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OFF-RESERVATION GAMING

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING FOR THE PROCESS FOR CONSIDERING GAMING APPLICATIONS

FEBRUARY 1, 2006
WASHINGTON, DC

PART 1

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OFF-RESERVATION GAMING

WEDNESDAY, FEBRUARY 1, 2006

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m. in room 106 Senate Dirksen Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, Cantwell, Smith, and Thomas.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. This morning, the committee is holding its sixth oversight hearing on the Indian Gaming Regulatory Act. Since IGRA was enacted in 1988, Indian gaming has grown from a few bingo halls on scattered reservations to a $19-billion industry featuring Las Vegas-style casinos and entertainment offered by nearly 200 tribes.

The previous hearings in this committee demonstrated several areas of the law that are in critical need of improvement. Last fall, we introduced a bill containing a comprehensive set of amendments, S. 2078. However, certain controversial activities continue to concern me, my colleagues, and many communities around the country. Therefore, I have determined, working with Senator Dorgan, to continue to look at these activities and whether additional changes to IGRA are needed.

While the majority of tribes have built casinos on their reservations, a growing number have applied to use the exceptions in section 20 of IGRA to obtain casinos off their reservations in more economically viable locations. As might be expected, the success of off-reservation casinos leads others to seek similar success.

State officials have a role in land-into-trust decisions under the two-part determination. I am concerned, however, that the process of taking land into trust under the restored lands and initial reservation exceptions may not be adequate to be fair to all the people impacted by the arrival of a casino.

At the same time, we recognize that the restored lands and initial reservation exceptions were originally intended to provide a fair chance for newly recognized tribes to achieve an equal footing with their sister tribes. Having received a great deal of information about newly recognized tribes looking for the best place to place a casino, rather than a location that meets the cultural and social

needs of their members when looking for an initial or restored reservation, we must now try to fairly balance the interests of tribes seeking reservations and the communities affected by new casinos.

We will also hear from individuals who can testify to three locales' experiences with the land-into-trust process, as well as an Indian tribe that currently has its application for an initial reservation pending before the Bureau of Indian Affairs [BIA] and that has at the same time received an opinion from the National Indian Gaming Commission [NIGC] stating that if land is taken into trust, it should be considered restored lands. It is these two exceptions to IGRA's general ban on gaming on recently acquired land, the initial reservation and restored lands for restored tribes exceptions, that we are interested in today, along with many other aspects of IGRA.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Mr. Chairman, thank you very much.

I agree with what you have said in your opening statement. There is no question but that the application process for these exceptions is something that we should hold these hearings on to try to better understand.

Today's hearing will focus on two exceptions to the general ban against gaming on lands that were acquired after 1988: No. 1, those lands that are the initial reservations of tribes; and No. 2, those lands that are the restored lands of tribes. The exceptions, my understanding is, from the origin of IGRA, are intended for those tribes whose lands were illegally taken; whose governments were wrongfully terminated; or who are just establishing their government-to-government relationship with the United States.

The two exceptions were are discussing today are intended to correct some of the many injustices bestowed upon native people. It is true, Mr. Chairman, as you indicated, that location for these facilities is critical. It is also true that there are many who would want to find the best locations possible and the largest possible centers possible. We understand all of that.

As a result, we want to evaluate how these exceptions are working; how the applications for these exceptions are being considered; and understand the consequence of all of that. For that reason, I think these hearings are going to be very productive and very important as we move forward.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thomas.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Thank you, Mr. Chairman.

I appreciate your having this hearing. I think this is an issue of increasing concern and interest to all of us. I have no particular statement. I look forward to the testimony. I believe this is a very important issue and I am glad we are dealing with it.

The CHAIRMAN. I thank my colleagues. I would like to again state we will be having several more hearings on this entire issue of Indian gaming, and also the issue of political involvement and contributions. I intend to mark up legislation within 1 month or so that I hope can be passed by both Houses of Congress.

I want to emphasize, as I said in my opening statement, this went from a very small revenue and small enterprise business, to now approaching $20 billion a year; 99 percent of the patrons of Indian gaming are not Indians, so we have an obligation not only to Native Americans to preserve their rights and their sovereignty, but also to protect the rights of those who patronize Indian gaming facilities as well.

So I am very aware that there is a great deal of controversy out there in Indian country about addressing this issue. It needs to be addressed. Every law that is passed over time needs to be updated and reauthorized. IGRA was passed in 1988 and it is time that law be reviewed and reauthorized in keeping with changing circumstances.

I thank my colleagues. I would like to ask the first panel, George Skibine, an old friend of the committee, who is the acting deputy assistant secretary for Policy and Economic Development for Indian Affairs of the Department of the Interior; and Penny Coleman who is the acting general counsel of the National Indian Gaming Commission, as our first witnesses.

Mr. Skibine, we will begin with you. Again, welcome back.

STATEMENT OF GEORGE SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY, POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SKIBINE. Thank you very much, Mr. Chairman, Mr. Vice Chairman, Senator Thomas. I am pleased to be here to represent the Department of the Interior at this hearing.

I submitted a statement for the record. In my testimony, I describe the process.

The CHAIRMAN. Without objection, both statements will be made part of the record. Please proceed.

Mr. SKIBINE. I describe the process that a tribe has to go through in submitting an application to take land into trust for gaming. I am not going to repeat what I said here; just outline it. Essentially, the way it works is that, first of all let me mention that before a tribe submits an application, there are often a lot of rumors going around, and articles in newspapers.

We are not really involved in that at all. That creates a lot of controversy and gives the impression that something is already pending, when in fact when we receive these calls, for many, many of these applications, the BIA is not yet involved.

The BIA's involvement is triggered when a request is submitted to the regional office under our regulations for taking land into trust, contained in 25 CFR part 151. That triggers the BIA to consider the application. What usually happens next is that the BIA will begin the environmental documentation processing under NEPA to decide whether an environmental assessment or an environmental impact statement is needed.

That usually takes 6 months to 1 year, we are involved with that process. The process includes public input. There are scoping sessions that are held in the field, and then eventually, a draft environmental statement is submitted for comment. We get most of our information on environmental consequences from that process.

The CHAIRMAN. What is the average length of that process?

Mr. SKIBINE. For NEPA, I would say it is at least a year, sometimes much longer than that.

As this is going on, the tribe will continue to submit its application and the local BIA will conduct consultation meetings if its off-reservation. We will do consultation with State and local communities that have jurisdiction over the land. We will examine the impact based on the comments that are received. Eventually, there will also be a determination that is going to be made in Washington, if the land is for gaming, on whether the land will qualify under one of these exceptions that you mentioned at the outset.

We look at the information that the tribe has submitted and we decide whether one of the exceptions applies. In some cases, we do not have to make a determination because the tribe will say, we are applying under the two-part determination, which is off-reservation. In that case, the process moves forward under that two-part determination test that you talked about earlier.

If not, then we will make a determination as to whether section 20(b)(1)(A), the two-part determination, applies or not. If it does not apply, it will be because it fits under one of these exceptions. Under these exceptions, we have approved since 1988 one under the restoration of land exception. We have approved three under the initial reservation exception, although we have not actually taken land into trust yet under the initial reservations exception because two of those cases are now in court. The third one was just approved a few days ago.

We have approved 12 applications since 1988 under the restored tribe exception. A restored tribe can be either restored by Congress or restored by judicial decision. We have about 10 applications under the two-part determination currently pending before us and we also have about 10 under the restored tribe exception that are currently pending in the Bureau of Indian Affairs.

As the process goes along, a determination will be made whether the tribe qualifies under the exceptions. Then the recommendation of the regional office will come to my office, where we will take a look anew at that application. We will decide whether to sign a finding of no significant impact under NEPA for an environmental assessment, or whether to sign a record of decision if an environmental impact statement is done.

We will look at whether to recommend to the Secretary who has delegated authority, actually the Assistant Secretary for Indian Affairs, to take land into trust. Since 1990, when Manuel Lujan was Secretary, there was a policy made that applications to take land into trust for gaming would be made at the central office. We have continued that policy since then.

Now, what I want to emphasize is that what we have sought to do here is to have a very transparent process from the beginning. We understand, and I have talked to many people out there who have sometimes had a problem with the regional office of the BIA

in getting sufficient information. I have talked to Congressmen representing Districts who have had that issue. We are trying to fix that because I think that the philosophy that we have and that essentially follows Secretary Norton's position on communication and consultation, is that we want the process to be very transparent.

We want to be able to do consultation and cooperation with local communities. At the central office, we often encourage the tribes to reach out to their local communities. We feel that agreements between local communities and tribes to reduce adverse impacts are extremely important. We emphasize that to the tribes and to the local communities when we go out there and talk about the process.

We understand that it is a somewhat confusing process. It is long and arduous. There are a lot of pieces there. It is sometimes difficult to explain that to the local communities, especially to the people who are not lawyers or involved in the process. We are developing a draft regulation to implement section 20 of the Indian Gaming Act. We had a draft regulation published in 2000 under the previous Administration that implemented section 20(b)(1)(A), the two-part determination process, but we never went final with that regulation in the new Administration.

Now we are reviving the process and broadening it to include dealing with the other parts of section 20. We are doing that in order to try to get clarity into the process so that a process can be followed and has to be followed in every case. The regulations have been developed.

We will hopefully in the next couple of weeks send a working document to tribes and do tribal consultation. We will make it available to the committee and to anyone else who wants it. Eventually, we hope to have regulations implemented before the end of this year.

With respect to the initial reservation, we have done that only a couple of times. I want to talk about that particular exception, finally, because our position is that to qualify under the initial reservation of a tribe recognized under the acknowledgment process, there has to be a reservation proclamation.

The reservation proclamation is published in the Federal Register pursuant to the Secretary's authority to proclaim reservations in section 7 of the Indian Reorganization Act. That act authorizes the Secretary to proclaim reservations on land that is held in trust. It is fairly broad.

We are also separately in the process of developing regulations that will implement section 7 of the IRA for reservation proclamations. Right now, there are no regulations. There are guidelines that were issued in the past that the BIA follows.

The CHAIRMAN. When do you expect those regulations to be completed?

Mr. SKIBINE. Hopefully we can do that in the next couple of months or so, in terms of producing a draft.

The CHAIRMAN. Senator Dorgan just made a comment: Seventeen years of IGRA without regulations?

Mr. SKIBINE. Without regulations on what?

The CHAIRMAN. On section 20.

Mr. SKIBINE. On section 20?

The CHAIRMAN. Yes.

Mr. SKIBINE. That is correct. We do not have regulations implementing section 20 of the Indian Gaming Regulatory Act. We tried to do that in the 1990's. Personally, I thought it would have been helpful. When we initially published our draft regulations for section 20, there were a lot of objections from tribes. I think the new Administration decided not to press the issue. I think that now the Administration feels that this is something that is going to be very worthwhile.

With that, this will conclude my brief comments. I am available for questions if you have any. Thank you very much.

[Prepared statement of Mr. Skibine appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Coleman.

STATEMENT OF PENNY COLEMAN, ACTING GENERAL COUNSEL, NATIONAL INDIAN GAMING COMMISSION

Ms. COLEMAN. Thank you, Mr. Chairman, Mr. Vice Chairman, committee members.

My name is Penny Coleman. I am the acting general counsel of the National Indian Gaming Commission. I appreciate that you took the time to let me speak to you today. I understand that you are concerned about off-reservation gaming and that you are concerned about gaming where there are tribes that are landless, and they are looking to find a place where they can establish their home base and establish a place where they can have economic development, and that includes gaming.

Our office is somewhat involved in that, but not extensively. The Indian Gaming Regulatory Act defines Indian lands. It makes the NIGC the primary regulator for the Federal Government. Consequently, there are several times when we have to decide that they are Indian lands. In fact, all of the time we have to decide whether or not they are Indian lands. The primary one, of course, is that we only have jurisdiction over Indian lands. So we need to know whether we are supposed to be regulating, whether we are supposed to be making sure that a tribe follows the Indian Gaming Regulatory Act.

There are a couple of other times when we look specifically to Indian lands and make Indian land determinations. That is when we have a pending management contract and if we are going to approve it, we obviously cannot approve a contract for gaming that is off of Indian lands. And then on very rare occasions, we have site-specific tribal ordinances. Those are ordinances where the tribal ordinance will say the Indian lands are all of the Indian lands of the tribe, and they include this specific site and it will list that site.

We do not issue formal opinions that often. They take a lot of time. They are a lot of work. But as I mentioned to you the last time I spoke, we are working on an Indian lands database so that we will have all of the information necessary to make those determinations for all of the gaming facilities. That is a work in progress and we are moving along on it quite well.

When we do write Indian lands opinions, we make every attempt to get the consensus of the Department of the Interior. That is im-

portant because we both have responsibilities on Indian lands, and it is necessary for us to agree with whether or not those are Indian lands. We do that through a memorandum of understanding that calls for us to provide the Department's Office of the Solicitor with drafts. We notify them when we are going to write one of these opinions so that they will be able to give us any information that they might have. We try to work together on that.

We also notify the State Attorney General when we are going to do one of these because the State and its people may have information that might be helpful in our analysis, and the State sometimes has information or analysis that impacts how we approach these. So we send them a letter, and that is a process that started several years ago as a result of a request from the Conference of Western Attorneys General, and that seems to be working.

Regarding public notice and participation, we try to respond openly to any requests. We meet with anyone who wants to meet to give us their views. We accept all comments. We respond to all FOIA requests. We have a wonderful FOIA officer who provides information very quickly. But generally, we consider these to be legal opinions, so we have not really developed anything beyond that.

When we are doing these opinions, if in the rare instance that they are dealing with a trust acquisition, we do not make any recommendations on the merits of whether the land should be acquired into trust; whether or not there should be gaming there; whether there is an economic impact on the surrounding community; whether there is environmental impacts. That is not our call. That is something that the Department of the Interior does. So they are the ones that have the whole process for making those decisions.

Right now, we have four pending that deal with trust acquisitions. Those are pending because we have management contracts. With respect to the environmental and economic impacts, we are a cooperating agency, or a lead agency under NEPA. So our NEPA compliance officer is right there participating with the Bureau of Indian Affairs NEPA officers.

That concludes my statement. Thank you.

[Prepared statement of Ms. Coleman appears in appendix.]

The CHAIRMAN. Thank you.

With both witnesses, let's go back to basics. A tribe is operating and they want to acquire additional lands to be taken into trust. That would be all of your responsibility. Right, Mr. Skibine?

Mr. SKIBINE. That is correct, yes.

The CHAIRMAN. What if their application was to take land into trust for purposes of gaming? Whose responsibility is that?

Mr. SKIBINE. It is ours also.

The CHAIRMAN. What about if it is non-contiguous land? Does that have any affect on your decision, whether it is contiguous or not contiguous? I am talking about somebody that wants to buy land in downtown Denver and take it into trust.

Mr. SKIBINE. They would have to apply to the BIA to have the land taken into trust. It makes a big difference on what the final decision will be, but the responsibility to look at the application is with the Department of the Interior.

The CHAIRMAN. If a tribe just buys land and it is not taken into trust, are they allowed to conduct gaming operations?

Mr. SKIBINE. If it is off-reservation?

The CHAIRMAN. Yes; they just bought some land.

Mr. SKIBINE. No; not if it is off-reservation.

The CHAIRMAN. What if it is contiguous to a reservation? They buy additional land. It is not taken into trust. They just purchase it. Can they start a gaming operation?

Mr. SKIBINE. No; if it is contiguous to the reservation, the land has to be taken into trust also. It fits under the exception in section 20(a) of IGRA for gaming on land taken into trust.

The CHAIRMAN. Okay. How many times have you seen a situation where a tribe bought land for taking into trust purposes, and then later on began gaming operations?

Mr. SKIBINE. Began gaming operations later on?

The CHAIRMAN. After they had received permission to take land into trust.

Mr. SKIBINE. Okay, so the land is in trust and then they want to do gaming? I would have to double-check on the number of times that has happened.

The CHAIRMAN. In other words, when there is a change in use.

Mr. SKIBINE. Yes; it has happened in a few instances, and we would have to get back to you on that.

[Information follows:]

Lands Converted From Non-Gaming to Gaming Uses According to BIA Regional Offices[9]

1. Keweenaw Bay Indian Community: 22.38 acres in Marquette County, MI, were brought into trust on 9/24/90 for housing purposes. According to BIA the land was converted to gaming use in September 1994. The tribe eventually received the Secretary's approval and the Governor's concurrence to an off-reservation gaming application (two-part determination) on May 9, 2000.

2. Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians: 98 acres in Florence, OR, were brought into trust on 1/28/98 for future economic development. Converted to gaming in July 2003. According to NIGC officials, the tract was administratively determined to fall within the IGRA exception for restored lands.

3. Confederated Tribes of Siletz Indians of Oregon: 10.99 acres located in Lincoln City, OR, were brought into trust on 12/5/94. According to NIGC, the parcel was brought into trust under a legislative amendment that revised the Tribe's Restoration Act and allowed gaming under the IGRA exception for restored lands. Gaming commenced in May 1995.

4. Confederated Tribes of Grand Ronde, OR: 5.55 acres located in Willamina, OR brought into trust on 3/5/90 for administration and governmental uses. Land converted to gaining in October 1995. According to NIGC officials, the parcel is subject to the IGRA exception for restored lands.

5. Kalispet Tribe: 40.06 acres located in Airway Heights, WA, were brought into trust on 6/26/98 for future economic development. Land converted to gaming in 2000. According to NIGC officials, tribe received a two-part determination from the Department and the Governor.

6. Kickapoo Tribe: 769 acres in Lincoln County, OK, were brought into trust on 5/3/95 for housing and economic development BIA could not provide a date for when the land was converted to gaming. They did state that 3 acres were released for economic development on 6/1/02. They further stated that the business was named "Kickapoo Casino."

[9] This list was not independently confirmed by the 01G. Additional information on each parcel was supplied, as available, from the NIGC. In addition, since the BIA did not maintain a central list of lands taken into trust after 10/17/88 that were converted from gaming to non-gaming, it is not known whether this list is complete.

7. Mooretown: 34.59 acres in Butte County, CA were brought into trust for HUD tribal housing units and community uses on 7/26/94. Land converted to gaming on 6/11/96. NIGC officials were not aware of applicable IGRA exceptions or status.

8. Smith River Rancheria: 6.45 acres in Del Norte County, CA, were brought into trust on 4/13/89 for HUD Grant for tribal housing. Land converted to gaming use in August 1996. NIGC officials were not aware of applicable IGRA exceptions or status.

9. Wyandotte Tribe of Oklahoma. Unknown quantity of land (Shiner Tract) located in Kansas City, KS, was brought into trust for economic development, including gaming on July 15, 1996. On 7/12/96, prior to taking the parcel into trust, the State and four Indian tribes in Kansas sought to enjoin the Department from taking the land into trust for non-compliance to NEPA and other reasons. The tribe appealed to the Tenth Circuit on 7/15/96 and the injunction was vacated by the Court. On 8/28/03, the tribe commenced gaming on the land. On 9/22/03, the tribe notified NIGC it had commenced gaining. Most recently, the State appealed the District Court's ruling to the Tenth Circuit. On July 27, 2005, the Tenth Circuit ruled that the Department's determination, in taking the land into trust status, that only Federal judgment funds "were used to purchase the Shiner Tract was not supported by substantial evidence in the record:' The Department must review the new evidence and report back to the Tenth Circuit within 60 days.

10. Porch Creek Band of Alabama. NIGC informed us that the tribe is conducting gaming on land brought into trust after 10/17/88 for a non-gaming purpose. No other details were available.

The CHAIRMAN. So where do you come in, Ms. Coleman? Where do you come into this equation? A tribe has acquired land, taken it into trust, and then they say they are going to start gaming operations, or want to start gaming operations. Is that where you come into it?

Ms. COLEMAN. That is exactly where we come in. As a general matter, if the land is already in trust, then the Department of the Interior does not have as much interest in the issue because they do not regulate gaming. They do not decide whether or not it can be gamed on once it is already into trust. So then we are the ones who assume the responsibility for looking at that.

The CHAIRMAN. Once it is has been established that they will begin gaming operations?

Ms. COLEMAN. Yes.

The CHAIRMAN. That is the only time you come into it?

Ms. COLEMAN. Yes.

The CHAIRMAN. What about November 2005, your organization reviewed a site-specific gaming ordinance and determined that lands sought to be taken into trust by the Cowlitz Tribe was "restored land" and could therefore be used for gaming. The NIGC issued this opinion at the same time the BIA was considering a land-into-trust application for Cowlitz as a "initial reservation."

We are told that communities, local governments and other tribes affected by the Cowlitz proposal seem to have been caught completely off-guard by your decision, Ms. Coleman. What is going on here?

Ms. COLEMAN. The Cowlitz ordinance decision is really an anomaly. It is the only time that we have been in a situation where it was trust acquisition that had not happened, and we had a site-specific ordinance. The ordinance was written in such a way that it said that if the lands are acquired into trust, then these lands would be Indian lands.

The Department of the Interior and the State attorney general's office was notified of this issue. They knew that this was happening. In fact, when the tribe came to us and told us they were going

to do it, we were not exactly thrilled with it because we knew that this was a very unusual situation. It is generally much better to let the processes go through. The Indian Gaming Regulatory Act requires that we make a decision on an ordinance in 90 days.

So when push came to shove, on November 25, the chairman of the National Indian Gaming Commission had to make a decision as to whether to approve or disapprove this ordinance. So he needed to know whether or not the ordinance was illegal. So we, the office of the general counsel, gave him an opinion on it.

The CHAIRMAN. What do you have to say, Mr. Skibine, about that situation? How can we avoid that in the future?

Mr. SKIBINE. How can we avoid that situation?

The CHAIRMAN. Yes.

Mr. SKIBINE. Yes; I think that the Department is working with the chairman of the National Indian Gaming Commission at this point to see if we can find a solution so that situations like this do not continue to occur. Hopefully, we can come to an understanding between the secretary and the chairman on how these can be processed in light of the chairman's obligation under IGRA.

The CHAIRMAN. If you do not know at the beginning of the process that land will be used for gaming, how can you engage in a NEPA that has any meaning?

Mr. SKIBINE. If we do not know that the land will be used for gaming, then the tribe's application under 25 CFR part 151 regulations, has to state what the purpose of the acquisition will be.

The CHAIRMAN. But we already know that there are some tribes that have taken land into trust initially, in fact a few that stated there would be no gaming conducted, and then changed their minds with due tribal governments, which they are entitled to do. Shouldn't they at least be required to go through another NEPA?

Mr. SKIBINE. If the land is off-reservation and is not Indian lands.

The CHAIRMAN. No; I am talking about land taken into trust.

Mr. SKIBINE. Yes; it could be. For instance, it could be land that is off-reservation that would still have to comply with the requirements of section 20. Potentially, the tribe would have to do a two-part determination to be able to game, if the land does not qualify under any of the other exceptions. In that case, NEPA will be required and the tribe cannot game unless it gets the determination.

If the tribe thinks the land does qualify under one of the exceptions, it can commence gaming at its peril because if the National Indian Gaming Commission decides that it does not qualify under the exceptions, then the gaming establishment can be closed down.

There is a potential issue if the tribe takes the land into trust, let's say for housing. It is off-reservation, but then it decides to change its mind and do gaming, and if the NIGC finds that the land qualifies under the exception for restored land, that would be the only one, I think, that would apply.

The CHAIRMAN. Thereby, you could avoid NEPA, that would take into the calculation that it is a gaming operation?

Mr. SKIBINE. That is correct. That is because as far as the Department is concerned, there would be no Federal action required. When we do take land into trust, we do not put title restrictions or encumbrances on the title, so that the tribe has the freedom

down the road to change the use of the land. It would still have to comply with the requirements of IGRA, but potentially they can satisfy that.

The CHAIRMAN. Finally, we will hear from the next panel, and we hear every hour of every day from local people who say that Indian gaming is established in their community, and they do not have sufficient input into the process. And that it has had significant effects on their communities, economically and in many other ways, and that they do not feel that they were involved in the process.

What is my response to those concerns that are raised all the time to this committee?

Mr. SKIBINE. I think with respect to the process of taking land into trust, there is a lot of involvement by the local community. The Department does consult with local communities. We are trying to be available to clarify the process. Right now, there are extensive consultations under NEPA.

We have a checklist that we have had since 1994, internal guidance, but under that checklist we have revised it to require local agreements to be included as part of the recommendation of the regional office, if they exist. We have pretty much decided that if a gaming establishment is off-reservation, and is going to be of a certain size, and if it is controversial, that we would require an environmental impact statement rather than an environmental assessment, which will include extensive public participation.

In addition, I know the Department is in the process of revising its trust regulations, including the land acquisition regulations in 25 CFR Part 151. I think the process for consultation and input of the local communities in off-reservation acquisitions will be enhanced as a result of that process.

So even now, I think there is extensive participation by the local community. For off-reservation, what I do when I go out to talk to tribes and to local communities about off-reservation is acquisitions make a point of stressing that the Secretary is very interested in consultation, in cooperation with local governments, and that to us the public input and having the local communities support the application is an extremely important factor in our consideration for off-reservation acquisitions.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you.

Mr. Skibine, I thought I had understood this last evening when I was reading about it, until I have heard your testimony. Now, I realize there is much I do not yet know. Let me ask you a couple of questions.

You just described this consultation and the process, but I thought you also just prior to that described circumstances where that consultation would not exist. For example, land taken into trust perhaps after October 17, 1988, and taken into trust for the purpose of a housing tract, and then after it was taken into trust for the purpose of building a housing tract, they decide that they want to do gaming on that land.

I thought you answered to a question that Senator McCain asked, that you would not then have to go through the process, the

tribe would not have to go through the NEPA process and the consultation process. Is that correct?

Mr. SKIBINE. Yes; that is correct.

Senator DORGAN. And you said there was no Federal involvement there.

Mr. SKIBINE. Right; I was addressing the chairman's question, if the application is to take land into trust for gaming.

Senator DORGAN. All right. But there are circumstances where that is not the case.

Mr. SKIBINE. That is correct, and we discussed that possibility before. That is an issue.

Senator DORGAN. As I understand it, let me ask about this contiguous issue. The chairman asked the question about wanting to get a parcel of land in downtown Denver, off-reservation and so on. The question there deals with the four exceptions. You would have to judge whether there are any of these four exceptions that are met. You have to go through the whole process, right?

Then he asked the question about contiguous lands, lands that are contiguous to the reservation. Section 20 provides that if lands are acquired in trust after the date in 1988, the lands may not be used for gaming unless one of the following statutory exceptions applies. These are different than the four exemptions or four conditions in IGRA. One of them is the lands are located within or contiguous to the boundaries of the tribe's reservation as it existed in 1988.

So someone purchases a rather substantial piece of land that is contiguous to the reservation, and they want to provide gaming facilities there because that is closer to the population center. Do they then have to go through the process of taking that into trust?

Mr. SKIBINE. That is correct.

