



# COQUILLE INDIAN TRIBE

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To the Oregon Joint Legislative Committee on Gambling:

Dai s'la! I am the Tribal Council Chairperson of the Coquille Indian Tribe. Thank you for affording Oregon gaming tribes an opportunity to speak at the July 20, 2021, Joint Committee meeting. Please accept this written statement as a supplement to my verbal comments.

Tribal Governments Are Unique: Each tribe is a sovereign government with its own unique law, and history. No other organization speaks for the Coquille Indian Tribe.

Coquille Tribe No Longer Affiliated with OTGA. You have likely heard of the Oregon Tribal Gaming Alliance or OTGA. I must clarify that the OTGA does not speak for the Coquille Indian Tribe. In fact, the Coquille Tribe for the first time ever has voted to withdraw its membership from that organization. The Confederated Tribes of Siletz and the Confederated Tribes of the Warm Springs Reservation also have previously withdrawn. Although we do not intend for this to change our government-to-government relationships with any Oregon tribes, we will let our actions speak for themselves.

The Importance of Indian Gaming. Gaming provides a vital source of revenue, jobs and philanthropy for our Tribe and the communities where we are located. Our Tribal Constitution (available at: <https://www.coquilletribe.org/wp-content/uploads/2017/04/Constitution.pdf>) prohibits “per capita” payments to our members. Consistent with our potlatch tradition we invest all of our revenue into services like health care, education, housing, ecosystem restoration, elder care, childcare, social services and community philanthropy. Without gaming virtually none of this would be possible.

Also often overlooked is the role that tribal gaming plays in rural economies. Tribal gaming facilities are extremely efficient and highly regulated industries that enjoy the ability to spend significantly on local goods and services. During the current pandemic, Tribal gaming facilities served as extremely reliable and effective nodal points to coordinate and deploy federal and state relief and to keep many local partners in business.

The Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act, or IGRA, is the foundational federal law to regulate tribal gaming. It separates tribal gaming into three different

classes. Class I gaming is comprised of traditional Native American games. Class II gaming includes bingo and certain card games. Class III gaming includes all other forms of gambling, including most casino-style games.

Class III gaming requires a state/tribal agreement called a “compact”. Our Mill Casino / Hotel, for example, is operated under the terms of a Tribal / State gaming compact that was originally negotiated in 1994.

These Class III gaming compacts reflect the State’s legal obligations under the IGRA. Those legal obligations have not changed over time, and the Coquille Tribe is proud to have a record of gaming compact compliance.

To understand the role IGRA plays requires some historical background. Before the IGRA, federal caselaw permitted tribes to conduct gaming on trust lands with no involvement from state government. This obviously led to several concerns from state and local governments. The IGRA was adopted in response to those concerns. It aims to balance federal, state and tribal government interests. The current process to approve any tribal gaming already accommodates the State of Oregon’s interests. To the extent that this Committee explores a more restrictive state policy for tribal gaming, it is unilaterally re-legislating the IGRA, which puts this balance in jeopardy. Oregon’s current tribal gaming compacts continue to reflect the legal analysis of then Attorney General Kulongoski, which aimed to apply Oregon’s gaming laws and policies, including the State Supreme Court’s decision in *Ecumenical Ministries v. Oregon Lottery* to IGRA to determine the State’s obligations in compact negotiations with the Tribes.

One Casino Per Tribe Fallacy. There has been much talk of a “one casino per tribe” policy in the State of Oregon. Simply put, no such policy exists outside of the rhetoric used by powerful interests to maintain market domination. We challenge any party to cite any State Constitutional provision, statute or administrative rule that includes this “policy”.

A quick review of the applicable law and Oregon gaming compacts is helpful.

1. Even if such a policy exists (and it does not) the IGRA itself preempts and prohibits it. When a tribe identifies an eligible parcel in trust status upon which it seeks to conduct Class III gaming, IGRA provides that the State has a legal obligation to negotiate a compact in good faith. A state cannot avoid this obligation by creating a “one casino” policy, which makes sense because it would allow a state government to entirely undermine the IGRA’s careful balance of state, federal and tribal interests.
2. Second, the language of every Oregon tribal gaming compact reveals that no such policy exists. Every tribal gaming compact includes some version of the following findings:
  - a. “...the public policy of the State is reflected in the Constitution, statutes and administrative rules of the State.” (Coquille Compact); or

- b. "...the public policy of the State is reflected in the Constitution, statutes and administrative rules of the State, which, at the time of execution of this Compact, authorize a variety of games classified as Class III games under IGRA" (Umatilla Compact); or
- c. "...the State's public policy concerning gaming is reflected in the Constitution, statutes and administrative rules of the State, which authorize a variety of games classified as Class III Gaming under IGRA" (Cow Creek Compact).

