Lujan made his decision to support the Tribe's proposal and found that the Tribe's fee-to-trust was "in the best interest of the Tribe and not detrimental to the surrounding community." Lujan then sent this decision to Governor Roberts, as required by the Gaming Act, for her views.

GOVERNOR ISSUES STATEMENT OF NONCONCURRENCE

On November 20th, the Governor issued a statement of nonconcurrence, claiming "a casino in Salem would erode the social and moral fabric of the community and the quality of life would decline", she ignored the fact that gambling abounds in the city of Salem; that the Governor herself approved video poker in 1992, which by the end of the year had been installed in thousands of bars and clubs across the state.

Tribal officials and Franklin Ducheneaux (who continued to serve as our Washington consultant after the retirement of Gerard), were in frequent contact with the Secretary regarding our application. We were repeatedly assured by many federal officials, including the Secretary, that the Governor's nonconcurrence did not constitute a veto and the application would therefore be approved. The Secretary's position was bolstered by the opinion of the departmental Solicitor who consistently maintained that it was unconstitutional for the Governor to veto executive decision.

SECRETARY LUJAN DISAGREES WITH GOVERNOR BUT DISAPPROVES TRIBE'S APPLICATION

In a letter dated December 21, 1992, in a sudden reversal of his long-held position, the Secretary informed the Tribe that although "we do not necessarily agree the Governor's assessment is accurate...the Solicitor has advised that the fee-to-trust application could not be approved without the Governor's concurrence." The Secretary had suddenly changed his legal opinion support of the Tribe, because of political pressure from the states.

TRIBAL COUNCIL DECIDES TO SUE THE U.S. BASED ON APPOINTMENT'S CLAUSE OF THE U.S. CONSTITUTION

After much deliberation, the Tribal Council unanimously decided to fight the Secretary's denial decision in court, contending that the Governor's veto of the Secretary's decision was a violation of the Appointment's Clause of the U.S. Constitution. The suit was filed in the U.S. District Court in Portland on December 22, 1992.

The year 1993 began and ended with the Tribe in litigation over this issue.

While the case was pending, however, it was necessary to purchase the Salem property to prevent it from being lost to a tax foreclosure. Loss of the property would have ended the Tribe's lawsuit, and the Tribe would have had to start all over again with a new piece of property. There were also legal costs involved which First Astri had assured the Tribe it would pay, "to the Supreme Court if necessary." Since First Astri was unable or unwilling to provide the necessary funds to pay the taxes, the Tribal Council voted unanimously to pay the taxes from timber revenue. Our case would have been moot if the Tribe did not have the Salem property as the subject of the suit. Rationale allowed that the property was a good investment, independent of gaming possibilities.

ECONOMIC DEVELOPMENT OPTIONS STUDIED FOR NORTH SALEM PROPERTY

Since the property could not be used for gaming under IGRA, the Ad Hoc Gaming Commission began considering various other options. Based on economic surveys, it was decided that an RV/business park was the most economically viable option available. A Corvallis based firm, the Research Group, was therefore contracted to begin conducting detailed studies and laying preliminary plans for an RV park.

MAJOR EFFORT LAUNCHED TO LOCATE ALTERNATIVE GAMING SITE

Meanwhile, the Ad Hoc Gaming Commission quietly launched a concentrated effort to locate an alternative gaming site, this time, in Lincoln County. We proceeded despite Governor Roberts' explicit warning that she would not approve any acquisition of off-reservation land for gaming by any tribe. We thought we were limited to already existing reservation land in the City of Siletz.

GOVERNOR'S ERROR HELPS GRAND RONDE GET RESERVATION LAND FOR GAMING

Our attorney discovered that the Governor had negotiated a Compact with the Grand Ronde Tribe on property which the Tribe was using as its forestry headquarters. The Governor executed the compact erroneously believing that the property was reservation land eligible for gaming under the Indian Gaming Regulatory Act of 1988. It was not.

In view of the Governor's publicly stated opposition to the acquisition of any off-reservation land for gaming by any tribe for gaming, it became necessary for the Governor to actively push for congressional action to make the property eligible for gaming. She personally lobbied Congress to have the property converted to pre-1988 reservation land.

The Siletz Tribe saw an opportunity from the Governor's conduct with regard to Grand Ronde to also gain state approval of an off-reservation site located in a more viable location than Siletz.

SILETZ TRIBE NAMES JUDD PROPERTY TO START COMPACT NEGOTIATIONS; TRANSFER TO ANOTHER ELIGIBLE SITE UNDERSTOOD

Although the Siletz Tribe requested that compact negotiations be initiated, the Governor's office advised that the negotiations must be site specific and involve eligible reservation property.

In order to get the process moving, the Tribe identified the Judd property at Siletz which qualified under IGRA but was property already designated by the Tribe for other purposes. A confidential letter was sent to tribal