Senator DORGAN. And that process then triggers all of the rest of the things you have testified to this morning?

Mr. SKIBINE. That is correct.

Senator DORGAN. Now, you indicated that you are doing regulations. That makes a lot of sense to me, so that everybody can understand what is the template; what exactly do you confront when you deal with this. This law has been around about 17 years, and we have had different Administrations here and there. It makes sense at some point to have regulations.

The question I have is, what are you doing in the construct of these regulations to reach out and consult with tribes, with communities? As you create regulations, tell me about the consultation process because it has been a long, long time and you are now saying that you think this year you are going to have a set of regulations.

Mr. SKIBINE. Right. We are planning on doing consultation with tribes and we will make the draft document that we have available to anyone who wants it. And as we do the consultation, we have not at this point exactly figured out how we will proceed. It is a little premature. I think that internally we will get together and decide how we are going to conduct the consultation when that happens.

Right now, the first thing that will happen is there will be a letter to all tribal leaders throughout the country that will go out

with this draft document, advising them that we will produce this document for implementing section 20, and that we will consult, and together and that we will get together and make a decision. At this point, we have not come up with a plan yet, except that we will do it for sure.

Senator DORGAN. Senator McCain pointed out that Indian gaming is $19 billion, perhaps $20 billion, at this point and growing, growing rather rapidly; producing in many cases a stream of income to address the real crisis that exists in some areas; crisis in health care, housing, education, for people that have in many cases not had the resources to address these things.

In many areas, particularly on reservations, you have some people living in third world conditions; children not having any access to adequate health care; adults not having access to adequate housing. So there is much to be said about this income stream that can be beneficial to tribes to address these issues.

On the other hand, the purpose of this hearing is there are competing interests here, very significant competing interests, an interest of a tribe that has the opportunity to game to very much wish to game in the middle of the largest population center they can possibly find. I understand that. I understand if we were on tribal councils and we were going to have a gaming operation to produce a stream of income, that is exactly what we would want to do, is put it in the largest population center possible.

On the other hand, there are other competing interests, population centers and others who feel very strongly about that. So this is a controversial and difficult issue, and I think regulations are necessary; uniform interpretations are necessary. And we must understand that when Congress passed this legislation, we generally created prohibitions. The larger prohibition here is October 17, 1988, and then with that larger prohibition, created some exceptions that needed to be created just based on merit.

So the method by which this is administered is very, very important to this committee. It is also important in the context of what the chairman indicated, the need from time to time to update these laws. That is the purpose of these hearings.

I appreciate the testimony that both of you have given us. We are trying to better understand a very complicated area. Thank you for being here.

The CHAIRMAN. Senator Thomas.

Senator THOMAS. Thank you, Mr. Chairman.

I agree. It is very complicated. It seems to be.

What do you think, Mr. Skibine? Is the law clear? It sounds like you have to go through a great deal of determinations? Doesn't the law pretty well prescribe what the conditions are? Isn't that a rather simple decision to be made, as to whether these lands qualify or not?

Mr. SKIBINE. I am not sure it is that simple. I think that the opinions that have been issued by the NIGC General Counsel are often lengthy and complex decisions.

Senator THOMAS. So why is that?

Mr. SKIBINE. Because I think that to decide whether a tribe qualifies as a restored tribe and whether the land they are seeking

is restored land, the statute just says that it qualifies if it is restored land for a restored tribe.

Senator THOMAS. Well, isn't "restored land" defined?

Mr. SKIBINE. No; it is not. There has been litigation on this issue. I think there are at least three or more decisions on the books that interpret that exception. Those were difficult decisions. The National Indian Gaming Commission tried to, in making their opinions, follow those court decisions, but I am not sure it is all that simple.

I am not sure if my colleague wants to add something.

Senator THOMAS. Would you comment? It just seems like there ought to be a criteria for the acquisition of land, and it does not seem like it ought to be thrown up into the legal dispute each time that happens.

Ms. COLEMAN. When we are looking at restored lands, it is not really the acquisition of the lands. The acquisition is under section 151, and to make the decision as to actually acquire the land into trust. But what we look to is based on what the court cases have said. The court cases have said that you look to the factual circumstances; you look to the historical relationship of the tribe to the lands; you look to the modern relationship; you look to the actual location. In other words, if a tribe is in Wyoming and wants to move to Denver, well then that would suggest those were not restored lands. And you also look at the timing. When was the tribe recognized? If they were recognized in 1979, and in 2006 they come and say, "we have already acquired 2,000 acres of land into trust, but we want this piece because it is in a big population area." And 30 years later, we are going to say, your timing is off.

All of those criteria come from the court cases, who have looked at these issues. We have been guided by those.

Senator THOMAS. Does there need to be a more clearly defined role in terms of the law?

Ms. COLEMAN. I think that even to the extent that Mr. Skibine's regulations try to define it more clearly, it is playing off of those court cases. You can only go so far as far as establishing standards. There has to be some interpretation. I would expect that restored lands for a restored tribe is going to continue to be the most difficult analytically.

Senator THOMAS. I know. My question is, could it be described more clearly in the law?

Ms. COLEMAN. It could be described more clearly in the law, but it probably could not be described any more clearly than the case law has already described it.

Senator THOMAS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. Thank you for having this hearing.

Obviously, much has changed since the Indian Gaming Regulatory Act was passed. I think there are many issues here to address, not just in how the legislation has been implemented and how it has been impacted, but how we move forward on transparency of the process as well.

I wanted to ask you, Mr. Skibine, there have been three off-reservation land-into-trust transactions since the legislation was passed. One of those, I believe, was the Kalispel Tribe.

Mr. SKIBINE. That is correct.

Senator CANTWELL. Can you talk about the Kalispel Tribe process from the oversight perspective, because it was one of the things that fell into an exemption. Is that correct, in the sense that everybody agreed? And so the way the oversight agency looked at it, everybody was in agreement, so it moved forward? Is that correct?

Mr. SKIBINE. The Kalispel Tribe process goes back to something the chairman said earlier, in that the tribe acquired the land not for gaming, but for a tribal facility of another kind. It was operating as such for a few years. And then the tribe decided that it wanted to use the land for gaming.

Right at the outset, it was determined that the only exception that the tribe could qualify on was the two-part determination exception, which is the true off-reservation exception, because where the Secretary, after consultation with nearby tribes and appropriate State and local officials, makes a determination that the gaming establishment will be in the best interests of the tribe and its members, and will not be detrimental to the surrounding community.

Senator CANTWELL. How did you determine that?

Mr. SKIBINE. We tried to submit an application to the regional office, and the application would follow something we had in our checklist for gaming acquisitions and section 20 determinations, where we cite a number of issues that we look at in making those two determinations.

There also has to be compliance with the National Environmental Policy Act [NEPA], so in that case, an environmental assessment was done.

To make the best interests determination, the Department looks at the anticipated benefits to the tribe from the gaming establishment to its members. We look at income projections; at employment; at what it will do for benefits on the reservation. We try to get as much information as possible from the tribe as to why they think this is going to work for them. That would include projections to show that the gaming establishment will be actually making money for the tribe, rather than losing money. We look at all of that for best interests.

For not detrimental, we look at the environmental compliance, and we have to do consultation with nearby tribes and with the appropriate State and local officials. The way we do that is that in the Kalispel case, letters were sent to all communities around, it is actually in a suburb of a larger city whose name totally escapes me.

Senator CANTWELL. Spokane. Are you talking about in Spokane?

Mr. SKIBINE. Spokane, right. Thank you very much.

I think we consulted with the county where it is located, and with the city of Spokane, and with all the other suburbs that are within the surrounding community. In looking at those comments, we determined whether the local community supports the project, because the local community felt that there was no negative impacts on them.

Senator CANTWELL. What would be your criteria, though, for community input? Do you have a criteria for community input?

Mr. SKIBINE. Yes; In the consultation letter, we ask the community to tell us about any adverse impacts that they think they will have, and we look at whether it will be traffic, increased crime, impacts on wastewater treatment, on almost any impacts on the human environment, and also whether there are any socio-economic reasons why the local community is opposed to it.

Senator CANTWELL. What would have happened in the Kalispel case is you would have had a division within the community? What do you think would have happened?

Mr. SKIBINE. Well, we would have taken a very close look at that, to see exactly who was opposed, who was in favor, and for what reasons. It would have been essentially a decision based upon a very analysis of the facts.

For the record, in the three applications that we have approved since 1988, and that have been signed off by the Governor of the State, the local communities have always supported the applications. So we have never sent in a two-part determination to a Governor unless the local community was in support.

Senator CANTWELL. Is that where you think we are today, Mr. Skibine? Do you think there are a lot of applications where everybody is unified on the support?

Mr. SKIBINE. Do you mean of the ones that are pending?

Senator CANTWELL. Here is my question. I appreciate the chairman having this hearing, and the oversight, and his legislation because to me one issue is whether we really know what we are doing with the exemptions that were put into the original legislation, and whether the agency of oversight actually does know how they would interpret these various proposals, given that exemption language.

I am not sure how transparent that process is to everyone else. So I do not know if you have any recommendations that you are making as far as the transparency of the process, because again the exemptions of the bill. Now, we have had some playout of those exemptions in these three cases, but now we are getting to a much more complex phase. I am just curious as to whether you believe there is enough transparency in the process.

Mr. SKIBINE. I think there is enough transparency. As I mentioned in our proposed regulations that we have developed, we deal in great detail with what is required in the two-part determination process. I think the regulations will really help.

Senator CANTWELL. So you are not recommending anything else to clarify that process, as far as reform of legislation?

Mr. SKIBINE. The Department may do that in time. Right now, I am not authorized to do that on behalf of the Administration, not at this hearing, anyway.

Senator CANTWELL. Okay. I am not sure how much time we have, Mr. Chairman, but thank you.

The CHAIRMAN. Mr. Skibine, it has been 17 years since the passage of the law. As Senator Dorgan has pointed out, we need to have regulations. We are going to send you a letter today asking for the exact time in which we can expect regulations to be sent to the Federal Register and implemented. I am a little dispirited

when you sort of as an aside said, well, we have not begun a consultation with the Indian tribes over proposed regulations. That means that we have a long way to go.

I do not see how we can effectively regulate Indian gaming and certainly exercise congressional oversight unless there are regulations to implement the law we have passed. So I would like for you to take the message back to the Secretary that we expect the issuance of regulations implementing a law that was passed 17 years ago to be issued.

That has covered various Administrations, but it really is unacceptable 17 years later not to have regulations written to implement a law which now applies to a $19 billion- or $20 billion-a-year business. We should not be doing that. Okay?

Mr. SKIBINE. I agree, Senator. I want to point out that when I came on board as the Director of the Indian Gaming Office in 1995, I immediately began to look at regulatory implementation. We did develop regulations for the distribution of per capita revenues. We have regulations for that at 25 CFR part 290. We also developed regulations for secretarial procedures. We have that at 25 CFR part 291.

Those were developed shortly after I came on board under the Clinton administration, and they are 25 CFR part 292. With the change of Administrations, there was sort of a period of uncertainty, but now I think everybody is on board and agrees with that assessment.

The CHAIRMAN. Ms. Coleman, we will probably see you again in this series of hearings that we are having to try to again ensure you have sufficient oversight authority, sufficient funding, and sufficient ability to oversee this very large enterprise that we call Indian gaming.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, might I just observe I did not respond on the consultation issue, but consultation does not mean you seek permission from someone. Consultation is very important, however, when you construct these kinds of things because consultation develops a base of knowledge about what exists and how it exists from various perspectives.

When you said to me that apparently no consultation had existed, but it will exist at some point after you send out the drafts, I really encourage you to consult as much as you can with all the parties as you think through these things, not to seek permission. That is not my point, but to better understand the circumstances that exist for all parties. Consultation is very important.

Mr. SKIBINE. I totally agree. It is not permission. We are not going to be seeking permission from interested parties, but we are seeking their input.

The CHAIRMAN. Thank you very much.

Mr. SKIBINE. Thank you very much.

Ms. COLEMAN. Thank you.

The CHAIRMAN. Our next panel is Al Alexanderson, on behalf of the Citizens Against Reservation Shopping, Stand Up for Clark County, and American Land Rights Association; Philip Harju, councilman, Cowlitz Indian Tribe, Longview, WA; Duane Kromm, supervisor, Solano County Board of Supervisors, on behalf of the

California State Association of Counties, of Fairfield, County; and Liz Thomas, spokesperson, Tax Payers of Michigan Against Casinos, Union Pier, MI.

Mr. Alexanderson, we will begin with you. Welcome.

STATEMENT OF AL ALEXANDERSON, ON BEHALF OF CITIZENS AGAINST RESERVATION SHOPPING, STAND UP FOR CLARK COUNTY, AND AMERICAN LAND RIGHTS ASSOCIATION

Mr. ALEXANDERSON. Thank you, Mr. Chairman, Mr. Vice Chairman and members of the committee.

I am here for myself. I am not representing any institutional interests. I am a landowner within about 2,000 feet of the proposed Cowlitz casino. My trip was sponsored by three citizens organizations that have risen up and put up websites and attempted to intervene in this process over the last 4 years.

I am here to tell you about my experience. Their experiences are written in letters that I have submitted with my prepared testimony. I recommend them to you for the long recitation of attempts to participate in the process, and the strong sense of betrayal that they feel with respect to the issuance of this NIGC opinion, after 7 months of secrecy, including the fact that it was not mentioned that this was pending at the hearings here before your committee in July of this year, when the NIGC was present, and the Cowlitz Tribe was present, and Mr. Skibine was present and listed all of the other pending applications for exemptions under section 20, but not the Cowlitz.

For me, this started about 4 years ago. I got a notice, a neighborhood association notice that David Barnett, son of the tribal chairman would appear and talk about plans for the property that he and his wife had optioned, which was now a 150-acre dairy farm and had been for 80 years, right next to my property.

The land had been preserved as agricultural, because as you know, the local communities under State law go through a long and intensive land-use planning process to decide what kinds of uses go where. This land had been preserved as agricultural, with possible future use as a low-intensity industrial uses, but not the kind of intense traffic-creating commercial uses that, say, a large shopping center, a theater complex, or a casino would bring.

At the meeting, Mr. Barnett told us that there were no plans for a casino, no plans to change the current agricultural use of the property. Later, or at the time, the tribe's application to the BIA said that there were no plans. As a result, the BIA issued internally, and not publicly, a categorical exclusion checklist, which had 9 or 12 questions that said, will there be any environmental consequences from this acquisition, and the answer was always checked no.

So they tried to run it through as a complete exclusion to NEPA. This took about the first year. Fortunately, that was stopped. The national BIA office said if you do not admit that you are gaming on the property, then if you do succeed with the acquisition, you will not be able to game.

I called the local BIA office to get the application. I was suspicious that this might not be the whole story. They said, well, you cannot have the application. I said, well, could I just come down

and read it. No, you cannot get in the building. Well, are there any procedural rules for me to participate in this process? No, you are not a participant. They said the two participants are the State and the county, because those are the jurisdictional entities that they have to consult with, and that is it. They will accept comments, but we were unable to have access to the materials submitted by the tribe.

Process is extremely important, and I think the committee knows that because people have their life savings tied up in homes and small businesses that are going to be displaced if the awesome Federal power of the Federal Government is used to effectively site a development like this. As we have gone through this process, the casino has grown faster than our fears.

It is now going to be eight stories high. It is going to create traffic jams, 40,000 car trips a day, and completely change the character of our neighborhood. It was sited where it was in part to cut off the existing traffic to the competing card rooms, so it was intended to destroy the existing economy, is my point.

What we are asking for is a thorough and open and fair process to determine the facts of the Cowlitz application. We want to see a stop to the backroom end-runs around the current law. We want our own government to put stuff out on the table where we can see what it is. If we have a factual dispute over what the project will do, or where the tribe was from, we want to have an opportunity to present those facts to an open-minded fact-finder.

And there should be no exemption for the Cowlitz project because the Cowlitz project itself is seeking an exemption from all the protections in section 20. That is the most important issue a community faces up front, is whether this will be an exempt casino or an non-exempt one. If it is an exempt casino, it eliminates the consultation process. It eliminates the Governor's veto. It eliminates the consultation with other tribes. And it permits the Secretary to avoid finding that the project will not be detrimental to the surrounding communities.

One major fact which has never come up in the discussions so far and was not considered by the NIGC is where is the tribe's other land. This tribe has 2,500 square miles, almost 1.5 million acres, of acknowledged aboriginal territory lying north along the I–5 corridor.

I have brought CD's with photographs of that are, aerial photographs, which I will leave for the committee and the staff. You can literally fly down and look at other undeveloped land in various quadrants of existing freeway interchanges, probably 10 of them; thousands and thousands of acres of undeveloped land in places where the casino would be closer to the tribe's population, its historical center.

When we turn these maps over on the wall, you will see the only official U.S. Government 19th century depiction of where the various tribes were in Washington State. It shows where the tribe's homeland was, far north of where this site is. The site was chosen for its proximity to Portland and Vancouver gaming opportunities.

The CHAIRMAN. You are going to have to summarize, Mr. Alexanderson.

Mr. ALEXANDERSON. Thank you. All right.

We appreciate your efforts to put procedures in place. The procedures have to have rights for people like myself and my community to substantively participate and present evidence, and most important, know what is going on and meet the evidence being put forward by the tribe.

Thank you for looking into this.

[Prepared statement of Mr. Alexanderson appears in appendix.]

The CHAIRMAN. Thank you, sir.

Councilman Harju.

STATEMENT OF PHILIP HARJU, COUNCILMAN, COWLITZ INDIAN TRIBE

Mr. HARJU. Chairman McCain, Vice Chairman Dorgan, and members of the committee, I want to thank the committee for this opportunity to testify. My name is Philip Harju. I am an elected member of the Cowlitz Tribal Council. Our chairman, John Barnett, recently suffered the loss of one of his sons, and I know you will understand why he cannot be here today. He has testified, as you know, numerous times here. He is a great leader and a great spokesman for our tribe.

Again, I feel it is both an honor and a privilege to testify in front of this committee. It is also an honor and a privilege to represent the Cowlitz people here.

Just a little background on myself. I was born and raised in Clark County, WA. I currently reside in Olympia, WA, where I am a deputy prosecuting attorney. I am a lawyer and I have been representing the people of the State of Washington, prosecuting criminals, for the last 27 years. I donate my time as a tribal council member to my tribe, the Cowlitz people.

I want to thank the first panel for their explanation. As a lawyer, I have some understanding of this. It is a complicated area. I do want to briefly respond to Senator Cantwell's question about the Kalispel Tribe, just for the record. That two-part determination, that was not stressed, also required the concurrence of the Governor of the State of Washington, which was done.

So there was input on the *Kalispel* decision by the people of the State of Washington through the elected Governor of the State of Washington. That would not have happened without the Governor's concurrence. That was the two-part exception to Indian gaming on off-reservation land.

I want to stress that, Mr. Alexanderson said that this started 4 years ago for him. This started for the Cowlitz people probably in 1792 when Captain Gray came over the bar of the Columbia River; in 1805, when Lewis and Clark reached the mouth of the Columbia River; in the 1820's and the 1830's when many of the tribes on the Columbia River were decimated and destroyed, and the Cowlitz people were nearly wiped out by the fevers and the diseases that were brought from the Europeans to this area; and also in 1855, when the tribes in Southwest Washington did not sign treaties with then-territorial Governor Stevens.

The Cowlitz controlled their land at that time, and negotiating with the Federal Government, and received no land or no reservation or no treaty. Then in 1863, as the Indian Claims Commission has documented, when President Lincoln opened the then-Wash-

ington Territory to settlers, the Cowlitz lost over 1 million acres of their territory and land without compensation.

So it has been a long time for the Cowlitz people in this history. The Cowlitz throughout this time have attempted to obtain a land-base in their historic area of Southwest Washington, which includes all of Clark County, I would submit to you. The records, if you read the reports from the Indian Claims Commission, they found that the Cowlitz has sole and exclusive occupancy to all of this land, all of the way down to the Kalama River, which is about 14 miles north of the present site.

They also acknowledged that this area south of the Kalama River down to the Columbia River, that they could not find that the Cowlitz had sole and exclusive use and occupancy of this area, but they found that the Cowlitz occupied this area since the first contact with Europeans in this area.

Just to remind the committee, the first contacts with Europeans in this area was with the British. They controlled Fort Vancouver and the north side of the Columbia River, and most of the documentation of the Cowlitz Tribe are because of the Hudson Bay Company, and the documentation from the British at that time. This did not become American territory until 1846, when we signed a treaty with Great Britain and they ceded this land to the United States.

So the Cowlitz have always been there. They have always sought their land base. They have always negotiated and been with the Federal Government. Their history is bleak. They got nothing from the Federal Government until 1969, when the Indian Claims Commission did grant compensation to them, but then never awarded them the money.

In 1975, the Cowlitz asked for a land-base and asked that the money that they were granted be applied to acquire land. The Interior Department refused at that time. It took 35 years and an Act of Congress signed by President Bush 2 years ago to get that compensation that was awarded in 1969 for the Indian Claims Commission.

The tribe in 1975 petitioned the BIA for acknowledgment or re-recognition. That process took 25 years and then 2 years of appeal. So in 2002, when the Cowlitz Tribe applied for a fee-to-trust application for this property, we are now four years from that time. I would submit to you, and I give this history just to show that it has gone longer for the Cowlitz Tribe and the Federal Government and the agencies involved.

The Cowlitz have been up front and have followed the rules from the very beginning. Our fee-to-trust application followed the current BIA guidelines back in 2002, which required us to submit the fee-to-trust application to the Portland Regional Office, and we did not have to designate other than economic benefit of the tribe.

The BIA's rules changed and they required us then, if we were going to use the property for gaming, we had to resubmit an application to the central office and we did tell them that we were proposing gaming on this. We have been up front and we have followed the rules. It has been a long time for justice for the Cowlitz Tribe. These exceptions to the Indian Gaming Regulatory Act are

very important to the Cowlitz because this 151 acres is clearly restored lands for the Cowlitz Tribe.

The opinion that was sought from the Commission is an excellent opinion. It is well-documented. It is factual and followed adjudicated facts, and gives guidance to everyone in this area. The important thing is, if the Cowlitz Tribe goes forward and it is not our restored lands, we are spending close to $2 million for a full environmental impact statement to take this land into trust.

There is more open process over this land than anything else I think in Western Washington at this time. We will complete a full environmental impact statement. In fact, the draft has been delayed because many of the local communities have put comments in as participating agencies, and so we are hoping next month to have that draft. There will be the full environmental impact statement. There will be public hearings, and there will be a time to appeal if the Department then takes the land into trust.

So I submit to you that in the two exceptions that we are dealing with, restored lands or initial reservation, the Cowlitz have done nothing but follow the rules. They only ask that the Congress and the local agencies and the Federal Government provide the Cowlitz with the means to, as Senator Dorgan had earlier said, illegal actions and land that was taken from the Cowlitz needs to be restored.

The Cowlitz have to buy this 152 acres, then we have to petition the government to take it into trust. Nothing has been given to the Cowlitz Tribe. We are a landless tribe with no economic base. We have over 3,500 members. I submit to you, what the Cowlitz want and what the Cowlitz need are adequate funds to provide housing, jobs, health care, education and to help restore our cultural artifacts and our history in this area. I would urge this committee, and I commend Chairman McCain, the BIA does need to have regulations in place so that these procedures are open and transparent.

I would submit to you the Cowlitz, using the *Cowlitz* case here, is a classic example of why the restored lands exception or the initial reservation exception is important. There are not many of those pending with the BIA, but those exceptions are important for tribes such as the Cowlitz, who are fighting for their very existence in Southwest Washington.

Thank you.

[Prepared statement of Mr. Harju appears in appendix.]

The CHAIRMAN. Thank you.

Mr. Kromm.

STATEMENT OF DUANE KROMM, SUPERVISOR, SOLANO COUNTY BOARD OF SUPERVISORS, ON BEHALF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES

Mr. KROMM. Thank you.

On behalf of the California State Association of Counties, I would like to thank Chairman McCain, Vice Chairman Dorgan, and the other distinguished members of the Committee on Indian Affairs for giving us the opportunity to submit testimony as part of this oversight hearing.

I am Duane Kromm, a member of the Solano County Board of Supervisors, a member of the CSAC Indian Gaming Working

Group, and a member of the Northern California Counties Tribal Matters Consortium.

Every Californian, including every tribal member, depends upon county government for a broad range of critical services, from public safety and transportation to waste management and disaster relief. Most of these services are provided to residents both outside and inside city limits. Because counties are so intricately involved with services to all residents, we strongly believe the counties must be significantly involved in the process of approving tribal gaming proposals.

California is at the epicenter of the reservation-shopping phenomenon. For example, there have been vigorous efforts by three tribes with no nexus to the land to engage in Indian gaming in Contra Costa County, a highly urbanized Bay Area county. Counties are now experiencing tribes with established casinos trying to leapfrog over other tribal gaming operations to get closer to a population center.

In California, the reservation-shopping problem has been driven in large part by the restoration exception contained in section 20 of IGRA. This exception allows tribes that are restored to Federal recognition to avoid the two-part test under IGRA. The restoration exception is by far the most frequently used exception under IGRA and serves to avoid the two-part test. Since 1988, the Secretary has approved 26 Indian trust acquisitions that were determined to meet one of the five section 20 gaming exceptions. Of these exceptions, 12 were under the provision for restored land to a restored tribe. Of these 12, one-quarter were in California.

Of the 10 or 11 pending gaming applications before the BIA claiming an exception under section 20, nine of them are in California, all of which are claiming an exemption from the two-part test under the restored land exception.

The experience in California, driven in part by the restoration of the legally terminated rancherias, is that the restored land exception is being misused. CSAC therefore supports continuation of the two-part test for the acquisition of new lands, along with an increased level of local government participation in the decision of whether land should be taken into trust for gaming purposes.

Chairman McCain has recently introduced legislation to increase Federal oversight of Indian gaming operations and to alter the lands-into-trust process. CSAC sincerely appreciates the efforts of Chairman McCain and the members of the committee for investigating the problems with the oversight of and current legal framework for determining the eligibility of Indian lands for gaming.

Today, we are primarily interested in Chairman McCain's S. 2078, which contains language to limit the two-part test to petitions already being considered for fee-to-trust in 2005. The bill also amends the restored lands exception to require the finding that a tribe has a temporal, cultural and geographic nexus to the piece of land in question before granting permission for the tribe to take it into trust.

While CSAC supports increased oversight of section 20 proposals and supports the existing two-part test, we must add that any amendments to the process must include the early direct participa-

tion of both State and local governments, particularly counties, before a land-into-trust application is granted.

Furthermore, under the current system, States and affected communities are not even notified by the National Indian Gaming Commission when a tribe files a request for determination of whether tribal lands are Indian lands, and thus eligible for gaming. CSAC believes that Congress must specifically require the NIGC and the Department of the Interior to provide for the timely notice, comment and the submission of evidence from affected parties in all proceedings.