The compacts themselves instruct readers where to look to find the State's public policy on gaming. And yet, there is not a single provision of Oregon law or policy that can be even inferred to justify a "one casino" standard.

- 3. Third, the State's own words in several Oregon tribal gaming compacts contemplate something very different than "one casino per tribe".
  - a. "The Tribe hereby waives any right it may have under the IGRA to negotiate a Compact for Class III gaming at any different or additional location or facility for a period of five (5) years from the effective date of this compact, provided that if any other Oregon Indian tribe operates Class III gaming at more than one location under a Compact with the State, the Tribe shall have the right to request immediate negotiations on the issue..." (Burns Paiute & Umatilla Compacts)
  - b. "Nothing in this Compact shall be deemed to affect the operation by the Tribe of any Class II gaming as defined in the [IGRA] or to confer upon the State any jurisdiction over such Class II gaming conducted by the Tribe." (Burns Paiute, Coos, Lower Umpqua & Siuslaw, Coquille, Grand Ronde, Klamath, Siletz, Umatilla & Warm Springs Compacts)
  - c. "For a period of five (5) years, the Tribe hereby waives any right it may have under IGRA to negotiate a Compact for Class III gaming at any other location or facility..." (Coquille Compact)
  - d. "Except as provided in this Compact, the Tribes hereby waive any right it may have under IGRA to negotiate a Compact for Class III gaming at any different or additional location or facility for a period of five (5) years from the effective date of this Compact" (Klamath Compact)
  - e. "The Tribe hereby waives any right it may have under IGRA to negotiate a Compact for Class III gaming at any other location or facility for a period of five (5) years from the effective date of this Compact..." (Siletz Compact).

These five-year periods all expired long ago. According, per the terms of these compacts in effect, these Tribes, including Coquille have the right both under IGRA and under the express terms of the of compacts to pursue (additional) new Class II or III locations on eligible Indian lands. This frequently-referenced but rarely investigated "one casino policy" is a myth perpetuated by the powerful to prevent tribal revenue parity. The only duly adopted policies

addressing this subject matter are the IGRA, its regulations, and the solemn commitments made each Oregon tribal gaming compact.

The Confederated Coos, Lower Umpqua and Siuslaw and the Confederated Tribes of Warm Springs already have two casinos each, albeit the second smaller facilities house Class II gaming, which does not require a compact. The Coquille Tribe has always supported the efforts of both Tribes. The Coquille Tribe's proposal for a second gaming facility in Medford is also a Class II casino. The Siletz Tribe's proposal for Salem contemplates Class III gaming which would require a compact. It is not lost on the Tribe that the "one casino policy" is selectively used to oppose some tribal proposals and not others. It is also not lost on the Tribe that the purported "one casino policy" is made with the backdrop of hundreds of outlets around the state offer slot machines owned by the Oregon Lottery, resulting in hundreds of small casinos spread out across the entirety of the State.

Statewide Mobile Gaming. As you might know, the Oregon Lottery engages in statewide mobile sports wagering. What you might not know is that the State refuses to negotiate IGRA compact amendments for tribes to compete in this field.

1. The Lottery has a monopoly – now employing Draft Kings – to capture the State's online sports wagering market – and Lottery insists it has right to monopolize all mobile gaming, not just sports betting.
2. Coquille (and at least one other Tribe) have requested that our compact be amended to allow for the Tribe to offer the same game, as permitted under the IGRA.
3. To date, the State insists that the Oregon Lottery is entitled to maintain its legal monopoly to accept wagers from any mobile phone in the State, while locking tribes out of this market.
4. This is wrong legally, and we believe that tribes are willing and able to assert their rights if necessary.

This refusal is wrong also as a policy matter – to prevent the Tribes from offering the same game that the Draft Kings is now offer is inequitable

Tribal Revenue Equity. Tribal revenue equity is a major issue among Oregon's nine tribes. Oregon has eight gaming tribes. Some of them are very successful. Others are much less successful. Success is driven overwhelmingly by location, but competition is stifled, to the detriment of consumers, employees, charities and local governments. Over the past twenty years we have observed incredibly successful gaming tribes devote substantial resources to preserve their market dominance. This has resulted in an inequitable distribution of resources and services based on a tribal member's national origin. In short, the status quo is inequitable and not the Oregon way.

The Coquille Tribe is very concerned that this Committee is being pushed by a minority of tribes that are set on perpetuating their market dominance, which would further widen the equity gap between rich tribes and poor tribes.

For our part, we have never opposed another tribe's economic development efforts, even to our own detriment.

For example, when our friends the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians opened a second gaming facility three miles from our Mill Casino and Hotel, we welcomed them with open arms. We understand what those gaming dollars mean for health care, education, housing, and elder care in every tribal community.