We also question the BIA's practice of beginning the environmental review process under NEPA before lands are determined to be Indian lands. Counties and other affected parties are required to expend considerable time and money in evaluating the environmental documents, when it might be entirely unnecessary if the land is ultimately not eligible for gaming. S. 2078 also includes amendments to increase the regulation of class II gaming.

With relative ease, a tribe can now establish a large gaming facility, install class II devices, and trigger virtually the same impacts on local government as those that result from a class III facility, without any of the safeguards afforded by IGRA. This, in fact, has happened already in Contra Costa County in I think a casino you are well familiar with, the Lytton Band of the Pomos in San Pablo.

Many tribes have expressed concern for such participation by local government, equating it with relinquishment of sovereignty and a land-acquisition veto. This is simply untrue. There are many examples of California counties working cooperatively with tribes on a government-to-government basis. Madera, Placer and Yolo Counties have reached comprehensive agreements with the tribes operating casinos in their communities. These comprehensive agreements provide differing approaches to the mitigation of off-reservation impacts of Indian casinos, but each is effective in addressing unique community concerns.

CSAC supports the committee's efforts to craft amendments to IGRA that preserve its original goals of supporting tribal economic development, while minimizing the impacts of reservation shopping of local communities. We believe that the single most important provision you can enact would be the formal participation of affected State and local governments, particularly counties, in the process of granting trust lands to tribes who wish to operate gaming casinos.

CSAC has submitted written testimony to assist the chairman and committee members in their efforts to amend IGRA. In California, there is an urgent need for counties to have a greater voice in matters that create impacts that the county will ultimately be called upon by its constituents to address. Enactment of amendments that strengthen IGRA by limiting its exceptions and allowing a greater role for local government would further the original goals of IGRA, while helping to minimize abuses that have created a backlash against Indian gaming and the opportunities its affords.

As such, CSAC offers its assistance to Chairman McCain and the Committee on Indian Affairs in any manner that you determine to be helpful as you tackle this complex issue.

Thank you.

[Prepared statement of Mr. Kromm appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Thomas. Welcome.

STATEMENT OF LIZ THOMAS, SPOKESPERSON, TAX PAYERS OF MICHIGAN AGAINST CASINOS

Ms. THOMAS. Thank you. Thank you very much for allowing me to testify in front of this committee. I am a representative of a community of grassroots organizations called Tax Payers of Michigan Against Casinos. We have worked to prevent a tribal casino from opening in our area in New Buffalo, MI for almost 10 years.

New Buffalo is right along Lake Michigan. It is about 2,500 residents, and it is about 1.5 hours from Chicago. We and other members of our group feel that a large, generally unregulated casino will fundamentally change the character of our community forever.

Throughout the past 10 years, those of us who oppose the casino in New Buffalo have found our voices and fought in many different ways to prevent the casino. The fight has been constant, costly and often demoralizing, none more so than last Friday when we received word that the government had taken the land into trust and the tribe announced that they would begin construction soon.

Our opponents are funded by powerful gaming companies that have always had more resources than we do. I have come to believe that over the last 10 years, the only way to ensure that people in small communities like ours will have a genuine say in whether an unwanted casino comes to its town is with changes to the IGRA legislation, which must come from the U.S. Congress.

After hearing the news reports over the weekend, so many of our supporters called and pleaded with me to come today and tell you our recommendations and how we think the process might be improved. So here I am. I would like to give you a little history first.

In September 1994, the Pokagons received status as a federally recognized tribe, with the help of cosponsors, U.S. Representative Fred Upton and U.S. Representative Tim Roemer. Both Congressmen claimed that the tribe promised that gaming was not in their interest, but by November the Pokagons were negotiating with Leisure Time and Harrah's entertainment companies about opening a casino. Congressman Upton told us later that he felt that he had been double-crossed by the tribe.

For the next year, the Pokagons held informational meetings along the I-94 corridor from Kalamazoo into Indiana, in at least 30 communities, looking for the right spot to open a casino. By the spring of 1996, the tribe had narrowed it down to three locations: New Buffalo and Bridgeman in Michigan, and North Liberty in Indiana.

On May 3, 1996, the tribe announced that New Buffalo was their choice. A few days later, our group of casino-fighters met in the basement of the local Methodist Church and took the name Tax Payers of Michigan Against Casinos.

We first fought at the local level. In 1996, we worked hard to support candidates for local offices who opposed the casino. We were even successful in electing a slate of anti-casino candidates, only to see them fall under the spell of promised revenue from the

casino. This very same group that had run on an anti-casino platform, turned around and signed a local revenue-sharing agreement with the tribe.

We have fought the casino at State level. The Pokagon Tribe was trying to pass a compact with the State of Michigan in 1998, and several of us from TOMAC were there in Lansing when the compact passed in December, on the last day of the legislative session, at 1 o'clock in the morning.

The compact was passed not as a bill, but as a resolution so that it would not require a majority of members of the legislature, just a majority of the people that were there on the floor voting. It was going to be a very close vote, and we watched as many legislators walked out of the chamber so that they would not have to make a public vote, a public stance on this very controversial project, so that it could the majority of people who were on the floor at the time.

We have fought this casino in Michigan court, arguing that the compact was invalid because it was passed as a resolution instead of a full law. We won in the circuit court. We lost in the appellate court, and then lost again in the Michigan Supreme Court, though a piece of this case still remains alive and to be determined in the Michigan Appeals Court.

We filed suit in Federal courts, too. We sued the BIA, asking that the tribe be forced to conduct an environmental impact study because it seemed plain and simple enough to us that a massive casino designed to attract over 4.5 million people a year into a community of 2,500 people, would have a significant impact. The court initially agreed with us, and rejected the BIA's conclusion that the casino would be insignificant. But the court later deferred to the BIA, and then it reached the same conclusion after further study. The appellate court agreed.

Overcoming agency deference is a big hurdle, even when any citizen on the street will tell you that a casino will obviously have a transforming and significant impact on a community. The tribes should not be allowed to have it both ways. They should not be allowed to have it both ways. They should not be allowed to garner support from local governments with the promise of thousands of jobs, millions of visitors and even more millions of dollars, and then turn around and ask the BIA to declare that the casino will have no significant impact.

The BIA made its initial decision that this casino would be insignificant on the last moments on the last day of the Clinton administration, January 19, 2001. The person who signed the papers was Michael Anderson from the BIA. He went to work for tribal interests shortly thereafter. This kind of blatant duplicity does not inspire public confidence in the fairness of government operations, now that the Jack Abramoff scandal shows that the level of public corruption and the money involved in Indian gaming matters has gotten completely out of control.

There are other communities in Michigan that are struggling with the threat of a proposed casino. We are thankful and grateful for their generous support that we have received over the years, and share their concerns about what may be happening in their own communities, people from CETAC in Battle Creek, MI; Gam-

bling Opposition and 23 Is Enough in Grand Rapids, MI; Positively Muskegon in Muskegon, MI. We have also had the pleasure of working closely with Tom Grey from the National Coalition Against Gambling.

Casino gambling is spreading throughout the country, and it is time for Congress to get its arms around the problems before it is too late. I would like to offer what TOMAC thinks would be improvements to this process, based on our experience.

First and foremost, what we have asked for all along is a chance for the people of the community to have a vote on this. When the casino project was announced, we the community residents were told it was a done deal and that there was nothing that we can do about it, and there certainly was nothing we could do to stop it.

But we the people never had a chance to register our formal vote. I believe there should be a local public referendum on every tribal casino project to ensure that the majority of the community actually wants it. If a community wants a casino, God bless them. But if a community does not want a casino, then that community deserves the right to self-determination.

Another more serious problem is this reservation shopping. Newly minted tribes and existing tribes work with their casino sponsors to find the best possible site for commercial gambling, and then they ask the Government to put it into trust for them.

The CHAIRMAN. Ms. Thomas, you are going to have to summarize.

Ms. THOMAS. Okay. Fine. I am sorry.

Last, there is the issue of the EIS, which is required under the IGRA land-to-trust process. We believe there should be an independent agency that would conduct analysis of the environmental, economic, and social impacts, with an honest picture.

We also support the legislation being proposed by Mike Rogers that basically would offer a moratorium of 2 years on tribal land and casino processes.

We thank you very much for allowing us to testify today.

[Prepared statement of Ms. Thomas appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Thomas.

A pretty simple question. You know, we like to deal with citizens, but we also place great credence on the testimony and views of the local elected officials, on the theory that Government closest to the people is probably the most aware of the views of the community they represent. If the local government supports the casino, shouldn't those elected representatives be deemed to express the will of the community, Ms. Thomas?

Ms. THOMAS. I think that in order to know what the will of the community is, they need to have a vote taken. You have been in Government for a very long time. You know very well that people can say one thing to get their job, and do the other thing when they have their job. And that is what has happened in our community.

The CHAIRMAN. I have never seen a case of that. [Laughter.]

Ms. THOMAS. Maybe you just have not been paying close attention. [Laughter.]

The CHAIRMAN. Thank you.

Mr. Kromm, would you respond to that question?

Mr. KROMM. I understand that concept real well. We wrestle all the time at the local level with representative government versus the initiative process. I do not have an absolute opinion on it. I am a person that personally has participated in urban growth boundary campaigns because I think local government officials often get blinded to where the interests of the community are when they start talking with big dollars. I think that goes to what Ms. Thomas' experience is with in her community.

So I tend to favor the initiative process on very major land-use issues. I find it intriguing that Congressman Pombo's draft legislation talks about the thought of having some kind of local initiative process before a casino would be sited. At CSAC we have not taken a formal position on that yet because it is not a full-blown bill.

In general, I think that appeals to many of us. These are exceptional types of development. It is not the typical, do you put in condos, or do you put in houses, or do you put in a shopping mall. This is something that can fundamentally change the character of a community.

The CHAIRMAN. In your county, if there was a referendum on the construction of towers to allow cell phones to operate, would it ever pass?

Mr. KROMM. I do not think so.

The CHAIRMAN. You see, it is a bit of a dilemma here.

Mr. KROMM. Yes.

The CHAIRMAN. I am asking the questions. I am not reaching any conclusions. It is a very difficult issue here as to the degree of public and grassroots organizations, versus the elected representatives. I think Ms. Thomas also described part of the problem.

Mr. KROMM. If I may, one of the experiences that many of us in California have had is that a tribe will start the reservation-shopping process, and they will fairly quietly approach a local government. That is what happened in our county. It was a tribe that was looking at an agricultural area that was in my supervisorial district outside of a local city. In our case, it is an area that has heavy land-use protections to keep it in ag. They wanted to know if they could start government-to-government discussions without having a public discussion.

It only took me about a nano-second to realize that what was going to happen was massive dollars were going to be put on the table as an incentive for us to negotiate, and that we would start down that path before it became very public. That just fundamentally I was opposed to, to have that discussion before the public process.

Once we started the public process, it took all of one public hearing. The only person who showed up in favor of the casino, citing the proposed site, was the broker who was brokering the land. The community in toto came out in opposition. I thought it was pretty interesting.

This exact same tribe has been marching around the Bay Area. They are into their third site now in the Richmond, California area, further into the bay. When they first arose in the Bay Area, it was in the city of Antioch, which is south and a little bit east of us. The local city council there was very much in favor, until they had their first public hearing. They had to move it out of the council cham-

bers into the high school gymnasium because 500-plus people showed up. That city council rapidly decided that, hmmm, we think we have heard from our community in a very meaningful way.

So whether it is a vote or whether it is a process that pretty much mandates a very early public participation, it has to be day lighted very, very early, and not start down the path of how many millions of dollars will come to your community if you start down the approval process. Dollars, well, you know what dollars do.

The CHAIRMAN. Mr. Alexanderson.

Mr. ALEXANDERSON. Senator, one problem with relying on local officials is the question which ones. We have the State involved. We have two counties. In our situation, we have at least four cities and that is not counting going across the river toward Portland, where the effects will be great.

I think a vote is a good idea, but I worry the opposite about the vote. Not that they will always be voted down, rather that the farther away you are from the casino, the more likely you are to think of it as a good idea.

The CHAIRMAN. Councilman Harju.

Mr. HARJU. Yes, Senator; Before I answer that question, I would like to send greetings to Senator Cantwell from her Cowlitz constituents from the great State of Washington. I do want to put that in the record.

To answer your question, yes, there should be consultation with the local officials.

The CHAIRMAN. I was talking about a vote.

Mr. HARJU. A vote, as you pointed out, what group would we have vote on our casino? Would we have the State of Oregon? Which county? Which city? What we have done is, as you know, we have done a full environmental impact study, which allows all of the agencies to participate in that. So we have plenty of public process.

I think to answer your question, and I think Mr. Kromm touched on it a bit, the thing I think that gets lost in here is tribal sovereignty. The federally recognized tribes are sovereign nations that are afforded a government-to-government relationship. Part of the problem that the Cowlitz Tribe has had in Clark County and in Southwest Washington is that they have never had an Indian reservation in their area. They have never had a government-to-government relationship with a federally recognized Indian tribe.

I know in the State of Arizona, your tribes have longstanding reservations and the governments have worked there.

The CHAIRMAN. By the way, we have a compact between the State and the Indian tribes which was ratified by a ballot referendum throughout the entire State.

Mr. HARJU. And our State has a compacting procedure. We have a State Gaming Commission. We have the Governor involved in that. As Senator Cantwell knows, the established tribes that have reservations and that have had government-to-government relations with local communities, that has been established over years because they have been there.

The Cowlitz problem in Clark County is that they have not had a federally recognized tribe to deal with. So the answer I think is

to stress the government-to-government relationship with the communities.

The CHAIRMAN. I have been and remain a strong advocate of tribal sovereignty and the government-to-government relationship which has been decided by our courts and by our American citizenry. But when you have an operation where 99.94 percent of the patrons are non-Indians, then this puts a different cast on the entire issue.

If this were an Indian agricultural project which only Native Americans were involved in, and received the benefits of, or many other things to do with Native Americans. But when it is non-Indians that are the primary source of the revenue, then I have an obligation to look out for the non-Indians as well as preserving the government-to-government relationship, with full respect to tribal sovereignty. I would be glad to hear your response to that.

Mr. HARJU. I do not disagree with that characterization, but again if you look at an example. We are talking about the two Section 20 exceptions to the Indian Gaming Regulatory Act, which prohibits gaming on any lands after October 17, 1988. There are tribes such as the Cowlitz. There are not many. As you know, the Federal recognition process is difficult, long, and there are not many. But tribes like the Cowlitz that are landless, we have no land-base.

If you follow your reasoning, there will be no area where the Cowlitz would be able to pick a reservation to do gaming. We are not involved in reservation-shopping.

The CHAIRMAN. I do not know how my reasoning moves in that direction, but go ahead.

Mr. HARJU. I mean, the reasoning that is here, that the Cowlitz will never find any land that will satisfy everyone. So we are going to follow the rules of IGRA which allow these exceptions, and we have done that. We have followed the law. We have had an open process. I would submit to you, I think that the there were some, I just want to correct the record here, there is some insinuation that the Cowlitz have all this other land that they could use. There is no other land that the Cowlitz can do a gaming facility on.

We own some property that is not in trust on the Cowlitz River. It could never be, under the shoreline management rules and NEPA, it could never be turned into a gaming facility on the side of the river. We own a small parcel of land in the city of Longview, where we have our tribal office.

There is no room for a gaming facility there. The parcel of land that we have at St. Mary's, interestingly enough, was donated to the church by the Cowlitz Indian Tribe so they could put a mission there to help the Cowlitz Tribe. The Cowlitz Tribe has purchased that property back for tribal housing in that area. It is not in trust either, and there is not enough land there to build a casino.

The CHAIRMAN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

I thank the residents of Washington for being here today. As much as the microscope is on this particular project and as painful or as enlightening as that may be, it is a timely example of the challenges I think we face, Mr. Chairman, on the current statute and what changes we need to make to it.

I wanted to ask Mr. Alexanderson, in your statement on page 4 there is a list of recommendations. Sixth on that list, you have "no site should be restored to the tribe that was not part of the historical sovereign." Would you elaborate on that?

Mr. ALEXANDERSON. Yes; Thank you, Senator.

This I believe, I call it a Federal-tribal casino siting process because the issue is where to put them. In order to put them someplace under the law, the land on which they are placed has to be handed over to the sovereignty of the requesting tribe. So it becomes land that is taken away from the sovereignty of the State and the tribe governs it. All State and local regulations are nullified.

So what I am saying here is that the concept of restoring land to a tribe, as I see what Congress was thinking about, is where did they once have sovereignty and govern the land; where did they have their villages and homeland and where were the missions established; and particularly where did all that occur pre-European contact, because after European contact a lot of stuff got mixed up and a lot of things changed. But where is the historical base of the tribe; where can we look and say, this is where they ruled.

When you have a landless tribe, but you can look at their history and see where they ruled, it seems to me you can only restore that situation within that area. It makes no sense to me to restore the Cowlitz Tribe to sovereignty on a parcel that was the original land of the Chinook.

Senator CANTWELL. To restore them to sovereignty?

Mr. ALEXANDERSON. Yes.

Senator CANTWELL. At all?

Mr. ALEXANDERSON. No; to restore them to sovereignty on this parcel. The decision to restore them to sovereignty, well, actually it has not been made, I guess, yet, because they are not sovereign over any land yet. They do not own this land, the proposed land, and the other tribal land has not been taken into trust. I believe technically it is the taking into trust that restores the sovereignty, because it then allows the tribe to govern.

Senator CANTWELL. You are not questioning their sovereignty in general.

Mr. ALEXANDERSON. No; absolutely not. That has been decided.

Senator CANTWELL. Okay.

Mr. Harju, do you want to comment on this?

Mr. HARJU. Well, I guess if we follow his analogy, the Federal Government will give the million acres back that were taken from the Cowlitz without compensation in 1863, but that is not realistic. Most of that land is now in the Gifford Pinchot National Forest, the Mount St. Helen's National Monument, Mount Rainier National Park, the Fort Vancouver Monument.

So most of that land is not available for the Cowlitz to regain sovereignty to, or to purchase and ask to be placed into trust. There is not that much land that is just out there for the taking.

As I pointed out, we are only asking for 152 acres that is in our historic area to be taken into trust to help the economic benefit of our tribe, a landless tribe. We are not reservation-shopping. We are attempting to obtain land in our historical area. The restored lands opinion, which is a legal opinion, it is just one part of this process.

It is a determination by the Federal agency that has the jurisdiction in this area, that this was restored lands under the Indian Gaming Regulatory Act for the Cowlitz Tribe. But that is just one piece of it.

Senator CANTWELL. You are saying that it is in a historical area.

Mr. HARJU. Oh, it is.

Senator CANTWELL. You are saying it has been determined already that it is an historic area.

Mr. HARJU. Well, the restored lands opinion that was authored by Ms. Coleman clearly demonstrates that, and that is their administrative finding that this is in the historic cultural area of the tribe. I would point out, the Cowlitz Tribe from time immemorial occupied all areas in Southwest Washington. It shared some of those lands on the Columbia River.

As you know, Senator Cantwell, the Columbia River divides Oregon and Washington. Pre-European contact, the Columbia River was the interstate highway for the tribes in that area. They used the river to navigate and for transportation. So on the river, there were different bands of different Chinookan tribes on the river many times.

As I have pointed out, in the 1820's and 1830's, many of those bands were wiped out by the fever and the cholera and the epidemics. But the Cowlitz have always been in that area, and as the opinion points out, this is our historic land.

So I do take offense to people saying, well, you should just go build your casino where you had land. We do not have any land in trust at this time. We are going through the complicated process to take this land into trust, as Mr. Skibine has pointed out. This land, we are going through the fee-to-trust process. We are going through the full environmental impact statement.

Before the BIA takes it into trust for the Cowlitz Tribe, we will have to fulfill all of those requirements. Once that happens, we have the opinion from the Indian Gaming Regulatory Act that it is our restored lands, and it is clear to everyone that then on that land we could either build a casino, and as we have pointed out, we also want to put tribal housing, a cultural center, and a governmental office there on that land. It is only 152 acres.

Senator CANTWELL. But I think, Mr. Harju, you could also could see from my colleague's perspective, too, on the process that we are trying to make sure is established since the implementation of this act and transparency, that when people are discussing these issues of the historical lands, you are right. There are many other examples of these trade offs that we deal with every day in our office as it relates to tribal sovereignty and the non-further use of tribal land that the Federal Government has taken and the implications of that, particularly as it relates to fish and to water and to power resources.

So are you suggesting that we do not need to make any changes to the Indian gaming law as it relates to transparency?

Mr. HARJU. My suggestion is in regards to the two exceptions that we are discussing today, either the restored lands exception or the initial reservation exception, I agree with Senator McCain that I think what direction the committee and the Congress should take would be to direct the BIA to implement regulations so that every-

one knows exactly what the BIA does, and what is expected of all the parties, the tribes, the public, and they have their input. So in regards to those two, the two exemptions that we are talking about, I think regulations are what we need right now, not amendments to IGRA.

Now, the two-part determination is what gets into reservation-shopping. I am not discussing that. The tribe has not asked for a two-part designation from the BIA or the State of Washington at this time. We are asking that the land be taken into trust and we will be applying one of the other exceptions, then. We have asked for an initial reservation proclamation and we have also asked for the restored lands opinion.

I might add that there is some indication that we have done this secretly. If you read the restored lands opinion, you will see that a State Representative responded. Several of the groups opposing the casino responded to them. They got input from another Indian tribe. A whole bunch of individuals opposing the tribe did have input on this opinion. It states that in the opinion. So it can hardly be said this was a secret process.

Senator CANTWELL. Mr. Alexanderson.

Mr. ALEXANDERSON. It was secret from March to October, and was discovered because Mr. Skibine advised one of the people that he visited with that the process was underway. Indeed, it was nearly over and at the very last minute that was some opportunity to put input in, but it did not apply to everybody, and it was inadequate.

If I may just clarify my position on one thing. Historically, you could find an area that everyone agrees was the exclusive area of tribe A. And you could find another area that was the exclusive area of tribe B. And you might find an area in between that you cannot tell, or was shared. Maybe there were resource sites that were shared and so on.

I am saying that when you are restoring a tribe to sovereignty over land, they should have had to make a showing that they once had sovereignty, exclusivity over that land. In that middle-land where more than one tribe has a claim, it is not right to restore it to the exclusive governance of one of the tribes and exclude the other. That is my position.

Senator CANTWELL. And what if that is not clear?

Mr. ALEXANDERSON. I am sorry?

Senator CANTWELL. I am not sure that is always so clear. I see Mr. Kromm smiling. I do not know in your experience in California if that is always so clear. I mean, how do you determine dominance on a particular parcel? I think if you were talking about a broad geographic area, east or west of the Cascades or north or south of the Columbia River, you know, it is easier.

But when you start getting into smaller territories, my guess is they were fighting over this for a long time about who was dominant. So I am just saying, it gets complicated.

Mr. ALEXANDERSON. That is absolutely true. In this case, that very issue was fought out twice before in the case of the Cowlitz, and the Indian Claims Commission, after a long trial that lasted years, I believe, made a determination as to where their exclusive area was, and where it was not. The determination they made as

to where it was not was the mouth of the Lewis River area, the area we are talking about.

So that has been found, and it was found again when the Bureau of Acknowledgment and Recognition spent years with expert historians looking into the Cowlitz history. Again, the Cowlitz representatives claimed that they had a band of the Cowlitz that lived in that area. The BAR found they did not.

So it has been ruled twice before already. It is a very difficult process, very fact-intensive. It involves reading the journals and evidence and maps of the time to see what the answer is. But once you get the answer, we should live with it.

Senator CANTWELL. Thank you.

Mr. Chairman, I am sure the case study of the Cowlitz could go on all day, and so could my questioning, but I will continue to work with you on the larger reform issues and appreciate my constituents being here.

I am not sure we like to be in the limelight on this issue, but I do think it is a case study of the challenges of the Act that we have now had for so long, and so many changes that have come along that require us to look at revisions. So I think the chairman for this hearing.

The CHAIRMAN. Thank you very much.

Ms. Thomas, we will allow you to make a closing comment if you would like.

Whoops, Senator Dorgan is back. Okay.

Senator DORGAN. Mr. Chairman, sorry. I had to be at another committee hearing to introduce a witness, so I apologize.

The CHAIRMAN. Ms. Thomas.

Ms. THOMAS. I would just like to say that I know that this committee worked, or the committee that you were a part of that worked so hard on the IGRA, did their level best to make sure that they had anticipated all the problems that might happen, and make provisions for those. And we do know that a lot of things have changed in the last 17 years. I just wanted to let you know how grateful communities like mine are that this is actually happening, because it is something that in our fight for the last 10 years, we have wanted to see happen, and we really appreciate it.

The CHAIRMAN. Thank you very much.

Mr. Kromm.

Mr. KROMM. Thank you.

Maybe a brief point I could make is that the California State Association of Counties has probably been the most active of the local government groups in the country of working on this issue. I want to thank Mr. Skibine. I came out here a couple of years ago when an issue first arose in our county, and just was kind of alone, a very inexperienced supervisor. He made time to meet with me. I have heard this from numerous other county supervisors in California, that the door has been open back here.

I think the challenge is, as you hear across the country, is that most folks do not quite know where to go and do not know how to address the problem, and it is difficult. We have been working with the National Association of Counties. CSAC has very much taken the lead. We are putting on workshops for the Western Regional

group of counties as part of NACO later this year. Mr. Skibine is going to be meeting with the League of Cities representatives.

I think an education process is part of what is needed. Part of it, I think, then goes back to your transparency questions earlier, about how do we make the process more open, more transparent. Good regs would help. It gives people something that they can put their hands on.

At the local government level, to kind of have an understanding that you do have a seat at the table; you need to have an appropriate recognition of the sovereignty of the tribes that are involved; and the difference between when land that is well-recognized is in trust versus when the reservation-shopping process comes about.

So I think a giant educational process nationwide is very necessary. We have been active in that. We would be glad to continue to help. I think reforms to IGRA could help that process also. Thank you.

The CHAIRMAN. Thank you very much, sir. I hope you work as quickly as possible to return Arizona's water from California. Thank you. [Laughter.]

Mr. KROMM. I am from California. Wine is for drinking and water is for fighting, right? [Laughter.]

The CHAIRMAN. Mr. Alexanderson.

Mr. ALEXANDERSON. Thank you.

Mr. Chairman, I think I have been clear about what I want from the process in terms of open access to information and opportunity to meet and present evidence, and a neutral, open-minded person to run the process and to make the decisions.

Substantively, I do not understand in this day and age why there should be exceptions to section 20. Those exceptions basically say that this giant Federal machine siting giant tribal casinos does not have to consult with anyone in the area and does not have to get the Governor's okay, and it can be proved that it will be damaging to the community. That is not okay with me. So urge substantive reform, as well as procedural reform.

Thank you.

The CHAIRMAN. Thank you.

Councilman Harju.

Mr. HARJU. Again, thanks to the committee for this opportunity. I do have a written statement and I would ask that that be submitted for the record.

The CHAIRMAN. Without objection.

Mr. HARJU. I guess, just to followup on that, there is need for regulation. Oversight is always important, but again I think there was a reason for these two exceptions that we have talked about today. It only affects a very few tribes, as you know, and any changes to those could have devastating results for tribes like the Cowlitz, and there is now the Snoqualmie Tribe in the State of Washington that has just recently obtained Federal recognition.

It is important to allow those tribes to have the same economic benefits of the tribes that had reservations and have gaming facilities or other economic benefits to help their tribal members. All the Cowlitz want are to be able to take care of the Cowlitz people.

Thank you.

The CHAIRMAN. Thank you, sir.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much.

As I said, I had a Commerce Committee hearing I had to rush off to, so I missed part of this, but I have read the statements offered today and I think they are very constructive and very helpful to this committee.

Again, Mr. Chairman, thank you for continuing on, and I thank all of you for traveling here today to be a part of this hearing.

The CHAIRMAN. Thank you very much.

This hearing is adjourned.

[Whereupon, at 11:31 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF PENNY J. COLEMAN, ACTING GENERAL COUNSEL NATIONAL INDIAN GAMING COMMISSION

Good morning Chairman McCain, Vice Chairman Dorgan, members of the committee, and staff. My name is Penny Coleman. I am the Acting General Counsel of the National Indian Gaming Commission [NIGC]. Thank you for this opportunity to discuss the NIGC's role in, and process for, making Indian lands determinations for off-reservation gaming. I understand that you are specifically concerned about such determinations when a tribe is trying to establish gaming off of its reservation or when a tribe is trying; to begin gaming when it does not have a reservation at all.

Under the Indian Gaming Regulatory Act (IGRA), tribes may conduct gaming operations only on "Indian lands," a term which is defined by the statute to include reservation land, as well as non-reservation land held in trust or restricted status by the United States for the benefit of a tribe or individual member of a tribe. IGRA prohibits gaming on non-reservation trust lands acquired after October 17, 1988, unless the tribe and its proposed gaming site qualify for one of six statutory exceptions in 25 U.S.C. section 2719.

In fulfilling its statutory duties under IGRA, there are three circumstances when the NIGC must make determinations regarding whether a site qualifies as "Indian land" on which a tribe is allowed to conduct gaming operations. The first circumstance arises under the chairman's duty to approve all management contracts between Indian tribes and gaming management contractors. In those cases, the NIGC will first confirm that the gaming operation to be managed is located on Indian lands eligible for gaming. Similarly, the second circumstance that may call for an Indian lands determination is created by the NIGC chairman's duty to approve all tribal gaming ordinances. Third, the Office of General Counsel, within the NIGC, issues Indian lands opinions when the Commission must determine whether it has regulatory authority over an existing gaming operation since the NIGC's authority is limited to Indian gaming operations on Indian lands. In conducting our analysis, we attempt to reach consensus with the Department of the Interior.

The working relationship that we have with the Department of the Interior on these issues is guided by a memorandum of understanding. Our practice of notifying, the State Attorney General is based on our internal policy developed as a result of a request by the Conference of Western Attorneys General. Regarding the issue of public notice and participation, our policy is to respond openly to inquiries and accept and consider any information provided by the subject tribe, other governments, community groups, or any member of the public. We typically do not provide public notice that any articular Indian lands analysis is, underway because this process involves a narrow, legal determination that does not require the solicitation of public comment.

Presently, we have approximately 21 active Indian lands opinions pending. The NIGC has assumed the responsibility for drafting 17 and the Department of the Interior is drafting 4. Of the 21, four include pending management contracts as well

as pending trust acquisitions: Ione Band of Miwok Indians; Elk Valley Rancheria; Federated Indians of Graton Rancheria and Hopland Band of Pomo Indians. The public will receive notice of these pending trust acquisitions through the environmental compliance processes, as well as the Department of the Interior's trust acquisition process.

I am available to answer any questions or provide further information that might assist in your review of this issue.

PREPARED STATEMENT OF REBECCA A. MILES, CHAIRMAN, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE

Mr. Chairman, the Nez Perce Tribe appreciates the opportunity to submit the following brief comments for the record of the hearing conducted by the Senate Committee on Indian Affairs on February 1, 2006.

First, the Nez Perce Tribe is concerned that Congress is considering taking such drastic action as amending the Indian Gaming Regulatory Act [IGRA] based on anecdotal evidence that does not necessarily comport with the known facts. As Mr. Skibine stated in his testimony, it appears that the media have created a firestorm of controversy about an explosion of off reservation gaming by Indian tribes that simply does not exist.

In order for a tribe to conduct such activities, tribes are required, under existing law, to go through a two-part determination test. The two-part determination process requires the approval of the BIA and the concurrence of the State Governor where the off-reservation casino would be located. The BIA must consult with local governments and nearby tribes before making a decision. According to Mr. Skibine, since IGRA was passed in 1988, only three casinos have been opened under the two-part determination process required under the existing law. In addition, the Department of the Interior has approved only one tribal acquisition under the land settlement exception and three tribal land acquisitions under the initial reservation exception but no land has been taken into trust yet.

The above process in conjunction with the required compliance with the National Environmental Policy Act means an adequate regulatory structure already is in place. It is at this point that the public is given an adequate outlet to comment on the process. As a result, it is the opinion of the Nez Perce Tribe that adequate safeguards are already in existence to regulate the area of applications for off reservation gaming by Indian tribes.

However, if the committee still believes that action needs to be taken, the Nez Perce Tribe believes that the current regulatory process can be amended to achieve the desired result without taking the drastic step of opening up IGRA for amendment. The draft regulations implementing section 20 that are being promulgated by Mr. Skibine's office should help resolve existing concerns over the off reservation gaming issue by fleshing out the exceptions allowed in section 20, providing more guidance with the secretarial determinations allowed, and defining important terms related to the process. The promulgation of these regulations will include tribal involvement before they become final. This helps insure the sovereign voice of the tribes is heard.

Finally, it should be noted that although the tribal gaming business has grown greatly since 1988, it has only grown because of the demand by the public. Each person that patronizes a tribal gaming facility does so at their own discretion. If customers did not feel welcome and safe at tribal facilities they would not visit. Statements made by the committee that the growth of the industry requires governmental intervention by the State are misplaced. The sovereignty of the tribes that conduct such gaming should be respected. It is important to allow tribes to grow and nurture our limited opportunities for economic development and as a result become more self sufficient and able to provide the services and programs that all governments are expected to provide.

Thank you for the opportunity to comment on this issue.

PREPARED STATEMENT OF LIZ THOMAS, TAXPAYERS OF MICHIGAN AGAINST CASINOS

Good morning. Thank you Chairman McCain and members of the Senate Committee on Indian Affairs for giving me the opportunity to testify. I am a representative of a community grassroots organization called Taxpayers of Michigan Against Casinos. We have worked to prevent a tribal casino from opening in New Buffalo, MI, for almost 10 years. New Buffalo is a Lake Michigan community of about 2,500 residents. My husband and I opened a small resort in 1990. We and the other members

of our group firmly believe a large, generally unregulated casino will fundamentally change the character of our community forever.

Throughout the past 10 years, those of us who oppose the potential Pokagon casino in New Buffalo have found our voices and fought in many different ways to prevent the casino. The fight has, been constant, costly, and often demoralizing, none more so than last Friday when we received word that the Government had taken the land in trust or the casino and the tribe announced they would begin building the casino soon.

Our opponents are funded by powerful gaming companies that always have more resources at their disposal than we do. I have come to believe over these 10 years that the only way to ensure that people in small communities like mine have a genuine say in whether an unwanted casino comes to town is with changes to the IGRA legislation, which must come from the United States Congress. And after hearing the news reports over the weekend, so many of our supporters called pleading with me to come today and tell you our recommendations about how to improve this process. So that is why I am here today, and before giving my recommendations I would like to give you a little history.

In September 1994, the Pokagons received status as a federally recognized tribe with the help of cosponsors U.S. Representative Fred Upton and U.S. Representative Tim Roemer. Both Congressmen claimed that the tribe promised that gaming was not the tribe's interest. By November the Pokagons were negotiating with Leisure Time and Harrah's entertainment companies about opening a casino. Congressman Upton told TOMAC he felt he had been double-crossed by the tribe.

For the next year the Pokagons held "informational meetings" along the I-94 corridor from Kalamazoo into Indiana, in at least 30 communities, looking for the right spot to open a casino. By the spring of 1996, the tribe had narrowed it down to three locations New Buffalo and Bridgeman in Michigan and North Liberty in Indiana. On May 3, 1996 the tribe announced that New Buffalo was their choice. A few days later our group of casino fighters met in the basement of the local Methodist church and took the name of Taxpayers of Michigan Against Casinos.

We first fought the casino at the local level. In 1996, we worked hard to support candidates for our local offices who opposed the casino. We were even successful in electing a slate of anti-casino only to see them later fall under the spell of promised revenue from the casino. This very same group that had run on an anti-casino platform turned around and signed a local revenue sharing agreement with the tribe. In a small community like ours, the lure -of much-needed revenue to help support the budget just became too much. And one thing casinos bring is a basket full of promises about lots of money flowing into town.

We have fought the casino at the State level. The Pokagon Tribe was trying to pass a compact with the State of Michigan in 1998, and several of us from TOMAC were there in Lansing when the compact passed. This compact passed in December on the last day of legislative session that year, at 1 a.m.

The compact was passed not as a bill but as a resolution so that it wouldn't require a majority of members of the legislature, just a majority of the people there on the floor voting. It was going to be a very close vote and we watched as many legislators walked out of the chamber so they wouldn't have to make a public vote a public stance on this very controversial project and so that it could get the majority of people who were on the floor at the time.

We have fought the casino in the courts. We filed suit in Michigan court, arguing that the compact was invalid because it was passed as a resolution instead of a full law. We won in the circuit court, lost in the appellate court, then lost again in the Michigan Supreme Court (though a piece of this case remains alive in the Michigan Appeals Court).

We filed suit in the Federal courts, too. We sued the BIA asking that the tribe be forced to conduct an Environmental Impact Study, because it seemed plain and simple enough to us that a massive casino designed to attract over 3 million people a year into a Community of 2,500 residents would have a significant impact.

The court initially agreed with us and rejected the BIA's conclusion that the casino would be insignificant, but the court later deferred to the BIA when it reached the same conclusion after further study. The appellate court agreed. Overcoming agency deference is a very big hurdle, I learned, even when any common citizen on the street will tell you that the casino will obviously have a transforming, significant impact on our community.

The tribes shouldn't be able to have it both ways. They should not be allowed to garner support from local governments with the promise of thousands of jobs, millions of visitors and even more millions of dollars, then, turn around and ask the BIA to declare the casino will have No Significant Impact on a community.

The BIA made its initial decision that this casino would be insignificant on the last day of the Clinton administration, January 19, 2001. The person who signed the papers was Michael Anderson from the BIA. He went to work for tribal interests shortly thereafter. This kind of blatant duplicity does not inspire public confidence in the fairness of government operations. And now the Jack Abramoff scandal shows that the level of political corruption and the money involved in Indian gambling matters has gotten completely out of control.

There are other communities in Michigan struggling with the threat of proposed tribal, casinos. We are thankful and grateful for the generous support we've received over the years and share their concerns about their own communities—people from CETAC in Battle Creek, MI; Michigan Gambling Opposition and 23 Is Enough in Grand Rapids, MI; Positively Muskegon in Muskegon, MI. We've also had the pleasure of working closely with Tom Grey from the National Coalition Against Legalized Gambling.

But casino gambling is spreading throughout the country and it is time for Congress to get its arms around the problems before it is too late. Now that you know the history of our fight, I'd like to offer what TOMAC thinks would be improvements to this whole tribal casino process, based on our experience.

First, most important, and what we have asked for all along, is a chance for the people of the community to vote on this. When the casino project was announced, we, community residents, were told it was a DONE DEAL. We were told what was going to happen, when, how wonderful it was going to be for our community, and that we shouldn't ask questions and that we certainly couldn't do anything to stop it. Fortunately for us, we had good souls like Tom Grey who told us it WASN'T a done deal and that there were ways we could try to stop it. But we the people have never had a chance to register our formal vote.

I believe there should be a local, public referendum on every tribal casino project to ensure the majority of the community actually wants it. If a community wants the casino, God bless them. But if a community does not want it, that community deserves the right to self determination.

The other, serious problem with this process is the "reservation shopping" as it is being called. Newly minted tribes and existing tribes work with their casino sponsors to find the best possible site for commercial gambling, and then they ask the government to put it in trust for them.

The Pokagons wish to build on land that they bought in 1996. This is not the Pokagons' existing reservation land. This is not even where the majority of Pokagons live now. The tribe's tribal hall is in Dowaigac, but the property there just isn't an attractive site for a commercial casino.

And yet once this newly acquired land is given trust status, it will be viewed forever more as a sovereign nation that belongs to the Pokagons, and on which they can build a casino that attracts 4.5 million people a year to our community of 2,500. The Pokagons decided on New Buffalo after they openly shopped "in probably all of the communities along the I–94 corridor in our service area". [Matt Weesaw, Harbor Country News, 5/9/96] We believe tribal casinos are best when built on tribal land and that "reservation shopping" was never the intent of the IGRA.

And last, there is the issue of the EIS which is required under IGRA in the land to trust process. We believe there should be an independent agency that would conduct an analysis of the environmental, economic and social impacts studies that would be an honest picture of the land in question. The present system allows the tribes to hire a firm that has experience with the BIA and knows what they want. These studies are inadequate, biased and often glaze over issues of great importance to host communities.

What has happened in my community, we call it Harbor Country, is not unique and that is what makes it so sad. It is not unusual or extraordinary because this nightmare is happening to towns all across America. As we debate this issue today here in Washington, there are grassroots groups all across America, calling their legislators, asking for help only to be told that this is an issue out of their jurisdiction. I ask you, who do we go to when our local, State, and Federal Governments have been seduced by the mere promise of millions of dollars of "revenue" that. once was some family's "paycheck". And I respectfully ask this committee, when did our rights as American citizens cease to matter on any day that was not an election day?

In the late 1980's the committee that drafted the IGRA did their best to include. Very thing they could imagine into the regulations that would govern an industry of gambling and an alliance with tribal nations. After nearly 20 years we know there is much more to learn. We applaud this committee's efforts to reach out to its critics and supporters and craft a solution that would be welcomed by all.

Thank you so much again for allowing me to speak today.

Before the United States Senate Committee on Indian Affairs
Re: Off-Reservation Tribal Casinos

Testimony of Alvin Alexanderson-Homeowner near the proposed Cowlitz Casino
Sponsored by:
Citizens Against Reservation Shopping
Stand Up For Clark County
American Land Rights.
February 1, 2006

Mr. Chairman, Mr. Vice Chairman, members of the Committee. The United Sates government is proposing to site an eight story tribal casino on a dairy farm a few hundred feet from my door near La Center, Washington. I am here for my family and the three groups sponsoring my visit.

The community does not want it there. No local government or business group supports a casino at that site. The County says the land is unsuitable for large-scale commercial development and was not envisioned for such use in the future. Clark County signed a services agreement with the Tribe; but this was before **any** casino was described. The County was later surprised and troubled that the Tribe was seeking an exemption from Section 20 protections.[1]

The Tribe is not from the area. The Tribe's homeland is consistently described in 19th century government maps, an 1855 draft treaty and historical accounts. One example is the John Wesley Powell map on the easel. The Cowlitz ruled a large area many miles north of the site. An unrelated Tribe held the project area. Cowlitz at most were only occasional visitors, and were never sovereign there. There is no evidence of **any** Cowlitz link to the project site for over 150 years. The only connection now is the proposed project.

The Tribe has 2,500 square miles of adjudicated land along I-5 to the North. It holds the Tribe's offices and medical building, all of its current fee land, and it has always been the Tribe's population center. It is where the Catholic Church Cowlitz Mission was established in 1838. The Tribe's Housing Authority is there and it is where the Tribe spends Federal Reservation Road Funds and state transportation subsidies. Several vacant freeway interchanges lie along this corridor. Local economies are weak and could benefit from the project.

The disputed site was picked for its commercial attributes. David Barnett and his wife optioned the site because it is next to I-5 and close to Portland/Vancouver. At the time, Mr. Barnett said it was a speculative investment and there were no plans for a casino or to change the agricultural use. Mr. Barnett now has a partnership with the Mohegan Gaming Authority. The site was only available to him because state and local land use regulations had preserved it as agricultural land. The Tribe does not own it.

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[1] If a Section 20 exemption applies, the casino is allowed to "be detrimental to the surrounding community." No local and nearby tribal government consultation is required, and the state governor has no veto.

Four years of deception. It has taken too long to get the facts. First we were told there were no plans for a casino. Then it was a small casino. Now, it has outgrown our worst fears. It would be Las Vegas sized, the fifth largest in America, towering over rural homes and farms in all directions, spreading light, traffic and noise 24/7 throughout the neighborhood.

The project would destroy the existing economy and tax base. At this site the project will do maximum damage to existing businesses by intercepting traffic to the only competition, small card rooms in La Center.

We need a "yellow flag." Several tribes are racing to build the first casino in the Portland/Vancouver market. But the process is so flawed that it needs to pause and hold the racers in line for a while. Our groups seek a **three year moratorium** in order to put sensible, fair, transparent procedures in place. There should be enough time to enact procedural rules and to consider substantive reforms now in draft legislation. The moratorium should temporarily stop all funding and processing of off-reservation gaming acquisitions.

Please-no grandfathering or exemptions from reforms. Exemptions would reward the most aggressive, most contentious, least meritorious projects. It would not be fair to the public or to competing tribes. Tribes frequenting Congress know they cannot get their casinos approved in a fair process with full disclosure. Please do not let them bypass the current protections in Section 20 or new reforms.

The idea that the Cowlitz should advance because they secretly sought an exemption from Section 20 is perverse. If anything, projects that **are** based on consultation with local government and nearby tribes, ones that do mitigate harms and can obtain the state governor's consent, are superior.

Major effects on neighbors and local communities. I expected to find procedural rights proportionate to the interests at stake. Siting of a new tribal casino, particularly a large Las Vegas-style commercial complex, is likely the most important land use decision ever faced by the surrounding communities and landowners.

A trust acquisition nullifies all state and local regulations and allows the Tribe to set up Tribal courts, pass laws, run a Tribal police force, etc. Because of its immunity, the Tribe is not accountable for the effects of its operation, even those that happen off the site. Gaming reservations expand easily and can entirely replace the existing economy.

If denied, the Tribe can move its plans to a better site. It is not so easy for the rest of us. Life savings have been invested in homes and small businesses. Some will be ruined.

The informal process now used to make siting decisions was never designed for something this important. It is not working. And it is being abused by those who run it.

What happened at La Center - my experience:

1. **No written rules for participation.** The process is ad hoc. There are no parties, no notice when materials are submitted, and no formal fact-finding. Department of Interior (DOI) says the process is "informal" administrative decisionmaking.[2]

2. **Local BIA officials did not allow us to see the Tribe's submittals**. They said only the County and the State had to be consulted. It was not their job to return phone calls to the public or provide information. I was told the public has no invitation to the BIA building, so cannot pass the guards. There is no public reading room or web site. Freedom of Information Requests (FOIAs) are the only way.

3. **FOIAs do not work because they are routinely ignored, delayed, or answered by a demand for open-ended fees.** One of my requests was answered several months later by saying there was nothing to disclose because the Tribe had withdrawn its application. This was a few days before the Tribe submitted new materials, the only moment when there were no Tribal materials to divulge.

4. **The local BIA openly favors the Tribal claims.** There is no rule or custom of impartiality. Tribal representatives have access to materials filed by the public. The public may never find out what the Tribe submits. There is concealment and misdirection that thwarts public participation.

5. **The lack of clear standards and rules is being used by the Tribe to coerce service agreements from local governments in exchange for a small part of the protections they are entitled to receive under IGRA.**

6. **The Tribe's initial fee-to-trust application stated that there were no plans for a casino or to change the agricultural use**. The local BIA wrote up a National Environmental Policy Act "categorical exclusion checklist" not made public. This found there were no environmental impacts from the proposed acquisition and sought to bypass all environmental review.

7. **The Tribe requested a restored lands opinion in March 2005. Until October, this was concealed by the Tribe, the BIA and National Indian Gaming Commission (NIGC), even when all three appeared here last July.** A restored lands finding eliminates statutory protections for the community. It is an end-run that permits gaming even if it is proved harmful.[3] It lets DOI skip the state governor's ok and the consultation process with other tribes and local governments. While the NIGC was processing the request, citizens asked the local BIA about restored lands and were told "this office has received no such requests." Asked directly in May, a NIGC

[2] DOI Backgrounder January 6, 1998.
[3] See footnote 1 on page 1.

attorney would not say. Mr. Skibine's July exhibit listed the other pending restored lands requests but **left out the Cowlitz.**

8. **The same July day the local BIA office wrote that "indigenous occupation…is completely irrelevant" to the decision.** This is false unless there is no restored lands request. The effect, if not the intent, was to steer citizens away from the issues being considered at that very moment.

9. **Once the NIGC process was discovered, the Tribe refused to release its request, saying there was no such requirement and doing so would "arm" its opposition.** A Tribal leader offered the materials in exchange for support.

10. **NIGC did not follow its prior opinions on restored lands**. It did not explain the departure, and relied on untested, even speculative assertions. If sustained, the opinion will open the door for exempt reservation shopping in vast new areas. Tribes can be made sovereign where they never were so before, just because of occasional travel nearby. The opinion gave no consideration to the 2,500 square miles available to the Cowlitz, where their ancestors actually lived and ruled.

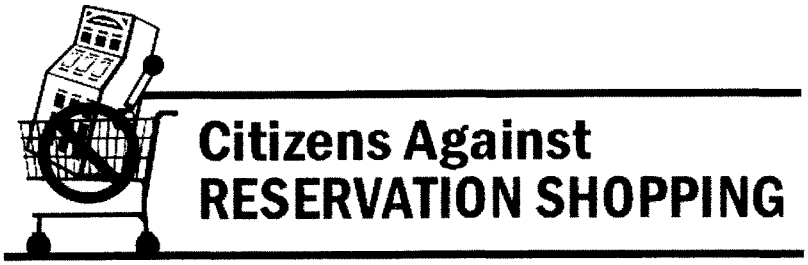
11. **Historical fact errors were made by counsel to the NIGC.** NIGC knows about gaming. The BIA Bureau of Acknowledgment and Recognition knows about history. It has qualified historians with decades of experience on tribal culture and history including the Cowlitz because of their recent acknowledgement proceeding.

There have been exceptions. Some individuals have been very helpful and have treated the public as customers of the process. But they do not write it down or want their names used. They know who they are. We thank them.

REQUESTS/RECOMMENDATIONS

1. There should be a three year moratorium on new off-reservation casinos.
2. There should be no exception for the Cowlitz project.
3. DOI should enact procedural and interpretive rules to guide the whole process.
4. Facts and procedural matters should be resolved by a neutral person.
5. Agency experts on historical facts should participate.
6. No site should be "restored" to a tribe that was not the historical sovereign.

Thank you.



EMBARGOED UNTIL JANUARY 15, 2006

Contact: Tom Hunt,
Hunt Communication
(360) 693-8180
Tom@NotHerePlease.org

ANTI-CASINO GROUPS ASK INTERIOR TO VACATE COWLITZ OPINION
They also request formal rules for NIGC's restored lands process

Three Clark County anti-casino groups have jointly asked Interior Secretary Gale Norton to reject a federally issued opinion that the Cowlitz Tribe has historical ties to land at the Interstate 5–La Center interchange. Developers want the land taken into trust so they can build a Las Vegas-style casino-resort in the Cowlitz Tribe's name.

In a letter that pronounced the process for taking land into trust, "hopelessly flawed," the groups also asked that the Department of Interior (DOI) establish formal rules for processing tribal applications for restored lands status, a designation that can make it legal for tribes to offer casino gaming on newly acquired lands. Gaming is prohibited on newly acquired land unless developers can convince local governments, the Interior Secretary and state governor that their proposed developments will cause no detriment to the surrounding communities, or they can get an exception with an initial reservation or restored lands determination.

The three citizen groups—Citizens Against Reservation Shopping (CARS), Stand Up For Clark County Citizens (SUFCCC) and American Land Rights Association (ALRA)—state that despite making many requests for information from the Northwest Regional Office of the Bureau of Indian Affairs (BIA) in Portland and meeting with Interior department officials in Washington, D.C., they were unable to conclusively determine whether the Cowlitz Tribe had applied for restored lands status until October 2005—although the tribe had applied to the National Indian Gaming Commission (NIGC) in March 2005.

The BIA is part of the DOI, and the NIGC is administratively linked to the DOI.

(MORE)

"From the outset, this tribe has worked to bar local governments from bringing into the process concerns about detrimental impacts a casino might impose on their communities," said Ed Lynch, chairman of CARS. "Their secret filing for a 'restored lands' declaration, which locks local governments out, is just one example."

CARS, SUFCCC and ALRA found that there are no formal rules for the restored lands application and determination process, nor are there set criteria for approval. The NIGC is not required to announce that an application is under consideration, and it is not required to solicit information from anyone other than the applicant. In this case, the lack of a formal process made it impossible for citizen groups and local governments to offer timely input to the process—although many did as soon as they learned an application was being considered.

"How can local governments or concerned citizens participate in local decision-making when there is no requirement for the federal agency involved to inform anyone about what the tribe is trying to do?" said Kamie Biehl, chairman of SUFCCC.

The NIGC's opinion breaks recklessly from precedent by not requiring the tribe to have the "strong historical nexus as well as geographic proximity to the land" that George Skibine, acting deputy assistant secretary for Indian Affairs, spoke of when he testified last year before the Senate Committee on Indian Affairs.

According to the opposition groups, the NIGC opinion relies almost solely on the Cowlitz restored lands application for the La Center property, disregarding earlier findings by both the BIA and the Indian Claims Commission.

"In fact," stated Chuck Cushman, chairman of the third organization, ALRA, "the Cowlitz restored lands opinion expands the definition of restored lands to include areas to which tribes have had minimal connections and disables Section 20 of the Indian Gaming Regulatory Act, which prohibits gaming on lands acquired in trust after 1988."

Moreover, the local citizen groups experienced a marked lack of transparency from the federal agencies and have asked Secretary Norton also to determine whether a BIA response to a Freedom of Information Act request was appropriate.

When SUFCCC asked the BIA's Northwest Regional Office whether the Cowlitz Tribe had submitted a restored lands application, it received a letter stating, "please be advised that this office has received no such request from the Cowlitz Tribe." Despite BIA's and NIGC's relationship via the DOI, the BIA did not explain that those requests go directly to the NIGC.