Tribal Gaming Expansion Is Far From a Threat To The State. The federal government has robust and very challenging processes governing the approval or disapproval of tribal gaming. In 2012 the Coquille Tribe requested the federal government to place 2.4 acres in Medford, Oregon into trust for a Class II casino.

As of today, nearly ten years have passed and we are still waiting on a public hearing for a draft environmental impact statement. I have spent 20% of my life waiting on even a process to make a decision.

A major reason for this delay is the aggressive pushback by powerful tribal interests that have actively opposed our efforts to protect their economic interests.

One tribe has spent approximately \$5.5 million in lobbying and campaign contributions since we filed our request. Now, after ten years, we might be receiving our due process as guaranteed under the law.

However, just as hope of our process appears to become a reality, this very committee is asked to evaluate (among other things) tribal gaming policy, even though a very robust public comment process will allow any of us to comment. I appreciated Co-Chair Gelser's statement at the June 20, 2022 hearing that this Joint Committee should only address state-licensed gaming.

I do not mean to disparage any of the members serving in this committee, but I do want you to be wary of efforts to squash competition and maintain market dominance. Competition benefits customers, employees, communities, governments, and affirms trust in our political and economic institutions.

The Coquille may be small but we refuse to lay down and allow others to take away from us what is legally ours. We have had everything taken from us and it took generations to get some of it back. Please do not be the vehicle to allow that to happen again. Our "ask" is for the

committee to refrain from involvement in tribal gaming processes and focus on state-sanctioned gaming. In our eyes, this is the rightful role of the Oregon legislature.

The Truth About the Oregon Gaming Market. Oregon remains an attractive gaming market with the potential to create more jobs, benefit more communities and generate more government revenue. Between 2011 and 2021 Oregon State Lottery annual revenue nearly doubled. In recent years the Lottery has expanded into previously untapped statewide gaming markets, including through their statewide monopoly on Internet gaming. In contrast, tribal gaming machine numbers have fallen behind. It appears to us that the Oregon gaming market is not at all saturated. Take for example:

1. the Lottery's (and Draft Kings') continued investments in statewide mobile sports betting;
2. the negligible impacts of the Ilani destination casino 13 miles north of the Oregon/Washington border on the Oregon lottery and competing Tribal casinos
3. recent Oregon state legislation authorizing pari mutuel betting on historic horse racing machines, only to be restricted after the State's DOJ realized these poorly disguised slot machines for what they really are
4. the willingness of investors to risk millions into an historic race gaming facility and race track improvements in Grants Pass Oregon
5. the recent announcement that Caesars will be investing in an Oregon horse race betting app;
6. discussions (as yet unrealized) to expand gaming to the Cow Creek Tribe's I-5 Travel Center;
7. the Siletz and Coquille Tribe's gaming applications; and
8. the Grand Ronde Tribe's announcement of a possible casino development in Wood Village; and
9. the continued viability of at least three online fantasy sports providers in the State of Oregon.

It does not appear that Oregon's gaming market is saturated.

The Coquille Tribe disagrees with one study presented to you from an economically successful Oregon tribe. This study assumes in error that additional gaming necessarily robs from existing Oregon outlets. (*See: Historical Horse Racing Machines: Recent Trends and Future Impacts in Oregon: ECONorthwest* (September 17, 2021, prepared for ART Public Affairs, lobbyist for the Cow Creek Band of Umpqua Indians). There is simply no evidence or information that this is true. In my opinion and that of others on my team, the basis for any such assumption is woefully anemic.

In closing, here are the messages that I hope you take away from this testimony:

1. No other organization speaks for the Coquille Tribe.
2. Coquille does not hand out gaming revenue to Tribal members. We invest all our gaming revenue into services. Tribal gaming funds health care, housing, education and other social services. It pays for community philanthropy, ecosystem restoration and care for our elders. Our health and welfare are directly tied to our ability to compete for gaming dollars.
3. Leveraging political power to prevent competition is an unsound long term business practice. It is bad for consumers, bad for employees and bad for competitors. Oregon's gaming tribes include "haves" and "have nots." Dominant gaming tribes and the State Lottery flex their resources to stifle competition from all sources, including poorer tribes wishing only to compete.
4. Tribal gaming expansion in Oregon is very infrequent and very slow to realize.
5. Claims of a "one casino per tribe" policy are false, but these ideas are nevertheless used by the powerful to maintain market dominance.
6. The process to expand tribal gaming follows a long-established approach that carefully balanced federal, state and tribal interests. I am concerned that you will be requested to disturb that balance to protect certain monopolies.
7. There is room for all current forms of gaming to grow and compete in our Oregon market.

Thank you for the opportunity to present this information.

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Brenda Meade, Chairperson  
Coquille Indian Tribe