Additionally, the BIA did not share with the NIGC materials that local groups and governments had submitted after the BIA announced in March 2004 that the tribe had

(MORE)

applied for an initial reservation, another way of circumventing the law against gaming on newly acquired lands.

To date, the Cowlitz Tribe does not own any land at the La Center junction. Seattle-based developer David Barnett and his wife, Kristine, are buying 71 acres there on contract, and the couple sold an acre there to Salishan-Mohegan, the partnership formed by Barnett and the Mohegan Tribe of Connecticut.

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CARS is a local citizens organization that is concerned about the practice of reservation shopping and is dedicated to keeping large-scale casino gambling out of southwestern Washington.

For more information, see our Web site—NotHerePlease.org.

Edward Lynch, Chairman
Citizens Against Reservation Shopping
PO Box 61801
Vancouver, WA 98660

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Stand Up For Clark County Citizens
38007 NE 60th Avenue
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Chuck Cushman, Executive Director
American Land Rights Association
PO Box 400
Battle Ground, WA 98604

January 9, 2006

Secretary Gale Norton
Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Norton:

We represent three separate citizen groups who are deeply concerned about the Cowlitz Tribe's proposal to site a mega-casino in Clark County, Washington. In light of the National Indian Gaming Commission's Nov. 23 opinion that 152 acres here qualify as the tribe's restored lands, we have come together to write you with three requests:

1. That you reject the NIGC's opinion that this land in Clark County can be considered the restored lands of the Cowlitz Tribe.
2. That your department work with the NIGC to establish formal rules for the predictable processing of restored lands applications; and
3. That you determine whether the Freedom of Information Act request response in which the Northwest Regional Office of the Bureau of Indian Affairs indicated that it had no information regarding the Cowlitz Tribe's restored lands request was appropriate in light of the NIGC and BIA's consideration of the tribe's request.

From our collective experience, we have found the process for considering restored lands applications is hopelessly flawed. Please note that until October 2005 our three groups worked independently for the most part, so you will observe in the following sequence of events that at times the right hand did not know what the left hand was doing. Despite that, once we began working together and comparing notes we found that our experiences were consistent.

We have all found that the restored lands process keeps vital information from the public and prevents comment—and critical information—from reaching decision-makers. Members of our organizations sought over many months to determine whether a restored lands request had been made and then to understand the process so we could participate, but we were thwarted at nearly every turn. For months we were unable to confirm that the tribe had even applied for this opinion—the Bureau of Indian Affairs' Northwest Regional Office provided a deceptive response to a Freedom of Information Act request. Then, in October 2005, the existence of the restored lands application was revealed in a conversation between representatives of one of our citizen groups and George Skibine, director of the Office of Indian Gaming Management.

It is clear that by the time we found out about the application and that it was under the jurisdiction of the NIGC, we were too late to participate meaningfully in the process. After eight months of review prior to our being able to participate, it was clear that the NIGC had already reached its decision. Indeed, the restored lands opinion made reference to the opposition's view only three times and failed to address any of the arguments presented, despite lengthy briefs filed with the NIGC in late October and November by informed citizens and legal counsel.

The resulting restored lands opinion points to a flawed process that predictably produced a flawed opinion. Very briefly, the NIGC opinion that the Clark County property, which the tribe does not own, qualifies as restored lands breaks recklessly from precedent by not requiring the tribe to have, "a strong historical nexus as well as geographic proximity to the land," as Mr. Skibine testified July 27, 2005, to the Senate Committee on Indian Affairs. The decision extends the definition of restored lands to include areas to which tribes have had minimal connections. In the case of newly recognized tribes, the decision disables Section 20 of the Indian Gaming Regulatory Act, which prohibits gaming on lands acquired in trust after 1988 by allowing a quickly filed fee-to-trust application to compensate for inadequate historical and cultural connections.

Our strong disagreement with the substance of the NIGC's opinion is outlined in letters you have received from us individually and that we have attached at the end of this letter. What follows is our coalition's experience of the restored lands process. Please remember that we are concerned citizens who have been looking to our representatives in government to help us make sense of a process that is not defined and with which we had not previously had any experience.

The red herring

As you may be aware, the restored lands exception was not the first path by which the Cowlitz Tribe has pursued an Indian lands determination. In March 2004, the Cowlitz Tribe surprised Clark County by applying for an initial reservation exception to Section 20. On March 2, the county had signed a memorandum of understanding with the tribe under the assumption that if it were to apply to take land into trust for gaming purposes, the process would include consideration of detrimental effects to surrounding communities and would involve Washington's governor. The county made that

assumption because the tribe had not applied for any Section 20 exception, had not indicated during negotiations that it intended to do so and had not, in fact, acknowledged a desire to operate a casino on the land. On March 12, the county received the letter from the BIA's Northwest Regional Office saying that the tribe had applied for an initial reservation, one of the three main exceptions to Section 20.

With the understanding that the initial reservation process is conducted through the BIA, local governments and citizens began sending information to the agency—both to the regional and national offices—largely concerning the Cowlitz Tribe's lack of historical connection to the area of its requested initial reservation site.

An information blockade

When our groups began seeking information about the Cowlitz Tribe's plans, they found that little information was available. One of these citizen groups, Stand Up For Clark County Citizens (SUFCCC), experienced great difficulty in gaining information from the regional BIA. Additionally, the group found the staff members were hostile to questioning. It seemed strange that representatives of our government made it so difficult to get the facts. SUFCCC began submitting FOIA requests seeking information on applications submitted by the tribe related to its efforts to get land taken into trust for gaming purposes. Except for one submitted in 2002, the requests were either ignored or denied. SUFCCC then enlisted the help of Washington Rep. Brian Baird, who filed a Congressional FOIA in March 2005. It also went unanswered for months.

In May 2005, representatives of SUFCCC met in Washington, D.C., with Mr. Skibine, who at that time was Acting Deputy Assistant Secretary-Indian Affairs for Policy and Economic Development. Although Mr. Skibine suggested that the tribe had applied for *both an initial reservation and restored lands exception* to IGRA Section 20, SUFCCC was unable to confirm this from any other source.

Indeed, during the same visit to Washington, SUFCCC met with NIGC attorney Sandra Ashton, with whom the group had met previously and knew was working with the Cowlitz. Ashton made it clear that because SUFCCC was not part of the tribe, there was information she was unable to share. *Ashton would not confirm that there was a restored lands application from the Cowlitz Tribe.*

After returning to Washington state, SUFCCC contacted Rep. Baird's office regarding the restored lands application, and Rep. Baird's district director Pam Brokaw contacted Stanley Speaks, director of the BIA's Northwest Regional Office, *who denied any knowledge of a restored lands application.* On July 27—four months after SUFCCC submitted this particular FOIA request—SUFCCC received a letter from the BIA's Acting Northwest Regional Director in response to Rep. Baird's initial request and subsequent FOIA, which had been requested by the BIA for the purpose of clarification. It stated, "With respect to application of the exemption of restored land pursuant to Section 20 of the Indian Gaming Regulatory Act, please be advised that *this office has received no such request from the Cowlitz Tribe*" (emphasis added). (See Enclosure 4.)

In December—nine months after Rep. Baird's office began its inquiry on behalf of SUFCCC—we learned from the Office of Indian Gaming Management that restored lands applications are frequently submitted by tribes directly to the NIGC. According to OIGM, it is possible that the regional BIA office was unaware of the restored lands application, but unlikely. According to Mr. Skibine, federal and regional BIA officials were in the process of examining a fee-to-trust request plus requests for initial reservation and restored lands status. Additionally, an OIGM representative said that it recommends tribes alert their regional BIA offices if they request a restored lands opinion.

If indeed the Northwest BIA office was unaware of the Cowlitz Tribe's restored lands application, why did the Acting Northwest Regional Director not say in her letter that restored lands applications are outside the BIA's jurisdiction and perhaps even suggest contacting the NIGC? We wonder who our government is representing—all citizens of the United States or exclusively tribal members?

With Mr. Skibine saying there was a restored lands application in process and regional BIA saying there was not, SUFCCC was not able to determine with certainty whether the restored lands application had been submitted. On Sept. 19, the group submitted yet another FOIA request to the regional BIA office, a categorical FOIA, to view "'any and all' documents pertinent to the requests submitted on the Cowlitz tribe's application, as well as those documents that better illustrate your role in the process." *To date it has not received a response.*

Redirected efforts

In October 2005, another of our citizen groups was able to get confirmation that the NIGC was actively considering a restored lands application from the Cowlitz Tribe. Representatives of Citizens Against Reservation Shopping (CARS), met with Mr. Skibine, now Director of the Office of Indian Gaming Management, and he told CARS that the application was at the NIGC. CARS then asked its contacts in Washington, D.C., to follow up with the NIGC. They learned that indeed the Cowlitz Tribe had applied to the NIGC for the restored lands exception to Section 20 *in March 2005*. Moreover, they found that the NIGC had not received most of the relevant materials that our coalition and local governments had submitted previously to the BIA—as it was considering the initial reservation application—and to the Department of the Interior.

This was disappointing, because in May 2005, when SUFCCC met with Mr. Skibine in Washington, D.C., he had said he was unaware of the conflicts surrounding the Cowlitz Tribe's claims to historic connections in Clark County. However, he told SUFCCC that if given documents regarding the issue, he would get them to the appropriate staff. Our contacts in Washington, D.C., then personally delivered those documents, but our understanding is that most never reached the NIGC.

CARS alerted the other citizen groups and local governments, who resubmitted materials—this time to the NIGC—addressing their concerns and documentation of the relevant history of the area, plus additional materials in response to the brief that the Cowlitz Tribe's counsel had submitted to the NIGC in March.

But it was late in the game. Not only had the Cowlitz Tribe submitted its initial brief to the NIGC seven months previously, but it had been given the opportunity in August to withdraw and revise its application before resubmitting it Aug. 29, we learned from the "Cowlitz Tribe Restored Lands Opinion" by Acting General Counsel Penny J. Coleman. This also gave the NIGC more time to consider the restored lands issue, according to Coleman. All of this was occurring as concerned citizens and governing bodies were focusing their attention on the application for initial reservation, a process being run by the BIA.

Concern and confusion

Once news about the restored lands application got out, Rep. Baird was inundated with calls and correspondence regarding the issue. He sent you a letter Oct. 27 expressing concern about confusion in his district over the Cowlitz casino application process. He asked that you appoint an ombudsman to oversee the process and communicate with Southwest Washington residents, to set up a public meeting in Southwest Washington where citizens could meet with representatives of all agencies involved in the decision-making process and delay any decisions on the issue until at least 30 days after the public meeting.

He did not receive a reply until more than two months later *and after an opinion had been rendered.*

On Nov. 23, the NIGC issued its opinion that the Cowlitz Tribe qualified for restored lands status, eliminating the need for the tribe to go through the two-part determination process, which would allow local citizens and governing bodies to express their concerns, and which would require you as Secretary to consult with local governments and tribes about whether a casino would be detrimental to them. In addition to taking away the right of local participation, this would take away the power of Washington Gov. Christine Gregoire, who under a two-part determination would have to give her approval before this land could be taken into trust for gaming purposes.

The process we experienced effectively allowed the Cowlitz Tribe to lock out local participation in a decision that could have an enormous impact on the economics, social climate and quality of life in Southwest Washington. The proposed Cowlitz casino-resort would become the largest development ever in Clark County, and it would become the region's largest employer.

A law that has gone awry

We understand that exceptions to the prohibition against gaming on newly acquired trust lands are part of federal law. However, due to our experience trying to participate in the process, we question whether this law is working as it was intended.

First, as noted above, there has been a near-complete lack of information and outright misinformation surrounding the Cowlitz Tribe's application process. Regional BIA did not respond to numerous FOIA requests, but the previously mentioned BIA letter dated

July 27, 2005—four months after the tribe submitted its first restored lands application—stated merely that it had not received a restored lands application. Moreover, neither the Cowlitz Tribe nor the NIGC alerted interested parties that the tribe was pursuing restored lands status. It is our understanding that under the current non-process such notification is not required, but if interested parties learn that such an application is being considered, they are welcome to submit materials supporting their concerns.

Why would a federal commission wish to surround this process with such a shroud of secrecy, particularly when the impacts of its decision could have huge impacts on the local communities—and once the restored lands decision is made, the communities and state really have no more say in the process? If the NIGC allows comment from the public, why does it not solicit it and make this a balanced process? Why does it instead set itself up to make a biased decision, informed by only one party—the one that has less at risk and stands to benefit extravagantly?

Not only is the process broken, but due process is absent. In the case of the Cowlitz Tribe's application, the federal government is running interference so the tribe can build a casino with no regard to detrimental effects to the surrounding communities—despite the fact that it never occupied or had exclusive use of the area where it wants to set up shop. How can lands be "restored" to a tribe that never occupied them in the first place?

According to the NIGC's Web site, the Commission is linked to the Department of the Interior, but "the Secretary of the Interior has no control over the Commission's decision processes." The opinions the NIGC is issuing—declaring lands "restored"—make us think you likely will not be part of the process of determining whether a casino is in the best interest of the involved tribe and whether it would not have a detrimental effect on the surrounding communities. As you are well aware, if you accept the NIGC's restored lands opinion, you will eliminate the need for the two-part determination, which would require you to get deeply involved, consulting with area citizens and governments, including nearby tribes. We want your involvement so we can share with you our concerns and show you why a mega-casino a) is not a fit for our area, and b) why the property being considered does not qualify as restored lands of the Cowlitz Tribe, based on prior findings of the BIA and the Indian Claims Commission.

A broken process

In addition to lacking a coherent formal process, it appears that the NIGC and the DOI are in violation of their own Memorandum of Understanding.

Stipulation 3 states: "The Department of the Interior shall then provide such advice and assistance as may be required to allow the NIGC to issue, a fully informed decision on any Indian lands questions."

When one of our groups confirmed in October that the NIGC was considering a restored lands application from the Cowlitz Tribe, our representatives in Washington, D.C., ascertained that the NIGC had not received the materials that citizen groups and local governments had previously provided to the BIA and DOI regarding the initial

reservation application. The NIGC was working solely with the documentation provided by the tribe and its representatives. The DOI and BIA were remiss in not providing the NIGC with the information—"such advice and assistance" that would have helped the latter make "a fully informed decision."

Moreover, given the opinion that was issued contained so little reference to the well-researched documentation provided by the public, it appears that the NIGC is violating stipulation 4 of the MOU: "The NIGC shall provide the Department of the Interior a reasonable opportunity to review the NIGC's draft decisions so that the Department may provide such additional advice as the Department deems warranted." We cannot imagine DOI, had it seen the public submissions and the NIGC's marked departure from precedent, allowing that opinion to proceed as it did.

Furthermore, it appears that the NIGC has forgotten or does not realize its role in the lands determination process. When the Cowlitz opinion was issued, the NIGC sent an e-mail to people who had contacted it regarding this issue. The NIGC e-mail read, in part, "Please be assured that this decision does not decide whether gaming will ever be conducted on the Lewis River Property. This land must be acquired into trust. That decision is solely within the discretion of the Secretary of the Interior."

Again, in the NIGC's news release dated Nov. 23, NIGC Chairman Philip Hogen stated that "NIGC approval of the gaming ordinance is not determinative of the DOI's decision on the fee-to-trust process. DOI has an independent course of action with respect to the land into trust process."

However, the NIGC-DOI MOU states that "the NIGC recognizes that its decisions on Indian lands may have an impact on other issues within the jurisdiction of the Department of the Interior." We cannot help but assume this acknowledges the influence the NIGC's opinions have on decisions that are part of the Indian lands determination process.

Feeling adrift

As concerned citizens, we can assure you that the process by which tribes go about getting an exception to IGRA Section 20 has been a puzzle with no answer key and overseen by agencies unwilling or unable to provide the most basic information. But more than that, the process is a disappointment. It is astonishing that the NIGC allows a tribe to submit an application, which, if approved, advises DOI to take away the rights of local governments and citizens to comment on a development, while there is no requirement for the NIGC to notify those who would be most impacted by the acceptance of that application and its ramifications.

This cannot be the true intent of IGRA or of the lawmakers who enacted it.

Clearly the process is broken, and we ask that the DOI fix it. We respectfully request:

1. That you reject the NIGC's opinion saying this land in Clark County can be considered the restored lands of the Cowlitz Tribe; and that you reopen the process, give interested parties the opportunity to submit information, and give that information the weight it is due.
2. That your department work with the NIGC to establish formal rules for the process of issuing restored lands opinions; that you revisit your MOU and ensure that the agency and commission are communicating with one another, sharing information and standard protocols; that you remove the curtains from the NIGC's process by diagramming it on the NIGC Web site, alerting local communities when a tribe files a restored lands application—as the regional BIA does when a tribe files an initial reservation application—publishing on the Web site a list of all pending applications and soliciting comment from interested parties.
3. That you clarify the respective roles of the NIGC and the BIA with BIA Regional Offices so that critical information regarding the review of restored lands applications, including the fact that such a review is taking place, is known and shared with the public when such inquiries are made.

For a democracy to allow a process so full of secrecy, misinformation and favoritism is shameful. We expected far better.

Please contact us if we can provide you with more information or if you would like to discuss this matter.

Sincerely,

Edward Lynch, Chairman
Citizens Against Reservation Shopping (www.NotHerePlease.org)
(360) 696-3611/edlynch@pacifier.com

Kamie Biehl, Founder
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Enclosures: 1. Letter to Secretary Norton from Ed Lynch, Chairman of Citizens

Citizens Against Reservation Shopping
PO Box 61801
Vancouver, WA 98660

January 6, 2006

Secretary Gale Norton
Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Madam Secretary:

I am writing you regarding the opinion issued by the National Indian Gaming Commission on Nov. 23 that determined the 152-acre parcel Washington's Cowlitz Tribe wants taken into trust for a casino would qualify as the tribe's restored lands.
This opinion was written largely from the Cowlitz application alone, is poorly reasoned, and deviates significantly from standards adhered to in all prior restored lands opinions.

Frankly, the tortured means used to reach the conclusion it did demonstrate a predisposition to find for the tribe at every contentious turn, and an equal readiness to leave communities and other stakeholders without a voice, to fend for themselves. An apparent lack of communication between the BIA and NIGC in this matter reflects poorly on each of them as well as the Department. With all respect, this opinion should either be ignored or vacated.

When Seattle-based Cowlitz developer David Barnett decided he wanted to inject a casino into Clark County, he began with a strategy designed to keep local citizens and governments out of the process. First it was by keeping his plans secret. He bought land that he said would be maintained in agricultural production. Then he said he thought he might use it for a cultural center. The county signed a memorandum of understanding with him. Ten days later it was revealed that he wanted to use the land for a small casino, 12,500 square feet of gaming space, which later grew into a partnership with Connecticut's Mohegan Tribe to develop one of the largest casino-resorts in the U.S.

At the same time, it was also learned he wanted to make the land he had bought a few years previously into the tribe's initial reservation.

That move, the county quickly learned, would have the effect of cutting the county, state and local decision-makers out of the process even more effectively than the initial strategy of secretiveness and evasion. The honest approach would have been for Barnett and the Mohegan Tribe to pursue their plans openly using the two-part determination in Section 20 of the Indian Gaming Regulatory Act. But they, too, understand the detrimental, unmitigatable impact a mega-casino would have on this area and that a positive finding from you and our governor would be hard to come by. So they pursued

the initial reservation exception to Section 20 and then in March this year, secretly and without notice, made it a two-pronged attack by launching the restored lands pursuit.

To make this situation worse, in October when opposition groups found out about the restored lands application, the NIGC process was so far along there was little time to respond. I had formed a group (Citizens Against Reservation Shopping) in June to oppose the casino. Last fall our group had begun communicating regularly with other local citizen organizations that were also in opposition. We were primarily focused on the initial reservation application, which we knew about, but were trying as well to keep an eye out for other possibilities.

Regional BIA was not informative in this matter, and by October when we realized the application was at the NIGC, we found that the Commission had been studying the application only in the context of the documentation provided by the Cowlitz Tribe. None of the materials opposition groups had sent the BIA to thwart the initial reservation were made available to the NIGC! We all hurried to get information to the NIGC, but the opinion issued shows clearly that the Commission had long ago made its decision and spent very little if any time considering other professional input. As non-applicants and non-tribal members, we were locked completely out of the process.

What kind of due process is this?

- The Commission (NIGC) charged with providing BIA with a legal opinion as to whether the tribe should be allowed to game under the restored lands provision fails to notify local communities and other stakeholders, and deliberately excludes them from an IGRA process designed, in part, to safeguard their interests and mitigate against detrimental affects. That they are not required to do this is an outrage. Why does this process not encourage factual input from other historians and existing host communities to help assure equity and a quality opinion?

- A tribe that stands to make hundreds of millions of dollars gambling needs only claim to a federal commission that it may have at one time occasionally hunted in the area, while purposely blocking nearby governments and the public from participating in the IGRA Section 20 process. All along, this tribe is professing to want to be a good neighbor to those same communities!

- A commission that in the past maintained rigid standards of prior tribal historic and geographic connection with lands proposed for restoration dramatically abandons those standards and admits the tribe had no serious connection to the location in question. In fact, the site is in territory historically occupied by the Chinook Indian Tribe. The opinion ignores altogether findings by the BIA in 2000 and the Indian Claims Commission in 1969 and again in 1971 that the Cowlitz tribal lands were along the Cowlitz River to the north, never on lands today located in Clark County. (In 1997, the Office of Federal Acknowledgement wrote, *"The "Cowlitz" were those Indians who resided mainly along the length of the Cowlitz River, in what is now Cowlitz County and Lewis County, Washington.")*

- The NIGC opinion fails also to recognize the 2,500 square miles of uncontested, adjudicated Cowlitz lands, many of which are bisected by Interstate 5 and appropriate for gambling. A significant number of those acres are for sale.

- Our congressional representative (Brian Baird, D-Wash.) writes the Secretary of Interior and, noting local confusion and lack of information available about the process going forward, asks for a public meeting prior to issuance of the opinion and is ignored.

In short, the recent NIGC restored lands opinion is a prime example of the federal government helping a tribe bypass the interests of state and local governments to reach a desired conclusion on behalf of an Indian tribe engaged in a most egregious case of "reservation shopping." Congress is preparing legislation in both houses to address these very practices, but will they act in time? Will you?

What we have witnessed here has been a shameful exercise resulting in a shameful conclusion. I certainly hope you will concur and ignore the Commission's recommendation.

Sincerely,

Edward Lynch, Chairman

cc: Mr. James Cason, Associate Deputy Secretary, Department of the Interior
Mr. George Skibine, Director, Office of Indian Gaming Management
Rep. Brian Baird, Congressman, D-Washington

Chairman Philip Hogen
Penny Coleman, Director, General Council
National Indian Gaming Commission
1441 L Street, Suite 9100
Washington, D.C., 20005

November 25, 2005

RE: Your recent decision on the Cowlitz gaming ordinance and historical ties to land.

Dear Sir and Madam,

I am in receipt of your official opinion on the Cowlitz Tribe's request to conduct gaming on lands located at what you term, "the Lewis River Property" in Clark County, Washington. I am deeply distressed at several things that have or will occur as a result of this opinion and found it to be far different than most land determination opinions issued from the NIGC that I have read.

You state that this opinion will in no way impact the way that federal agencies view this request. However, the NIGC issuing a restored lands provision means that the Tribe's desire to use this site for a casino overrides our community concerns as a matter of law. Even if we prove and BIA finds that the local impacts will be devastating, including in this case loss of almost all of an entire town's current and primary tax base, the Tribe will say it does not matter because your opinion makes all that immaterial to the decision. It would also remove the role of our local and state government in this decision, including our Governor. We view this as critical.

Unlike other NIGC opinions, there was no finding that Cowlitz Indians ever resided on or near the property. You cited "likelihood" of the Cowlitz maybe having villages or engaging in one battles in this area. Yet, I saw no history of burial grounds, no history of villages, nor proof of any significant Tribal presence.

In general, what I did see was an alarming lack of attention to undisputed history and facts that show the Cowlitz were from upper Washington. The area was along the Cowlitz River far from Clark County. I've read through the BIA findings, the Indian Claims Commission and also local historical journals, all which concur with the Cowlitz River area as the true homeland of the Tribe.

Some of the information your commission used to show a presence in Clark County has already been disputed by noted historians, including the Fish and Wildlife Service, Army Corps of Engineers at Camp Bonneville, again, the BIA who said, "no conclusive proof" and the Indian Claims Commission. The I.C.C. even chided the tribe's ethno-historian for citing his own work to establish a presence along the lower Lewis River.

I also do not see any evidence in your opinion of the Tribe's previous litigations for lands in Medicine Creek that they cited as their indigenous territory, including legal battles

against other tribes to claim those lands far from here. They also litigated against Tacoma Power and Light, located several hours from here and a local newspaper carried one of their elders speaking of that Cowlitz territory, calling it their homelands.

Other news articles from 2002, had the Cowlitz tribal chief stating that "Tahola is our home" when referencing their reservation rights on the Quinault reservation. Tahola is located in upper Washington several hours' drive from here. In addition, the tribe was awarded reservation road grants in Toledo, Washington. Ancient burial grounds and other proof of indigenous history are entirely absent from this area.

Some of the instances you cited to show a presence in Clark County have also already been disproved. So we assume most of this information came directly from the Cowlitz ethno-historian's work that was already dismissed.

The Chinook and Klickitat Tribes are or were from this area, not the Cowlitz. Their history is very clear and changing it to show the Cowlitz as indigenous to this area in order to gain a Class III casino seems, in a very real sense, stealing another tribe's history and territory. The Chinooks are also trying to gain federal recognition. Your decision helps the Cowlitz Tribe to site a casino less than ten miles from where the Chinook Tribe is constructing a replica of their Plank House.

Since deciding to build a casino, the tribe has requested a HUD grant service area to include Clark County. They recently relocated tribal offices closer to this area, we assume to try to show a closer presence. That they are asking the BIA to include Clark County as a BIA-grant service area is more of the same. This has been used in your formal opinion to support a historical tie. Does a tribe asking to have their grant service areas located close to where they have requested permission to conduct gaming even remotely qualify them as having aboriginal ties to those lands?

In your opinion, your justification for temporal ties uses the Cowlitz Tribe's request of the lands at the "Lewis River Property" as their first lands purchased as part of restoring lands to a new, federally recognized tribe. There is no mention of the fact that David Barnett, millionaire real estate speculator and the chief's son, purchased those lands for his personal use. When Mr. Barnett was asked about his reasons for purchasing the Lewis River property in a 2002 Columbian Newspaper article interview, he said, "There is no story, I don't have any plans for these lands." He emphasized that the tribe was not involved in the purchase.

Those same lands are the ones being shown as selected by the tribe, three years after Barnett purchased them, as a temporal connection. Your opinion also says that the tribe has no trust lands. In fact, the Cowlitz Tribe has other lands. Cowlitz Indians have individual trust lands from the allotments issued off the Quinault reservation where the Tribe has reservation rights, per Supreme Court decisions granting them such. They also have lands in Toledo, Washington where they recently gained reservation road grants.

Our group asked repeatedly to know if a restored lands determination was being considered. In spite of meeting with your offices in Washington, D.C. and establishing what we felt were solid contacts, no one seemed to know anything about the request for restored lands exception as far as your offices working on an opinion or a gaming ordinance. This included the Department of the Interior, Bureau of Indian Affairs, both regionally and federally who had conflicting opinions, but neither appeared to know of your ongoing process.

This kept us from being any part of this process since March of 2005 up and until we found out just weeks before your final decision. Our group and many others have a solid history of research, involvement and interest in this issue. We were all kept from contributing information or even corresponding on this issue until it was close to your final decision

The lack of balancing opposing arguments is evident in this opinion and I believe substantiates the concerns submitted to you by opposing parties just prior to your issuance of this opinion. Your opinion seems to rely almost solely on the revisionist history provided by the tribe, rather than the true area history. This is not unlike the Cowlitz tribal submissions to the Indian Claims Commission. However, in that instance, the courts discovered that the submitted information was not entirely accurate. Subsequent to the findings of error, the I.C.C. ruled that the Cowlitz Tribe could not claim Clark County as their indigenous territory.

I really wish to understand what we can do now about this erroneous and faulty opinion. Can it be appealed? Can it be amended to reflect the accurate history of Clark County with words such as "likely" and "assume" completely removed? This is not an issue that those types of words should be used. No one can assume or pretend to know what might have been likely. Not when the clear indigenous history for other tribes in this area is so well known. Not when the indigenous history for the Cowlitz shows them to be from other areas, outside of Clark County.

The Cowlitz tribe cannot possibly lay claim to the entire state of Washington. They were not that large of a tribe, yet they have litigated for lands from the upper portion by Olympia to the lowest portion, that being Clark County. If the NIGC decides to issue a restored lands decision to tribes if they ever "wandered" through an area or fought one battle in an area, then how many other areas will face Class III casinos applications even if the tribes have no real indigenous right to develop there. The precedent that could be set by this decision is significant with regard to the national issue of reservation shopping.

Finally, could you explain why the Class II ordinance for gaming was issued, as opposed to a Class III? The proposed development and draft EIS issued by the tribe's contractor both show the Cowlitz's intent to build a Class III facility, not a Class II. This also concerns me. Did they ask for Class II instead of Class III deliberately? Is the NIGC aware of the Cowlitz's intent to conduct Class III gaming on this site?

I would appreciate some type of response so that I can understand how this critical decision was issued. I would also like to know if the decision can be appealed or amended to reflect more of the accurate history of the Cowlitz tribe and their true aboriginal territory.

Respectfully,

Kamie Biehl
Stand Up For Clark County Citizens
38007 N.E. 60th Avenue
La Center, Washington 98629
www.speakupcitizens.com

cc: Offices of Secretary of the Interior, Gale Norton
James Cason, Department of the Interior
Congressman Brian Baird
18th District Legislator, Richard Curtis
Senator Craig Pridemore
Senator Joseph Zarelli
NIGC Commissioner, Cloyce Choney
NIGC Commissioner, Nelson Westrin
La Center City Councilman, Troy Van Dinter
Mayor of La Center, James T. Irish
Clark County Commissioner, Steve Stuart
Clark County Commissioner, Marc Boldt
Washington State Attorney General, Rob McKenna
Chuck Cushman, President, American Land Rights Organization

Sunday, November 27, 2005

Chairman Philip Hogen
Penny Coleman, Director, General Council
National Indian Gaming Commission
1441 L Street, Suite 9100
Washington, D.C., 20005

RE: Cowlitz Legal Opinion – Unfair process-unacceptable expansion of off-reservation Indian Casinos

Chairman Hogen:

The National Indian Gaming Commission (NIGC) released an opinion this week stating that the land at the Interstate 5-La Center junction, where the Cowlitz Tribe wants to put a casino, qualifies as "restored lands."

I want to object in the strongest way to both the substance of this opinion and the process that was used to keep a dramatic expansion of Indian gaming rights hidden from public scrutiny until it was a fait accompli.

The Cowlitz Tribe submitted its application to the NIGC in March with no public notice, and the NIGC never requested public input. Your agency knew that the facts were hotly contested and that local people had worked long and hard to expose and correct false statements made by the Tribe's advocates. Despite appearances before Congress by the Tribe, your General Counsel and testimony by many local people, despite FOIA requests to BIA, and Congressional representatives' requests for information, the Tribe's submittals and your deliberations were kept a secret for months.

You asked the Tribe to respond to a published paper establishing that Clark County Indians were not Cowlitz and the Tribe's rebuttal was kept secret as well.

Anyone who wanted to know the facts would have asked local people who have done the research to submit their evidence and give their views. It seems clear that non-Tribal views were not solicited because they were not wanted.
Local citizens only confirmed the existence of the restored-lands application in October and then quickly submitted materials supporting our position that the lands at the La Center junction are outside the Tribe's aboriginal homeland, which has been adjudicated by the Indian Claims Commission and supported by the Bureau of Indian Affairs.

Even this hurried and incomplete response was largely ignored. For example:
the opinion does not mention the fact that the Cowlitz Tribe has over 2500 square miles of undisputed, adjudicated aboriginal territory to choose from, including vast expanses of

undeveloped Interstate-5 corridor land. Not one reason is given by the Tribe or in the opinion to support reservation shopping outside the Tribe's homeland

It is an abuse of federal power to put this casino where the Tribe and its investors want it instead of finding one of the hundreds of more appropriate locations. The effect of the opinion is to allow the BIA to trump all local concerns. The only reason the opinion is sought is because the Tribe's advocates know the local impact is too great to permit a "no detriment" finding. Your opinion is a statement that the Tribe wins and the community loses no matter what horrible effects will result.

In order to justify such use of federal power in this case, your agency had to toss out all of its precedents dealing with restored lands. In the process it has exposed hundreds if not thousands of cities to federal casino acquisitions for restored tribes. According to the opinion:

-----1. It no longer matters if a Tribe had a village, burial or ceremonial site on the desired property. It is enough if a few tribal members visited the general area a few times or camped along distant parts of a river that flows by the site. Given that American Indians traveled and traded all over North America from Alaska and Canada to Mexico, and that rivers were the highways in that era, what community will be spared from a restored lands claim? For example, how many great lakes tribes fished or hunted near Chicago?

-----2. It does not matter if the Tribe had nothing to do with the vicinity for over a hundred years until gaming became an objective. The former NIGC requirement of continuous connection had to be discarded for the Cowlitz.

-----3. It doesn't matter if the project would conflict with existing residential and agricultural uses and be incompatible with local zoning and planning in place for decades. In the only other case allowing restoration outside a Tribe's former reservation, NIGC looked at the equities and saw that the Tribe's alternative land was not available. The opinion talks about equity but gives local citizens no consideration whatsoever. The issue is not whether the Cowlitz should have restored land or a casino, it is **where** the federal government will place it.

-----4. Several different tribes can claim a historic connection to a city if there were battles or trading routes or intermarriages that show some kind of shared connection. Given American Indian tribes' intermarriages, trading and conflicts how can any tribe's claim to an area be unique?

-----5. A tribe that has an adjudicated area of thousands of square miles can now go site shopping where it had seasonal hunting or gathering connections and without having to seek sites close to home first.

The legal opinion does not square with the Wyandotte case where NIGC recently denied restored lands status. The Tribe in that case had lived on the land for 11 years, its burial ground was nearby, the land was in the Tribes' former reservation and had been ceded by the Tribe to the United States. Here, the Cowlitz never lived on the land, did not cede the land (were never asked to do so), it was not part of a former reservation and there are no Cowlitz village or burial sites anywhere around. You will not be able to defend the Wyandotte case after the Cowlitz opinion, and it is not fair to Tribes to make up different rules for them.

This huge expansion of the IGRA exception for restored tribes comes at a time when Congress is considering going the other way and while Senate and House committees were being assured of the how carefully and strictly the historic connection is considered in granting an exception under IGRA.

It is very clear that Congress needs to amend the Indian Gaming Regulatory Act so your agency and others dealing with this issue provide a more level playing field, a real open public process and an opportunity to have a legitimate independent finder of fact.

-----A. You do not and did not provide an opportunity for public comment on this application by the Cowlitz Tribe. Some comment was provided, but only because concerned citizens found out about the Cowlitz Restored Lands Request by accident.

-----B. You failed to notify any cooperating agencies in the Cowlitz process, which violates Interior Department Policy. You thereby excluded local communities from your entire process.

-----C. You ignored the substantial public comment that did come in that clearly provides substantive evidence that the Cowlitz were not in Clark County in any substantial way. The evidence is overwhelming. The Cowlitz are now engaging in revisionist history and you are helping them by ignoring the quality histories available for the area.

Did your counsel even read the documents regarding the Cowlitz in Clark County? Specifically the material gathered by former Assistant Attorney General Al Alexanderson and the law firm of Perkins Coie?

I noted that the opinion says the 1857 map shows Cowlitz territory extending at least as far south as the Lewis River. Anyone can see this is not the case, that the closest Indian Tribe to the site is Upper Chinook and that the Cowlitz Tribe drew its site on the map in the wrong place so it would lie close to the "Howalitsk" name. The error was pointed out in the Perkins Coie submission, but shows up in the opinion anyway, just as erroneously claimed in the Tribe's request.

Your Counsel's Legal Opinion seems to be full of delicate turns of a phrase and allusions that certain facts establish the Cowlitz as being in Clark County. Pronouncements modified by the words likely, nearby, might be, could mean and many others. The

Counsel was clearly stretching to find support for the Cowlitz that they were in Clark County in any substantive way. It does not appear that your Counsel gave any weight to the Alexanderson/Perkins Coie analysis. Perhaps it was the timing. But that was because you failed to provide any semblance of legal notice about your process.

I know you said in your Restored Lands Legal Opinion that "This legal opinion is not intended to affect the Secretary of the Interior's discretion under Part 151 or provide any recommendation regarding the merit of the Tribe's pending fee-to-trust application."

However, the slipshod manner in which you examined the proposed casino site in relation to the Cowlitz indigenous history helps create a domino affect where future decision makers come to falsely rely on the credibility of your investigation and your document. It will certainly be cited by the Cowlitz as this process moves along as evidence that they were actually in Clark County. You will have helped the Cowlitz create the myth.

At a minimum, you should withdraw this faulty and biased legal opinion. You should remove any reference to the Cowlitz in Clark County until you carry out due diligence and open a public comment period to allow the public and cooperating agencies to participate. The Cowlitz are trying to rewrite history. The National Indian Gaming Commission should not do the same.

As it stands now, your legal opinion could be considered a cruel joke. It will exist and be cited nationally as a poster child for biased and secretive bureaucratic behavior and discredit the NIGC in other future and past decisions. It will be used to show that your agency has little credibility because you do not do your homework or even solicit the homework that others have done for you. No one should rely on your opinions because they are not carried out by an independent finder of fact.

I certainly hope Congress will take note from this sordid affair and pass legislation to change the mission of the NIGC to more fairly reflect Tribal needs as well as those of concerned citizens.

Respectfully,

Chuck Cushman
American Land Rights Association

United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

In Reply Refer To:

JUL 27 2005

Ms. Kamie Biehl, President
Stand Up for Clark County Citizens
38007 Northeast 60th Avenue
LaCenter, Washington 98629

Dear Ms. Biehl:

This letter is in response to the letter of July 14, 2005, written on your behalf by Congressman Brian Baird. His letter clarifies your request under the Freedom of Information Act (FOIA),

> . . . to review public documents, including information about the Cowlitz Tribe's indigenous history, being used by the Regional Office to determine whether to approve the Cowlitz Tribe's request for reservation and/or restoration of lands under Section 20 of the Indian Gaming Regulatory Act.

He has requested that you have the opportunity to review such documents in a temporary reading room at the Northwest Regional Office.

Please be advised that the Northwest Regional Office will make an area available for you to review such documents upon receipt of notification from you of your agreement to pay for the cost of such search and review.

With respect to requests by tribes for reservation status of tribal trust lands, please be advised that consideration of indigenous occupation of the subject land for purposes of determining whether the Secretary will proclaim a particular tract of trust land reservation or not is completely irrelevant. The statute at 25 U.S.C. Section 467 providing the Secretary with authority to proclaim land reservation for an Indian tribe contains no reference to any such requirement.

With respect to application of the exemption of restored land pursuant to Section 20 of the Indian Gaming Regulatory Act, please be advised that this office has received no such request from the Cowlitz Tribe.

The cost of research and review would include the wages of those conducting the research and review or accompanying someone who is searching and reviewing the documents. This might consist of clerical level at $17.32 per hour, professional level at $30.16 per hour or managerial level at $43.74 per hour.

The search option includes all the time spent looking for relevant material within the documents. Review time consists of the direct costs incurred during the initial examination of a document fo the purposes of determining whether the document must be disclosed under FOIA. Charges will also be incurred for the reasonable direct costs of duplication of the documents requested. The current charge for duplicating a letter-sized piece of paper is 13 cents per copy.

In accordance with regulations at Section 2.17(b) of Title 43 of the Code of Federal Regulations we will not proceed further with your request until we hear from you. If we do not receive a response from you within 20 business days from the date of this letter, we will close the file on your request.

If you consider this response to be a denial of your request under Section 2.28(a)(2) of Title 43 of the Code of Federal Regulations, you may file an appeal by writing to the United States Department of the Interior, Office of the Solicitor, Division of Administration, Freedom of Information Act Appeals Officer, 1849 C Street Northwest, MS-7456 Main Interior Building, Washington, D.C. 20240. A copy of the initial request and this letter should accompany the appeal. The appeal should be marked, "Freedom of Information Appeal" on both the envelope and the face of the letter and must be received no later than 30 working days after the date of this letter. The letter should also contain a brief statement of the reasons why it is believed that this response is in error.

If you have any questions on this matter, please do not hesitate to contact Ms. Twyla Stange, FOIA Coordinator, Northwest Regional Office, at (503) 231-6727.

Sincerely,

ACTING Northwest Regional Director

cc: Ms. Jennifer Kelly

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169

IN REPLY REFER TO

TAKE PRIDE IN AMERICA

APR 8 2004

Kamie Biehl
Stand Up for Clark County Citizens
38007 Northeast 60th Avenue
LaCenter, Washington 98629

Dear Ms. Biehl:

This letter is in response to your Freedom of Information Act (FOIA) request which is undated but received April 7, 2004, in which you request ". . . the Cowlitz Tribe application for "fee-to-trust". . . . and all supporting documents, . . . and the documents submitted in regard to the "request for initial status".

Your request to view the documents is not possible due to security considerations. However find enclosed the following information:

1. Resolution No. 2004-02, **Resolution Requesting the Secretary of the Interior To Take Land in Clark County, Washington, Into Trust for Gaming To Proclaim the Land as Tribal Reservation and the Tribe's "Initial Reservation"**

2. Letter of Assignment –David E. Barnett & Kristine E. Barnett
   Exhibit "A" Clark County Assessors Tax Parcel Numbers
   Exhibit A-2 Purchase and Sale Agreement, Real Estate Contract
   Exhibit A-3 Purchase, Sale and Option Agreement
   (Forty seven pages)
3. Exhibit A – 5 pages
4. Vicinity Map # 1 with aerial photograph attached.
5. Clark County Washington –NE Qtr of Section 08 T4N R1E WM
   Clark County Washington –SE Qtr of Section 05 T4N R1E WM
   Clark County Washington –NE Qtr of Section 08 T4N R1E WM
   Clark County Washington –NE Qtr of Section 05 T4N R1E WM
6. Constitution of the Cowlitz Indian Tribe – 8 pages
7. Checklist – 2 pages
8. Title Company Distribution List dated January 29, 2004 – 103 pages

Your request does state a willingness to pay fees; however, the cost for reproduction of the enclosed material was minimal. Therefore, the fees were waived at the discretion of this office.

Portland Bureau of Indian Affairs
911 N.E. 11th Avenue

Portland, Oregon 97232

(503)231-6702 FAX (503) 231-2201

April 20, 2004

Attn: Marie Howerton, FOIA Officer

Dear Ms. Howerton,

As I've already corresponded with you regarding a "new" FOIA request, I am again writing to ask you to consider this letter as a formal request to view **"all of the documents"** that you have received from the Cowlitz Tribe with regard to their application to gain trust status on the land at the La Center junction and with regard to their application to gain "initial reservation" status at the site of the La Center junction in Clark County Washington.

Since you have already responded with information to my previous request but it only contained the real estate information, a blank contents of proclamation check list that I assume the DOI uses, the Cowlitz Tribe's resolutions and the Cowlitz Tribe constitution, and further, that you did not list any items that you have at the Regional Bureau of Indian Affairs offices in Portland, but could not be released per my FOIA, I phoned and spoke with acting director Gerald Ben who informed me that I could **assume this was all the information you had "at that time."** He stated that he would check with you and return my phone call because this would imply that the tribe had not even filed a trust application with the BIA yet.

I have not heard back from Mr. Ben, however, I am requesting again, through the freedom of information act that I be allowed to either come into your offices to view all documents submitted by the Cowlitz Tribe that are permitted public viewing or that any documents that the Cowlitz Tribe has submitted to the Portland Bureau of Indian Affairs regional offices or to any other offices but for which you are now in receipt, that you **have not already sent** me and **have been received by the BIA during the period of August 12, 2002 through the current time and that you continue to send me any new documents received by the Regional Bureau of Indian Affairs offices that pertain to the Cowlitz Tribe's requests as noted above the BIA's final decision on both of these applications, be sent to me directly.**

As I stated in my previous FOIA request, I am willing to pay for copies if you are still unable to allow me to come into your offices to view these documents for "security reasons" as you stated in your previous correspondence. I am again requesting that you notify me as to why the BIA offices have closed their "viewing" rooms, as I have been told that this is an option that may be exercised with FOIA requests.

Since we are now into the environmental phase of this trust and initial reservation applications, the final comment period that the BIA gives for the public to ask questions, it seems important that private citizens, such as myself be allowed to view the documents that the tribe has submitted in a timely manner. Since this is a "off reservation" acquisition with the intent to game and is after October of 1988 request, there is the question of community detriment that must be addressed and therefore, the tribe must file documents that substantiate what they plan to do with the land. I cannot respond to detriment, both myself or on behalf of the Stand Up for Clark County Citizens group, if the information is not forthcoming.

Please either address my FOIA request by informing me as to whether or not the documents you sent me are the only documents you have on file at this point in time or allow me the opportunity to view new information, either by viewing, as stated above or by sending me the newly submitted documents via mail. Either way, I feel it is necessary that I am allowed to view all of the information, documents, studies, trust applications, initial reservation applications and any other information that might be pertinent to this FOIA request that extends from 8/12/02 through the completion of this process as far as the Portland regional BIA's offices and you, as the FOIA officer are concerned.

Respectfully,

Kamie Biehl, President
Stand Up For Clark County Citizens
38007 N.E. 60th Avenue
La Center, Washington 98629
www.speakupcitizens.com
Home Phone 360.263.2582 Info Line: 360.263.STOP

STATEMENT
OF
THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON
AT THE OVERSIGHT HEARING
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
CONCERNING OFF RESERVATION GAMING:
THE PROCESS FOR CONSIDERING GAMING APPLICATIONS

FEBRUARY 1, 2006

WASHINGTON, D.C.

This statement represents the official comments of the Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs Tribe") on the testimony presented and issues discussed at the U.S. Senate Indian Affairs Committee's February 1, 2006 oversight hearing on public and local government involvement in the Department of Interior's process for considering gaming applications.

As explained by Chairman McCain at the beginning of the hearing, the focus of the testimony was on the "restored tribes" and "initial reservation" exceptions to Section 20 of the Indian Gaming Regulatory Act (IGRA) general ban on gaming on after-acquired lands. These two exceptions, set out in IGRA Section 20(b)(1)(B), were the avenues pursued by the specific tribes discussed at the hearing; the Cowlitz Tribe of Washington's application under both the "restored tribe" and "initial reservation" exceptions to take land into trust at LaCenter, Washington, the Pokagon Band of Potawatomi Indian of Michigan's application under the Section 20(b)(1)(B) for an "initial reservation", and the application of several landless tribes in California for an "initial reservation" or "restored tribe" land in the San Francisco-Oakland Bay Area. The controversy regarding each of these applications centered on the perception of a lack of public opportunity for comment and of the failure of the Department of Interior to consult with local and state government officials.

The Warm Springs Tribe is now approaching the end of a long and open process under another exception to Section 20—the Secretary's "two-part determination"—to take land into trust for gaming 38 miles from our reservation in an area adjudicated to be part of the Tribe's exclusive aboriginal homeland. This process, set out in Section 20(b)(1)(A) of IGRA, is markedly different than the process for Section 20(b)(1)(B) in terms of public involvement and state and local government consultation. As explained below, the requirements of the two-part determination process and the history of the Warm Springs Tribe's Cascade Locks, Oregon project, illustrate the high level of public involvement and the extensive consultation with the state and local governments that has led to universal support by state and local governments for our application. Indeed, the distinction between the Section 20(b)(1)(B) process, which was the subject of many

complaints by witnesses on the Second Panel, and the Section 20(b)(1)(A) two-part determination process, led several witnesses, including Al Alexanderson who spoke against the Cowlitz Tribe's application, and Duane Kromm, of the California State Association of Counties, to express support for the two-part determination process. Indeed, Mr. Kromm, who said the Section 20(b)(1)(B) exceptions were being used by some California tribes to "avoid" the Section 20(b)(1)(A) two-part determination process, expressed support and admiration for the two-part determination exception because of its transparency and the required involvement with local and state government officials. Mr. Kromm noted that the two-part determination process requires a Secretarial finding of "no detriment" to the surrounding community and also requires the Governor's concurrence in that finding, unlike the Section 20(b)(1)(B) exceptions which require neither.

As background, nearly a decade ago the Warm Springs Tribe began looking at a casino location north of the Warm Springs Indian Reservation in the Tribe's aboriginal and Treaty-reserved homeland in the Columbia River Gorge. At first the Tribe considered developing a gaming operation on a 40 acre parcel of tribally owned trust land, eligible for gaming under IGRA, on a wooded bluff above the town of Hood River, Oregon. Through a series of public meetings with local officials and the general public, it became apparent that certain elements of the Hood River community opposed the project, which does not require Department of Interior approval under IGRA as the site was taken into trust for the Tribe prior to IGRA's enactment in 1988. Through a series of discussion with Hood River County and other local government officials, the Tribe was invited by the City of Cascade Locks, 14 miles to the west, to consider moving the project from the Tribe's Hood River trust lands site to Cascade Locks' mostly vacant Industrial Park. The Cascade Locks Industrial Park site was also suggested by a Portland-based environmental group, Friends of the Gorge, which strongly objected to the Tribe's Hood River trust lands casino proposal on environmental grounds.

When it became clear several years ago that the Cascade Locks Industrial Park site enjoyed local support and was compatible with state, federal and local land use designations, the Tribe started the long and involved process of developing a casino at that location. However, rather than beginning with an application under IGRA Section 20(b)(1)(A) for a Secretarial two-part determination and for a fee-to-trust transfer under 25 CFR Part 151, the Warm Springs Tribe believed it was essential first to reach agreement with Hood River County and City of Cascade Locks officials, as well as with the Governor of Oregon, on cooperation and coordination regarding any impacts of the development. Accordingly, the Tribe, the City and the County negotiated a three-party Memorandum of Understanding detailing how the Tribe will address impacts on traffic, housing, public safety, fire protection, and other effects of the development in the community. The MOU was approved by the local governments through an open, public process. In addition, and perhaps more significant in terms of complexity, the Tribe negotiated a Class III Gaming Compact with the Governor of Oregon, which addresses in detail impacts of the project on the local, regional and state communities. Through the Compact, the Tribe committed to environmental standards, worker health and safety standards, building design and operation standards that will be compatible with the

surrounding environment, new energy efficiency technologies, regional traffic studies and planning, and many more provisions designed to benefit the local community, the region and the State as a whole.

Only after the Tribe had finalized the MOU with Hood River County and the City of Cascade Locks, and signed the Class III Gaming Compact with the Governor, did we formally initiate the process of applying to take 25 acres of vacant Cascade Locks Industrial Park land into trust and applying for a Secretarial two-part determination under Section 20(b)(1)(A). At this point, even though the project had been subject to extensive public discussion and local and state government consideration for a number of years, the Tribe embarked on the additional public and local government consultations required at four separate stages of the two-part determination process.

First, as George Skbine, Acting Deputy Assistant Secretary of Interior--Indian Affairs for Policy and Economic Development, explained in his testimony before the Committee, an application for land-into-trust for off-reservation gaming must comply with the requirement of 25 CFR Part 151. These regulations specify that the Bureau of Indian Affairs must consult and seek the comments of the state and local governments with jurisdiction over the subject parcel on several specific issues, such as consistency of the Tribe's proposed use with existing land use regulation, impact on the tax base by converting the land to trust and thereby exempting it from taxation, public safety concerns and other factors. These consultations took place in June and July of 2005. The state and local governments with jurisdiction over the Cascade Locks Industrial Park property shared their responses with the Tribe, and so we know that these responses to the BIA were uniformly positive and supportive of the Tribe's fee-to-trust application.

Second, again as explained by Mr. Skibine, in order for the Secretary to make the required two-part determination of Section 20(b) (1) (A), the BIA must conduct detailed consultations with the applicant tribe and with the "surrounding community." Thus, the Warm Springs Tribe received a letter from the BIA asking for responses to thirteen specific questions designed to elicit information that would allow the Secretary to determine if taking the land into trust would be "in the best interests of the Tribe and its members" (part one of the two-part determination) and if taking the land into trust for gaming would "not be detrimental to the surrounding community" (part two of the two-part determination). The Tribe filed a 45 page response with thousands of pages of exhibits addressing each of the BIA's thirteen questions. (These questions are set out at page 8 of the "Checklist" published by Mr. Skibine's Office of Indian Gaming Management and are attached to his February 1, 2006 written statement). In addition, the State of Oregon and eight local and tribal governments in Oregon and Washington were asked to submit responses to seven specific questions addressing the second part of the two-part determination. These local and tribal governments in Oregon and Washington (Hood River County, City of Cascade Locks, Port of Cascade Locks, Multnomah County, City of Stevenson, City of North Bonneville, Skamania County and the Confederated Tribes and Bands of the Yakama Indian Nation) are within the ten mile radius for local governments and fifty mile radius for nearby tribes set out in the Checklist for determining the surrounding community for purposes of the second part of the two-part

determination. We are advised that two governments (Multnomah County and the Yakama Indian Nation) filed no response to the BIA's consultation request, while the detailed comments of the other six local governments, plus the state of Oregon, were uniformly positive and supportive. This consultation took place in June, July and August of 2005.

Third, as required by Mr. Skibine's Checklist (as revised in March, 2005), the BIA has undertaken the environmental review required by the National Environmental Policy Act (NEPA) by preparing an Environmental Impact Statement fully assessing any and all environmental impacts of the proposed fee-to-trust action. Under NEPA and its implementing regulations, development of an EIS is a very open and public process with numerous opportunities for public comment via written submission, email or by oral testimony at public hearings at several stages of the process. The public involvement begins with "scoping" to determine the purpose and need of the proposed action and the reasonable alternatives, continues with extensive public review of the draft EIS, and concludes with publication of the final EIS. In the case of the Cascade Locks casino fee-to-trust application, the process began last summer with publication of a "Notice of Intent" to undertake development of the EIS, moved in the Fall of 2005 through a lengthy "scoping" phase that included two separate public comment periods and six separate public meetings in Cascade Locks, Hood River and Portland, Oregon and Stevenson, Washington. We anticipate an even greater effort to elicit public and governmental comment once the draft EIS is released later this year.

Unlike the two-part determination and the 25 CFR Part 151 consultations, the EIS public involvement is not limited to state and local governments within a certain proximity to the project site. Public comment during the EIS is open to any individual, organization, government or group without regard to location, size or the subject of their comments. Indeed, the BIA has secured the services of a private "public involvement" consulting firm to design and carry out a process that is intended to maximize the public's awareness and opportunity to comment on the environmental issues raised by the Tribe's proposed Cascade Locks casino project.

Fourth and finally, under the two-part determination process that Warm Springs has undertaken to develop the Cascade Locks project, there is a final consultation with the Governor of the state that is, in effect, an opportunity for the Governor to veto the project. Under Section 20(b)(1)(A), if the two-part determination consultations with the "surrounding community" and the required EIS lead the Secretary to make a positive two-part determination in favor of the Tribe's fee-to-trust application, that determination much be communicated to the Governor of the state who must expressly concur with the Secretary's two-part determination. This final stage in the process is more than a consultation. If the Governor refuses to concur, or simply fails to respond, no gaming can take place on the subject parcel. Thus, in the two-part determination process, the Governor has a veto over the Secretary's final action in taking the land into trust for gaming. In the case of the Warm Springs Tribe's application to take the Cascade Locks Industrial Park property into trust for gaming, we believe that the Governor of Oregon will concur with the Secretary's two-part determination because of the specific

agreements laid out in our State/Tribal Class III Gaming Compact for the Cascade Locks project. Nonetheless, under the Section 20(b)(1)(A) process that we are pursuing, we recognize that the Governor has the last word on whether we will achieve our goal of developing this much needed project that promises such great benefits for our Reservation and our people.

In summary, while the February 1st hearing focused on the concerns expressed by some witnesses about the perceived lack of public and local and state government involvement in the Section 20(b)(1)(B) process for taking land into trust for gaming for "restored tribes" and "initial reservations" for newly recognized tribes, we offer the experience of the Warm Springs Tribe's application under Section 20(b)(1)(A) to take the Cascade Locks Industrial Park property into trust as a model of public and local and state government involvement in the process, including a final opportunity for a Governor's veto of the Tribe's application. The fact that the Cascade Locks project enjoys the unanimous support of governments in the surrounding community in Oregon and Washington, as well as the support of Oregon's Governor, shows the value of a transparent and inclusive process of public involvement and government-to-government consultations.

Thank you.

Cowlitz Indian Tribe

TESTIMONY OF THE HON. PHILIP HARJU
COWLITZ TRIBAL COUNCIL

ON BEHALF OF THE

THE COWLITZ INDIAN TRIBE OF WASHINGTON

SENATE COMMITTEE ON INDIAN AFFAIRS

OFF-RESERVATION GAMING:
THE PROCESS FOR CONSIDERING GAMING APPLICATIONS

FEBRUARY 1, 2006

Chairman McCain, Vice-Chairman Dorgan, and respected members of this Committee, I thank you for the opportunity to testify this morning. To Senator Maria Cantwell, I bring warm wishes from your Cowlitz constituents at home in Washington State.

My name is Philip Harju, and I serve as an elected member of the Cowlitz Tribal Council. Our Tribal Chairman John Barnett, who you know from his many appearances before your Committee over the years, very recently has suffered the death of one of his sons. I know you will understand why he cannot be here with you today. He has asked me to be here in his place to represent our Tribe at this hearing.

As I understand it, the purpose of today's hearing is to discuss two of the exceptions to the Indian Gaming Regulatory Act's (IGRA's) general prohibition on gaming on land acquired in trust after October 17, 1988: the "initial reservation" exception set forth in Section 20(b)(1)(B)(ii) and the "restored lands" exception set forth in Section 20(b)(1)(B)(iii). Both of these exceptions are relevant to the Cowlitz Indian Tribe, because we are both a "newly recognized" and a "newly restored" tribe. I wish to thank you for including language in S. 2078 which continues to protect newly recognized and newly restored tribes by reaffirming and further clarifying IGRA's initial reservation and restored lands exceptions. These exceptions ensure that tribes like mine will not be disadvantaged solely because, through no fault of our own, we were unrecognized and landless in 1988. In addition, I am eager to answer any questions you may have.

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In my testimony today, I would like to discuss: our understanding of the purpose of these two exceptions (Part I); how the exceptions have been mischaracterized by opponents of Indian gaming (Part II); the fee-to-trust process, with a focus on the important role of public consultation (Part III); how the initial reservation and restored lands exceptions are considered (Part IV); NIGC's restored lands opinion for Cowlitz (Part V); Interior's proposed Section 20 regulations (Part VII) and concluding thoughts (Part VII).

PART I
THE INITIAL RESERVATION AND RESTORED LANDS EXCEPTIONS: CONGRESSIONAL INTENT

Chairman McCain, I do not presume to tell you what Congress intended eighteen years ago when it enacted the Indian Gaming Regulatory Act (IGRA). No one knows or understands what the exact intent underlying the Section 20 exceptions was better than IGRA's original framers, and I know that you were an important force in passage of the Act in 1988. I think it would be useful, however, if I explain what *we* understand to be the purpose of the Section 20(b)(1)(B) exceptions, to explain our understanding of the law, and to explain how it has informed decisions that have been made by the Cowlitz Tribe.

We believe that, in 1988, Congress saw Indian gaming as an appropriate expression of tribal sovereignty and, accordingly, Congress enacted IGRA to protect and regulate that activity. It is clear, however, that, with certain exceptions, Congress intended to limit Indian gaming to Indian lands that existed on the date of enactment (October 17, 1988).

The problem was that not all tribes held tribal lands in 1988 and, in fact, not all tribes even enjoyed federal recognition in 1988. We believe that Congress very specifically intended to assist such disadvantaged tribes by providing that, when they finally obtained recognition and land, their land would be treated as if it effectively had been in trust since before October 17, 1988. In other the words, Congress provided the initial reservation and restored lands exceptions so that eligible tribes could be placed closer to the position they would have been in had they been recognized and held trust lands in 1988. By so doing, Congress provided a mechanism by which newly recognized/restored tribes would be on a more level playing field with the tribes that were lucky enough to have been recognized and to have had a land base on the date of IGRA's enactment. We believe that Congress knew that locking newly recognized and restored tribes out of the economic development opportunities made available by IGRA would do an incredible injustice to those tribes.

Our understanding of the purpose and intent of IGRA's restored lands and initial reservation provisions is informed by the opinions of the federal courts that have considered this issue. In 2003, in a case involving a California tribe, the D.C. Circuit (in an opinion joined in by now Chief Justice Roberts) explained that the restored lands and initial reservation exceptions "serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones." *City of Roseville v Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003). In 2002, in an opinion involving a Michigan tribe that was later affirmed by the Sixth Circuit, the District Court said nearly the same thing, saying that the term "restoration may be read in numerous ways to place

belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." *Grand Traverse Band of Ottawa and Chippewa Indians v U.S. Attorney for the Western District of Michigan*, 198 F. Supp. 2d, 920, 935 (W.D. Mich. 2002), *aff'd* 369 F.3d 960 (6th Cir. 2004) (referring to the factual circumstances, location, and temporal connection requirements that courts have imposed). The restored lands provision "compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim." *City of Roseville*, at 1029.

From a public policy standpoint, the need for special assistance for newly acknowledged/restored tribes is clear. Newly recognized and restored tribes have had to function without a land base and/or without federal recognition for very long periods of time. Almost by definition, these tribes – tribes like the Cowlitz – have been more disadvantaged and have suffered greater hardships than those which have had trust lands and access to federal assistance for many years.

Hence, we believe that Congress did not intend that a tribe newly emerged from the expense and rigors of the Federal Acknowledgment Process – or a tribe finally restored to federal recognition after having been terminated – should be automatically subjected to the "two-part determination process" which allows "off-reservation" gaming only where the Governor of the State concurs in the trust acquisition (*see* IGRA Section 20(b)(1)(A)). We believe that the two-part determination process was designed to govern the land acquisition activities of tribes that already have functional reservations, not the activities of newly recognized landless tribes. A blanket application of the two-part determination process will hold newly recognized and restored tribes hostage to the Governors of the states in which they are located, likely ensuring that most newly recognized and restored tribes will *never* gain access to the one economic development engine that has improved the livelihoods of so many other tribes.

PART II
RESERVATION SHOPPING

Given our understanding of what IGRA's initial reservation and restored land exceptions are supposed to accomplish, we hope this Committee understands how painful – how offensive – it is for us to hear our involvement with these IGRA exceptions characterized as "reservation shopping" and as mechanisms to "circumvent [ ] the law against gaming on newly acquired lands." Yet this is how our opponents have described the Cowlitz Tribe's request that the National Indian Gaming Commission (NIGC) review our eligibility for a restored lands determination. *See* Citizens Against Reservation Shopping press release, *Anti-Casino Groups Ask Interior to Vacate Cowlitz Opinion* (Jan. 15, 2006) at p. 3. The non-Indian card rooms and others who oppose our proposed trust acquisition characterize our efforts as somehow underhanded. We feel that these characterizations entirely ignore the "equal playing field" goals of the Section 20(b)(1)(B) exceptions.

Equally offensive, we feel that our opponents' characterizations ignore the Cowlitz Tribe's sincere and ongoing efforts to work through the established federal processes required to acquire land in trust for gaming. Those processes ensure that the public's thoughts, issues and concerns – even the card rooms' concerns – are carefully considered by

the Secretary of the Interior before she decides that she will, or that she will not, acquire trust title on our behalf. Following is a brief description of those established federal processes.

PART III
PETITIONING FOR TRUST LAND

There are two processes central to the fee-to-trust process: (1) compliance with Interior's fee-to-trust regulations, and (2) compliance with the National Environmental Policy Act (NEPA). *The Cowlitz Tribe adamantly supports these processes and their public consultation requirements.*

Interior's Fee-to-Trust Regulations

Only rarely does Congress provide the Secretary with special authority or direction to acquire trust land for a particular newly recognized or restored tribe. Therefore, newly recognized and restored tribes like the Cowlitz must rely on the general *discretionary* land acquisition authority given to the Secretary pursuant to Section 5 of the Indian Reorganization Act. (25 U.S.C. § 465) I emphasize the word "discretionary" because Section 5 does not require the Secretary to acquire land for Indian tribes; it merely gives her the authority to do so if she so wishes. As a consequence, newly recognized and restored tribes must submit to Interior's usual process for reviewing fee-to-trust applications, including complying with the requirements of Interior's fee-to-trust regulations (25 C.F.R. Part 151).

Interior's regulations for trust acquisitions distinguish between "on-reservation" and "off-reservation" fee-to-trust acquisitions. Off-reservation acquisitions are subject to significantly more process and significantly greater scrutiny than are on-reservation acquisitions. Because newly recognized/restored tribes like the Cowlitz have no reservation, *any* request for land we submit is deemed an "off-reservation" request and processed according to the more rigorous off-reservation standards.

Interior's regulations for off-reservation trust acquisitions specifically require that state and local governments (the elected officials who represent the local community) be consulted regarding their views on the proposed acquisition. The regulations require Interior to notify state and local governments that the tribe has made a fee-to-trust request. The regulations further require that Interior provide state and local governments with a minimum of 30 days in which to submit written comments regarding jurisdictional or land use issues and the impacts of removing the land from the local and state tax rolls, as well as other issues that the state or local government wishes to raise. Private citizens and local organizations are welcome to submit comments under this provision as well. In addition, where requested, Interior will make further efforts to assure that the public has an opportunity to comment on the proposed acquisition even though neither the Indian Reorganization Act nor the implementing fee-to-trust regulations require such additional opportunities. The Cowlitz Tribe's case provides a good example: the Department of the Interior, working with Congressman Baird, is hosting two public meetings (February 15th and

16th) in the local community. High-level officials from both Interior and NIGC have committed to participating in these hearings.

Public Participation Required During the NEPA Process

In addition to the public consultation and comment requirements built into the fee-to-trust process, there are a significant number of opportunities for public participation *required* by the National Environmental Policy Act (NEPA). Interior has made clear in its recently revised guidelines for gaming acquisitions that most tribal casino projects will require preparation of an environmental impact statement (EIS) to assess a wide range of potential impacts, including ecological, social, economic, cultural, historical, aesthetic and health impacts. The Cowlitz proposed project is no exception.

The enormous amount of public consultation wired into the NEPA EIS process is perhaps best demonstrated by walking through the process in which the Cowlitz has been engaged.

On November 12, 2004, the Bureau of Indian Affairs (BIA) published a notice of intent to prepare an EIS in the Federal Register describing the Cowlitz Tribe's proposed project, explaining the NEPA process, announcing a scoping meeting, and soliciting written comments on the scope and implementation of the proposed project. Public notices announcing the proposed project and the scoping meeting also were published in two local papers, The Reflector and The Columbian. As you know, the scoping process is intended to gather information regarding interested parties and the range of issues that will be addressed in the EIS. BIA held the public scoping meeting on December 1, 2004, in Vancouver, Washington, and received numerous comment letters during the scoping process.

In February 2005, BIA issued a scoping report describing the NEPA process, identifying cooperating agencies, explaining the proposed action and alternatives, and summarizing the issues identified during the scoping process. BIA then prepared a preliminary draft EIS, which was circulated to the cooperating agencies for comment late in 2005. Cooperating agencies for the Cowlitz project include NIGC, EPA, the Federal Highway Administration, the U.S. Army Corps of Engineers, the Cowlitz Tribe, Washington State Department of Transportation, *and a host of local government entities including: Clark County, Cowlitz County, Clark County Sheriff, City of La Center, City of Vancouver, City of Woodland, City of Ridgefield, and the City of Battle Ground.*

Based on the comments received from the cooperating agencies, BIA currently is preparing a draft environmental impact statement that is scheduled to be released for public comment some time later this month or in early March. BIA also will hold a public meeting after the draft EIS has been made available to the public at which the public may comment. All the comments on the draft EIS, whether received in writing or through the public meeting, will be considered and addressed in the final EIS. The information included within that final EIS will be considered by the Secretary while she determines whether or not to take the Cowlitz Tribe's Clark County parcel into trust. Therefore, the views of local elected officials, local citizens, and even the card rooms will be available to the Secretary for consideration before she makes a decision as to whether to take this land in trust for the Cowlitz Tribe.

Finally, it needs to be made clear that, after the Secretary of the Interior has considered all the public comments, including information about impacts and mitigation, *if* she does decide to acquire trust title to the land, Interior's regulations provide the public with a very clear and very unambiguous opportunity to challenge the Secretary's decision in federal court before she implements that decision. (*See* 25 CFR 151.12(b), which requires the Secretary to give the public at least 30 day's notice of her decision to take land into trust before she will actually take the action to acquire trust title.) Accordingly, if the public ultimately is not satisfied that its concerns have been addressed through either the fee-to-trust or the NEPA processes, it can bring suit against Interior to try to prevent it from taking the land in trust.

Given the extensive opportunities for public participation in the process for acquiring land in trust for gaming that I have just described, and in which the Tribe has cooperated fully, we believe it is misleading to the public, and insulting to us, for the opponents of our proposed project to say things like "from the outset, this Tribe has worked to bar local governments from bringing into the process concerns about detrimental impacts a casino might impose on their communities." Ed Lynch, Chairman of CARS (citing Cowlitz filing of a restored lands request), Citizens Against Reservation Shopping press release, *Anti-Casino Groups Ask Interior to Vacate Cowlitz Opinion* (Jan. 15, 2006). We understand that our opponents would be happier if the land that we have asked to take into trust did not meet the restored lands legal test. But the fact is that it is in the fee-to-trust process where any detrimental impacts on the community are properly addressed – not in a restored lands determination. To better illustrate the point, let me now turn more directly to the restored lands and initial reservation exceptions.

PART IV
THE RESTORED LANDS AND INITIAL RESERVATION PROCESSES: PRACTICAL REALITIES

The relevant language of IGRA's restored lands and initial reservation exceptions is:

> (a) Prohibition on land acquired in trust by the Secretary
>
> Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, ...
>
> (b) Exceptions
>
> (1) Subsection (a) of this section shall not apply when . . .
>
> (B) lands are taken into trust as part of ...
>
> (ii) the initial reservation of an Indian tribe acknowledged by the secretary under the Federal acknowledgement process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(25 U.S.C. § 2719(b)(1)(B)(ii) and (iii))

As discussed earlier, we understand the general intent behind the initial reservation and restored lands exceptions to be essentially the same, *i.e.*, to assist tribes that were not recognized and/or did not have a land base in 1988. *See City of Roseville*, 348 F.3d 1020; *Grand Traverse*, 198 F. Supp. 2d 920, aff'd 369 F.3d 960. Not only are the public policy rationales for the two exceptions congruous, but, depending on the circumstances, some tribes newly recognized under the Federal Acknowledgment Process also meet the standards for restored tribes/restored lands. It is not surprising, then, that there is significant overlap in the standards and criteria that are required to meet either of the two exceptions. For example, for both, the tribe must be able to demonstrate that the area in which the land is located is of both historical and modern significance to the tribe.

However, as outlined below, there are some differences in the processes by which restored lands opinions and reservation proclamations are issued.

(Initial) Reservation Proclamations

The Secretary of the Interior has authority to proclaim Indian lands to be a reservation pursuant to Section 7 of the Indian Reorganization Act (25 U.S.C. § 467). The Department has not yet promulgated regulations to govern the exercise of the Secretary's authority to issue proclamation requests, but the general requirements are provided in a list of "guidelines." To obtain a reservation proclamation, the tribe must file an application, providing the information outlined in the guidelines. The tribe's application is reviewed by the local Regional Office of the Bureau of Indian Affairs and then by the Office of Trust Services at BIA headquarters in Washington.

BIA currently takes the position that a tribe's land must already be in trust before it will review and process a reservation proclamation request. Thus, it is our understanding that, as a practical matter, a tribe newly recognized through the Federal Acknowledgement Process (FAP) must complete the entire fee-to-trust process (which, for gaming acquisitions, must be approved both at the Regional Office and then at BIA Headquarters through the Office of Indian Gaming Management) before the Office of Trust Services will begin to process the tribe's request for a reservation proclamation. Because the reservation proclamation process takes place after the fee-to-trust process, the FAP tribe is forced to complete the entire fee-to-trust process, exhausting several years and consuming extraordinary financial resources, before the tribe can get a real read from the federal government as to whether it agrees that the proposed tribal lands are located in an appropriate place. Further, even if the federal government agrees that the lands are appropriately located, the tribe is forced to wait for some indefinite period – six months, a year, more? – after the land has been taken into trust before the tribe will receive a proclamation designating its trust land to be a reservation. (The reservation will be considered as an "initial reservation" within the meaning of Section 20(b)(1)(B)(iii) if it is the first land to be designated as the tribe's reservation.)

This is a very significant burden for a newly recognized, landless tribe with limited funding. We previously have recommended that Interior process reservation proclamation requests and fee-to-trust applications simultaneously to avoid this delay, thereby reducing the pressure put on the Tribes and local communities by the bifurcated review process currently in place. We hereby reiterate that request, and further respectfully suggest that it would be in *everyone's* better interest to consolidate review of fee-to-trust and initial reservation proclamation requests into one office, *i.e.*, the Office of Indian Gaming Management. We believe that this office is in the best position to counsel tribes (and local communities) early in the process as to the propriety of any particular location for gaming purposes. Further, the Office of Indian Gaming Management becomes so familiar with the tribe, the local community, and the specifics of the proposed land acquisition during the fee-to-trust process that it seems to make more sense to have that office complete the proclamation process rather than forwarding the proclamation request to an entirely new office to begin another review de novo.

Restored Lands Legal Opinions

Unlike the issuance of a reservation proclamation, which is the result of a process by which the Secretary implements her authority under Section 7 of the Indian Reorganization Act and which ends with an affirmative action by the Secretary, a restored lands opinion is a just that – a legal *opinion*. Either NIGC or Interior looks at the tribe's historical and modern facts and applies the established legal standards to those particular facts to determine whether, in the agency's opinion, the tribe and its lands meet the legal standards set forth by the federal courts. Because a restored lands opinion is a legal opinion, it generally is not the subject of a formal public consultation process.[1] The legal standards by which restored lands opinions are rendered are well fleshed out by the federal courts and previous agency decisions,[2] and Interior has well articulated these standards in its proposed regulations implementing Section 20.

Timing

We believe that it makes sense for the federal government, tribes and the local community to know as early as possible in the fee-to-trust process whether the particular land is in an appropriate location for gaming purposes – before the Tribe spends millions of dollars on a fee-to-trust application and NEPA compliance, before the federal government spends its resources on processing the fee-to-trust application, and before the local community spends significant time and money on the other components of the fee-to-trust

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[1] Although it is our understanding that the development of agency legal opinions generally is not subject to public notice and comment, we note that in fact NIGC reviewed American Land Rights Association materials. NIGC also considered submissions from the Grand Ronde Tribe, two non-Indian card rooms in La Center, the City of La Center, State Representative Richard Curtis, and a number of other groups and private citizens.

[2] *See Grand Traverse Band of Ottawa and Chippewa Indians v United States Attorney for the Western Dist. Of Mich., et at.*, 46 F. Supp. 2d 689 (W.D. Mich. 1999); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v Babbitt*, 116 F. Supp. 2d 155 (D.D.C. 2000), *see also* NIGC *Grand Traverse Band of Ottawa and Chippewa Indians* Opinion (Aug. 31, 2001); Interior *Confederated Tribes of Coos, Lower Umpqua & Siuslas Indians* Opinion (Dec. 5, 2001); NIGC *Bear River Band of Rohnerville Rancheria* Opinion (Aug. 5, 2002); NIGC *Mechoopda Indian Tribe of Chico Rancheria* Opinion (Mar. 14, 2003); NIGC *Wyandotte Nation Amend Gaming Ordinance* Opinion (Sep. 10, 2004); NIGC *Karuk Tribe of California* Opinion (Oct. 12, 2004).

and NEPA processes. We believe that if everyone knew sooner rather than later whether the general area in which the land is an appropriate location for trust lands for the Tribe that the general public "angst" about "reservation shopping" would be minimized.

It may well be that there are circumstances where a determination that a particular parcel meets the requirements of the restored lands exception cannot properly be made early in the process, but, in our case, there was so much factual historical information already available from adjudicated and federal sources that we thought it prudent to go ahead and ask whether we had met the legal test for a restored lands determination. Indeed, we felt compelled to address this issue up front, because the non-Indian card rooms and their supporters have mounted an aggressive public relations campaign against our proposed acquisition based on assertions that we have no historical connection to Clark County. They have said, over and over again, that we do not belong there. To help us determine whether our understanding of the facts and the law is reasonable, we asked the National Indian Gaming Commission to provide us with an opinion as to whether the Cowlitz Tribe does, in fact, have a sufficient nexus to the Clark County site that it could be considered restored lands within the meaning of the IGRA exception.

While our opponents may be unhappy with the legal conclusions reached by NIGC, there is absolutely nothing wrong with the Cowlitz Tribe asking that a federal agency charged with implementation of IGRA provide its opinion on a specific legal question relevant to the Tribe's proposed gaming development. The Tribe's decision to look for clarity and guidance was entirely proper, and it in no way dictates a particular outcome in the fee-to-trust process.

PART V
THE COWLITZ RESTORED LANDS DECISION

Based on our understanding of IGRA and the law construing the restored lands exception, we believed that the Clark County site would be an appropriate place to locate tribal trust land for gaming purposes. For this reason, we asked NIGC to review adjudicated and federally-established facts to determine whether, under the established legal standards this land would qualify as restored lands. The purpose was not to circumvent the requirements of IGRA or the IRA or the regulations implementing those statutes, but to solicit the federal government's views as to whether we were in the right place sooner rather than later in the process.

Because numerous federal sources (such as the ICC proceedings and BIA's technical reports from the Federal Acknowledgment Process) already document that the Cowlitz Tribe is a restored tribe and that we have historical and modern connections to the area surrounding the Clark County site, our restored lands request relied entirely on existing federal documents and federally adjudicated facts rather than history compiled by a hired expert. NIGC explains in its restored lands opinion that it reviewed and considered the entire record – including the opposition comments and analyses it received from two non-Indian card rooms, the City of La Center, citizen groups and another Indian tribe. NIGC concluded that the Cowlitz Tribe is a "restored tribe" and that, if the Cowlitz parcel is taken

into trust, that the land would qualify as "restored lands" under Section 20 (b)(1)(B)(iii). A brief summary of NIGC's analysis follows.

The Cowlitz Tribe is a Restored Tribe

Relying on findings and conclusions reached by BIA when it extended recognition to the Tribe in 2002, NIGC concluded that the United States generally recognized the Cowlitz "during the mid-to-late 1800s." NIGC's *Cowlitz Tribe Restored Lands Opinion* at 4 (November 22, 2005). In 1855 the United States entered into treaty negotiations with the Cowlitz and other tribes in the Washington territory to try to convince them to cede their lands to the United States. Although the Cowlitz were willing to cede lands, we refused to sign the treaty offered to us because the United States insisted that we relocate to an area that was unacceptable to us. In 1863, an Executive Order opened up most of southwestern Washington, including Cowlitz lands, to non-Indian settlement. Because no reservation had been set aside for us, we became landless soon after the 1863 Executive Order took effect. Over the course of the next fifty years, Interior eventually began to deny services to us because of our landlessness, so that by the early twentieth century the Department considered the Tribe to have been terminated. In 2002, Interior officially re-extended recognition to the Cowlitz through the Federal Acknowledgment Process. For these reasons, NIGC determined that the Cowlitz Tribe is a "restored tribe" under the meaning of Section 20(b)(1)(B)(iii).

The Clark County parcel will qualify as restored lands if it is taken into trust

NIGC applied the same criteria used by the federal courts, NIGC and Interior in past restored lands opinions when it concluded that the Clark County parcel, should it be taken into trust, would meet the standard for restored lands within the meaning of Section 20(b)(1)(B)(iii). These criteria require the Tribe to show that the land is "restored" based on one or more of the following three factors: the factual circumstances of the acquisition, the location of the acquisition (which refers to the historical and modern nexus of the Tribe to the land), and the temporal relationship of the acquisition to the tribal restoration. *Grand Traverse*, 198 F. Supp. 2d at 935.

With respect to factual circumstances of the acquisition, NIGC found convincing the Cowlitz Tribe's long history of attempts to reacquire lands it had lost, a history that significantly pre-dates IGRA. As the opinion describes, Cowlitz members began to seek redress for the dispossession of their lands in the early 1900s, and pursued federal legislation that would allow the Tribe to present its claims in court. Although many bills were introduced and one was even passed by both houses of Congress (but vetoed by President Coolidge), it wasn't until the Indian Claims Commission was created that the Tribe had an opportunity to pursue its land claims against the federal government. In 1969, the ICC found in favor of the Cowlitz Tribe, agreeing that the United States had taken the Tribe's lands without compensation. In the 1970s, we insisted that the federal legislation implementing our ICC settlement provide for some of the funds to be used for land acquisition. Interior refused, insisting that we were no longer recognized. As a consequence, the Cowlitz had no choice but to submit to BIA's federal acknowledgment process, and we submitted evidence to satisfy the Department's recognition criteria for the next quarter century. Two years after Interior recognized the Tribe in 2002, a statute was

finally enacted into law that implemented the Tribe's ICC judgment and included a land acquisition provision.

With respect to the Tribe's historical and modern nexus to the area, NIGC concluded that significant established evidence exists to demonstrate the Tribe's legitimate historical and modern connections to the area. As explained by NIGC, many of the Tribe's historical connections are documented in the ICC litigation and the historical and anthropological technical reports prepared by BIA during the Federal Acknowledgement Process – adjudicated findings that we believe are binding on the federal government. These findings document the historical presence of the Cowlitz Tribe in the area of the site from the time of first white contact through the modern era.[3] In addition, our modern connections to the area are clear, and are reflected in the fact that both the Indian Health Service and the Department of Housing and Urban Development have designated Clark County as a service area for the Cowlitz Tribe.

Finally, with respect to the timing of the trust acquisition, NIGC found that the Cowlitz Tribe's attempts to minimize the time between restoration and the proposed trust acquisition, by applying to have the land taken in trust on the day of BIA recognition, and the fact that this would be the Tribe's first trust acquisition, weighed heavily in favor of the Tribe.

In short, the NIGC opinion found that Cowlitz satisfied all of the requirements for a restored lands determination, based almost completely on adjudicated federal findings and the application of established legal precedent.

PART VI
REGULATIONS GOVERNING THE SECTION 20 EXCEPTIONS

Given the somewhat complex interplay between the process for making determinations under the IGRA Section 20 exceptions and the fee-to-trust process, we can understand how the general public may be confused about what precisely is necessary before Tribes may game on lands that they have acquired in trust. We applaud Interior's efforts to propose regulations that govern the implementation of the Section 20 exceptions, as we believe those regulations will help to dispel some of the confusion in this area by making the process and the standards more transparent. We fully support the promulgation of the Section 20 regulations as a way to improve and regularize the implementation of the Section

[3] Those opposed to the Cowlitz Tribe's efforts to acquire land in Clark County argue that, because other tribes in addition to the Cowlitz historically occupied this area, the lands should not be deemed to meet the restored lands test. There is no precedent for requiring that the ICC's exclusive use and occupancy standard be grafted onto the restored lands standards. To the contrary, established case law suggests that restored tribes need not necessarily return to the exact parcel of land or reservations they previously held. *See City of Roseville v Norton*, 348 F.3d 1020 (D.C. Cir. 2003); *Grand Traverse Band of Ottawa and Chippewa Indians v United States Attorney for the Western Dist. of Mich.*, 46 F. Supp. 2d 689 (W.D. Mich. 1999); *Grand Traverse Band of Ottawa and Chippewa Indians v United States Attorney for the Western Dist. of Mich.*, 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff'd* 369 F.3d 960 (6th Cir. 2004).

20 exceptions. For the same reasons, we also strongly encourage Interior to promulgate reservation proclamation regulations.

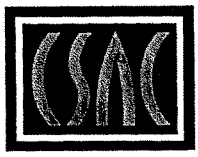
PART VII
FINAL THOUGHTS

We think it important to highlight that newly recognized and restored tribes, left landless by the misfortunes of history, have no choice but to carve out lands from existing jurisdictions to acquire land in trust. These lands will, if taken into trust by Interior, come off the local tax rolls and be withdrawn from local jurisdiction. This rarely makes the newly recognized tribe popular with the local community. If, as in our case, the newly recognized tribe acquires land in a local community that generally supports gaming, there likely already are existing gaming establishments there – and, as in our case, those existing gaming establishments have every incentive to fight the newly recognized tribe to the death in order to protect its profits. Conversely, if the newly recognized tribe identifies land where there is no nearby existing gaming facility, it is probably because the local community is disinterested in – or possibly even hostile to – hosting a gaming facility. Neither situation is very comfortable for the tribe or for the local community. For these and other reasons, newly recognized tribes find themselves in the middle of public debates and controversies – controversies often fueled and well-funded by other gaming interests trying to protect their own turf and profits.

The Cowlitz Tribe understands and is sympathetic to the inherent difficulties of having to carve out a homeland from an existing non-Indian jurisdiction. But we take exception to some of the criticism we have received for our efforts to achieve greater clarity early in the process on the question of whether our Clark County parcel is located within an appropriate area.

Chairman McCain, Vice Chair Dorgan, and esteemed members of this Committee, the Cowlitz Tribe implores you to remember that newly recognized landless tribes like Cowlitz are poor tribes in desperate need of the United States' active assistance. We face daunting obstacles to self-governance and self-sufficiency precisely *because* we have no trust land. I am here today to reiterate Chairman Barnett's previous requests that Congress continue to insist that there be a fair and equitable mechanism to put newly recognized and newly restored tribes on a level playing field with tribes that were lucky enough to have had a reservation on October 17, 1988. In that same vein, we ask that this Committee ensure that there never be a blanket moratorium on fee-to-trust acquisitions. No Congressional action could do more damage to the very tribes who most need your help.

Thank you very much for the opportunity to testify.



SUPERVISOR DUANE KROMM
SUPERVISOR, SOLANO COUNTY, CALIFORNIA
MEMBER, INDIAN GAMING WORKING GROUP,
CALIFORNIA STATE ASSOCIATION OF COUNTIES

TESTIMONY
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

OVERSIGHT HEARING ON OFF-RESERVATION GAMING:
THE PROCESS FOR CONSIDERING GAMING APPLICATIONS
FEBRUARY 1, 2006

On behalf of the California State Association of Counties (CSAC) I would like to thank Chairman McCain, Vice-Chairman Dorgan, and the other distinguished members of the Committee on Indian Affairs, for giving us the opportunity to submit testimony as part of this oversight hearing to consider issues related to the taking of land into trust for gaming purposes and exceptions to the Indian Gaming Regulatory Act (IGRA). I am Duane Kromm, a member of the Solano County Board of Supervisors and a member of the CSAC Indian Gaming Working Group.

CSAC is the single, unified voice speaking on behalf of all 58 California counties, and in testimony submitted to this committee last July, we described the position of California counties as "ground zero" for coping with the impacts of Indian gaming. Because of our key role in providing critical services to California residents and our more than two decades' worth of direct experience with the issue of Indian gaming – more so than any other level of government – CSAC is especially grateful to address this esteemed committee on issues related to the lands-into-trust process and the provisions of IGRA which determine whether land acquired by tribes is eligible for gaming.

For the past four years, CSAC has devoted considerable staff time and financial resources to understanding the impacts on county services resulting from Indian gaming. We believe that California counties and CSAC have developed an expertise in this area that may be of benefit to this Committee as it considers amendments to IGRA and looks at ways to address problems created by the phenomenon now known as "reservation-shopping," the practice of some tribes and their business partners to acquire land to which the tribe is not historically tied, but which has considerable economic potential as an Indian casino.

INTRODUCTION

At the outset, the California State Association of Counties (CSAC) reaffirms its absolute respect for the authority granted to federally recognized tribes. CSAC also reaffirms its support for the right of Indian tribes to self-governance and recognizes the need for tribes to preserve their tribal heritage and to pursue economic self-reliance. CSAC further recognizes the injustices tribes have faced and the unique history of many California tribes in facing termination of their sovereign status as tribes and loss of tribal lands.

However, it is now apparent that the delicate balance between federal, state and tribal rights that was struck to further tribal economic development in IGRA's enactment has now been upset. Tribal gaming has grown from a $100 million venture when IGRA was enacted to a more than $19 billion economic powerhouse today, and tribes and their development partners are now looking far from traditional tribal lands to open casinos in the most lucrative markets. In addition, existing laws fail to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. This is of growing concern to us, as gaming enterprises are attracting millions of non-Indian visitors to these newly sovereign lands.

A. The Role of County Government

Every Californian, including every tribal member, depends upon county government for a broad range of critical services, from public safety and transportation, to waste management and disaster relief. Counties are the largest political subdivision of the state having corporate authority and are vested by the Legislature with the powers necessary to provide for the health and welfare of all people within their borders. Counties are responsible for a countywide justice system and social welfare, health and other services totaling nearly 700 programs, including the following:

* sheriff	* elections & voter services	* jails
* public health	* roads & bridges	* flood control
* fire protection	* welfare	* indigent health
* family support	* criminal justice	* child & adult protective services

* rehabilitation of substance abuse and other addictive behaviors

Most of these services are provided to residents both outside and inside city limits. Unlike the exercise of land use control, such programs as public health, welfare, and jail services are provided (and often mandated) regardless of whether a recipient resides within a city or in the unincorporated area of the county. These vital public services are delivered to California residents through its 58 counties. It is no exaggeration to say that county government is essential to the quality of life for the more than 36 million residents in the state today. No other form of local government so directly impacts the daily lives of all citizens. In addition, because county government has very little authority to independently raise taxes and increase revenues, the ability to adequately mitigate reservation commercial endeavors is critical, or all county services can be put at risk. California counties' ability to provide these mandated critical services has been significantly impacted by the expansion of Indian gaming.

B. Impacts on County Government

There is not yet a definitive study on the impacts of gaming on local communities. However, in those counties that are faced with large gaming projects, it is clear that the impacts on traffic, water/wastewater, the criminal justice system and social services are significant. For non-Indian casinos in other states it is estimated that for every dollar a community collects from gambling-related taxes, it must spend three dollars to cover new expenses, including police, infrastructure, social welfare, and counseling services.[1] As local communities cannot tax Indian operations, or the related hotel and other services that would ordinarily be a source of local government income, the negative impact of such facilities can even be greater. This is one reason that CSAC sought amendments to California Tribal-State Compacts to ensure that the off-reservation environmental and social impacts of gaming were fully mitigated and that gaming tribes paid their fair share for county services.

In 2003 CSAC took a "snapshot" of local impacts by examining information provided by eight counties (the only counties that had conducted an analysis of local government fiscal impacts) where Indian gaming facilities operated.[2] The total fiscal impact to those eight counties was approximately $200 million, including roughly $182 million in one-time costs and $17 million in annual costs. If these figures were extrapolated to the rest of the state, the local government fiscal costs could well exceed $600 million in one-time and on-going costs for road improvements, health services, law enforcement, emergency services, infrastructure modifications, and social services.

Even when a gaming facility is within a city's jurisdictional limits, the impacts on county government and services may be profound. The California experience particularly has made clear that large casino facilities have impacts beyond the immediate jurisdiction in which they operate. Attracting many thousands of car trips per day, larger facilities cause traffic impacts throughout a local or even regional transportation system. Similarly, traffic accidents, crime and other problems sometimes associated with gaming are not isolated to a casino site but may increase in surrounding communities.

As a county is often the key governmental entity and service provider in the area, with a larger geographic perspective and land use responsibility, county involvement is critical to insure that the needs of the community are met and that any legitimate tribal gaming proposal is ultimately successful and accepted. Local approval is necessary to help insure a collaborative approach with tribes in gaming proposals and to support the long-range success of the policies underlying the IGRA.

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1 *Cabazon*, The Indian Gaming Regulatory Act, and the Socioeconomic Consequences of American Indian Governmental Gaming - *A Ten Year Review* by Jonathon Taylor and Joseph Kalt of the Harvard Project on American Indian Economic Development (2005) at p. 9 (citing Sen. Frank Padavan, Rolling the Dice: Why Casino Gambling is a Bad Bet for New York State at ii (1994).

2 CSAC Indian Gaming Survey – 2003 Results (11/5/03) (attached as Attachment C.)

C. The Advent of "Reservation Shopping" in California

As mentioned earlier in this testimony, California is the epicenter of the "reservation shopping" phenomenon. For example, a number of existing compacts negotiated by the then-Governor in 1999 allow tribes to develop two casinos and do not restrict casino development to areas within a tribe's current trust land or historical ancestral territory. In the fall of 2002 a Lake County band of Indians was encouraged by Eastern developers to pursue taking into a trust land in Yolo County for use as the site of an Indian casino. The chosen site was across the Sacramento River from downtown Sacramento and was conveniently located near a freeway exit. The actual promoters of this effort were not Native Americans and had no intention of involving tribal members in the operation and management of the casino. In fact, one promoter purportedly bragged that no Indian would ever be seen on the premises.

In rural Amador County, starting in 2002 and continuing to the present, a tribe financed by another out-of-State promoter is seeking to have land near the small town of Plymouth taken into trust for a casino. The tribe has no historical ties to the Plymouth community. The effort by this tribe and its non-Native American promoter has created a divisive atmosphere in the local community. That new casino is not the only one being proposed in the county. A second, very controversial new casino is being promoted by a New York developer for a three-member tribe in a farming and ranching valley not served with any water or sewer services, and with access only by narrow county roads. The development of these casinos would have severe environmental and social consequences for this rural county of only 30,000 residents, which already has one major Indian casino. Indeed, the daily influx of visitors to these casinos is projected to exceed the entire population of the county.

In the past two years in Contra Costa County, there have been vigorous efforts by three tribes to engage in Indian gaming in this highly urbanized Bay Area county. The possibility of significant economic rewards from operating urban casinos has eclipsed the fact that these tribes have demonstrated no apparent historical connection to the area in which they seek to establish gaming facilities.

The newest California twist to "reservation shopping" also shows how the current law now serves to pit tribe against tribe. Counties are now experiencing tribes with established casinos trying to "leap-frog" over other tribal gaming operations to get closer to a population center. For example, the Hopland Band of Pomo Indians, a Mendocino County based gaming tribe located north of Sonoma County, is trying to move south along the Highway 101 corridor towards San Francisco, passing a Sonoma County tribe's operations that apparently are reducing its profits. The location the Mendocino tribe chose for its new casino is within the historic rancheria boundary of another Sonoma County tribe – the Cloverdale Band of Pomo Indians – that opposes the gaming proposal. The Mendocino tribe has applied to the Bureau if Indian Affairs (BIA) and the National Indian Gaming Commission (NIGC) to transfer the land (held in trust by a member of the Cloverdale Tribe) and to have it designated as "restored" so that it is eligible for gaming. The Mendocino's tribe's trust transfer application, which is opposed by other Sonoma County tribes, is pending before the BIA and NIGC.

D. Future Risks

In California the "reservation shopping" problem has been driven, in large part, by the "restoration" exception contained in Section 20(b)(1)(B)(iii) of IGRA. This exception allows tribes that are restored to federal recognition to avoid the two-part test under IGRA, but that test helps to insure that a gaming establishment would not be detrimental to the local community. The result of this policy has been to encourage developers to shop for or attempt to "create" tribes that may be eligible for recognition to eventually obtain "restored" land or for tribes that were terminated (both landless and not) to seek to have land taken into trust, often far from their traditional geographic base.

In recent testimony before this Committee, George Skibine, Acting Deputy Assistant Secretary for Indian Affairs in the Department of the Interior, testified that the restoration exception is by far the most frequently used exception under IGRA that serves to avoid the two-part test. Since 1988, the Secretary has approved 26 gaming trust acquisitions that were determined to meet one of the five Section 20 gaming exceptions for land acquired after IGRA's enactment. Of these exceptions 12 were under the Section 20(b)(1)(B)(iii) exception for "restored land to a restored tribe." Of these 12, one quarter were in California. He further testified that of the 11 pending gaming applications before the BIA claiming an exception under section 20(b)(1)(B); nine were in California – all of which were claiming that they were not subject to the two-part test pursuant to the restored land exception.

The experience in California, driven in part by the restoration of illegally terminated rancherias, is that the restored land exception to prohibiting gaming on lands acquired after 1988 is being misused. This is illustrated in the Hopland tribe's attempt to have land found eligible for gaming under the restored land provision despite the fact the tribe already has land in trust upon which it operates a casino and the land sought is within another tribe's historic jurisdiction. Similarly, Alameda and Contra Costa counties have been faced with numerous proposals to have land "restored" from remote tribes for gaming purposes.

These efforts are examples of tribes and their investors attempting to evade the two-part test under IGRA that provides for consultation between local communities (and local tribes) and the Secretary to determine whether gaming on newly acquired trust lands is detrimental to the surrounding community, and the concurrence by the governor in that determination. CSAC therefore supports continuation of the two-part test for the acquisition of new lands and increased local government participation in the decision of whether land should be taken into trust for gaming purposes.

E. CSAC Indian Gaming Policy

CSAC's approach to addressing the off-reservation impacts of Indian gaming is simple: to work on a government-to-government basis with gaming tribes in a respectful, positive and constructive manner to mitigate off-reservation impacts from casinos, while preserving tribal governments' right to self-governance and to pursue economic self-reliance.

With this approach as a guide, CSAC has developed a policy comprised of seven principles regarding State-Tribe Compact negotiations for Indian gaming, which was adopted by the CSAC Board of Directors on February 6, 2003. The purpose of this Policy is to promote tribal self-reliance while at the same time promoting fairness and equity, and protecting the health, safety, environment, and general welfare of all residents of the State of California and the United States. A copy of this Policy is attached to this written testimony as Attachment A.

The CSAC Policy has become the association's guiding document and has been applied to the rapid expansion of the "reservation shopping" phenomenon, whereby tribes seek to locate a gaming operation on lands far from their documented reservations or rancherias. Many of these types of proposals are backed by out of state, non-Indian gaming conglomerates eager to cash in on the Indian gaming phenomenon in California. These Indian-private conglomerate partnerships are seeking locations near urban centers or major roadways in an effort to lure as many gaming patrons as possible. However, based on our Indian gaming policy, CSAC opposes such "reservation shopping" as counter to the purposes of IGRA. First, "reservation shopping" is an affront to those tribes who have worked responsibly with federal, state and local governments on a government-to-government basis in compliance with the spirit and intent of the IGRA as a means of achieving economic self-reliance and preserving their tribal heritage. These tribes have submitted to the IGRA's so-called two-part determination process, which CSAC believes is an important foundation for the responsible operation of Indian gaming casinos throughout the nation.

Chairman McCain has recently introduced legislation to increase federal oversight of Indian gaming operations and to alter the lands-into-trust process. CSAC sincerely appreciates the efforts of Chairman McCain and the other Members of the Committee for investigating problems with the oversight of and current legal framework for determining the eligibility of Indian lands for gaming. We are today primarily interested in Chairman McCain's recent legislation (S. 2078), which contains language to limit the two-part test administered by the Interior Department to petitions already being considered for fee-to-trust on November 18, 2005. We have a significant concern about this amendment, as explained below. On the other hand, the bill amends the restored lands exception to require the finding that a tribe has a "temporal, cultural and geographic nexus" to the piece of land in question before granting permission for the tribe to take it into trust. While CSAC supports increased oversight of such proposals, we must reaffirm our support for the existing two-part test and furthermore add that any amendments to that process must include the direct participation of both State and local governments before a land-into-trust application is granted.

The topic of today's hearing is "The process for considering gaming applications" and CSAC believes that local government, and specifically counties, must be an integral and early partner in the process. For example, under the current system, states and affected communities are not notified by the NIGC when a tribe files a request for determination of whether tribal lands are "Indian lands," and this eligible for gaming, as that term is defined in the IGRA. CSAC believes that Congress must specifically require the NIGC and the Department of the Interior to provide for the timely notice, comment, and the submission of evidence from affected parties in all proceedings.

We also question the BIA's practice of beginning the environmental review process under the National Environmental Policy Act (NEPA) before lands are determined to be Indian lands. Counties and other affected parties are required to expend considerable time and money in evaluating the environmental documents when it may be entirely unnecessary if the land is ultimately not eligible for gaming. The process is confusing and the cause of considerable consternation in communities across the state.

F. Other Provisions of S. 2078

As mentioned earlier, S. 2078 also includes amendments to IGRA relating to the National Indian Gaming Commission, to gaming-related contracts, and to increased regulation of Class II gaming. CSAC has not had an opportunity to consider these provisions formally, but the organization will take up these proposals at its earliest opportunity.

In the meantime, I can represent to you that many individual California counties have a serious concern about Class II gaming. As you know, technological advances have severely blurred the line between Class II and Class III gaming devices. With relative ease, a tribe now can establish a large gaming facility, install Class II devices, and trigger virtually the same impacts on local government as those that result from a Class III facility, without any of the safeguards afforded by IGRA. This has, in fact, happened already in at least one California county. For example, once the State Legislature failed to ratify the Lytton Band's compact negotiated with the Governor, which authorized Class III gaming, the Band installed 500 Class II gaming devices in its existing facility. No mitigation of potential or actual impacts has been provided by the tribe. We look forward to providing you with additional comments on this issue.

G. Government-to-Government Relationships

Many tribes have expressed their concern for such participation by local government, equating it with relinquishment of sovereignty and a land acquisition veto. This is simply untrue. There are many examples of California counties working cooperatively with tribes on a government-to-government basis on all issues of common concern including gaming-related issues. These discussions and resulting agreements have preserved tribal sovereignty and assisted tribes in moving forward to achieve their economic goals.

In Santa Barbara County, an agreement was reached with the Chumash Tribe over a trust land acquisition adjacent to its gaming facility. In addition, after the Chumash completed a significant expansion of its casino, it realized the need to address ingress and egress, and flood control issues. Consequently, Santa Barbara County and the Tribe negotiated an enforceable agreement addressing these issues in the context of a road widening and maintenance agreement. Presently, there is no authority that requires the County of Santa Barbara or its local tribe to reach agreements. However, both continue to address the impacts caused by the tribe's acquisition of trust land and development on a case-by-case basis, reaching intergovernmental agreements where possible.

San Diego County has a history of tribes working with the San Diego County Sheriff to ensure adequate law enforcement services in areas where casinos are operating. In addition, San Diego County has entered into agreements with four tribes to address the road impacts created by casino projects. Further, a comprehensive agreement was reached with the Santa Ysabel Tribe pursuant to the 2003 Compact with the State of California.

In Northern California, Humboldt County and tribal governments have agreed similarly on law enforcement-related issues. Humboldt County also has reached agreements with tribes on a court facility/sub station, a library, road improvements, and on a cooperative approach to seeking federal assistance to increase water levels in area rivers.

In central California, Madera, Placer, and Yolo Counties have reached more comprehensive agreements with the tribes operating casinos in their communities. These comprehensive agreements provide differing approaches to the mitigation of off-reservation impacts of Indian casinos, but each is effective in addressing unique community concerns.

The agreements in each of the above counties were achieved through positive, respectful and constructive discussions between tribal and county leaders. It was through these discussions that each government gained a better appreciation of the needs and concerns of the other government. Not only did these discussions result in enforceable agreements for addressing specific impacts, but enhanced respect and a renewed partnership also emerged, to the betterment of both governments and all members of the community.

CSAC supports the Committee's efforts to craft amendments to IGRA that preserve its original goals of supporting tribal economic development while minimizing the impacts of "reservation shopping" on local communities. We believe that the single most important provision you can enact would be the formal participation of state and local affected governments in the process of granting trust lands to tribes who whish to operate gaming casinos. As such, CSAC offers its assistance to Chairman McCain and the Indian Affairs Committee in any manner that you determine to be helpful as you tackle this complex issue.

PRINCIPLES FOR IGRA REFORM

To address these emerging gaming issues, the CSAC Board of Directors adopted a Revised Policy Regarding Development on Tribal Lands on November 18, 2004 (attached as Attachment B). It is CSAC's position that these policies should inform any revisions to IGRA. As a preliminary principle, the Revised Policy reaffirms that:

* CSAC supports cooperative and respectful government-to-government relations that recognize the interdependent role of tribes, counties and other local governments to be responsive to the needs and concerns of all members of their respective communities.

With respect to the issues specifically now before the Committee the following policies apply:

* CSAC supports federal legislation to provide that lands are not to be placed in trust and removed from the land use jurisdiction of local governments without the consent of the State and affected county.

* CSAC opposes the practice commonly referred to as "reservation shopping" where a tribe seeks to place lands in trust outside its aboriginal territory over the objection of the affected county.

* Nothing in federal law should interfere with the provision of public health, safety, welfare or environmental services by local governments, particularly counties. (June 2004 NACo Policy sponsored in part by CSAC).

Several of these policies are embodied, at least in part, through IGRA's two-part test when meaningful input is afforded local governments. When the test is evaded, either through the restored land exception, or legislative fiat (in cases of congressionally mandated land acquisitions), the potential for "reservation-shopping" abuse is heightened, as is the potential for an Indian gaming "backlash" either from other tribes or local communities. To avoid the negative impacts and abuses of reservation shopping, county government must play a significant role in the decision making process to insure that a proposed facility is not significantly detrimental to a community and that impacts of any new gaming establishment are appropriately mitigated.

CONCLUSION

CSAC presents this written testimony to assist the Chairman and Committee Members in their efforts to amend IGRA to address the increasing practice of "reservation shopping." In California, there is an urgent need for counties to have a greater voice in matters that create impacts that the county will ultimately be called upon by its constituents to address. This voice is critical if California counties are to protect the health and safety of their citizens. Otherwise, counties find themselves in a position where their ability to effectively address reservation shopping and the off-reservation impacts from Indian gaming is very limited.

In California, through the most recent State-Tribe Compacts, counties and other local governments have been provided an appropriate opportunity to work with gaming tribes to address these off-reservation impacts. The result has been improved government-to-government relationships between tribes and county governments. Contrary to the fears expressed by some tribal leaders, local governments have not acted to usurp tribal sovereignty or automatically oppose all gaming proposals. In fact, local government involvement in the gaming and trust acquisition process has led to improved relationships as each government gains a better understanding of the responsibilities and needs of the other. A joint approach to gaming projects has also led to more successful enterprises as both tribes and local governments work jointly to create a safe beneficial community environment for a gaming enterprise. Enactment of

amendments that strengthen IGRA by limiting its exceptions and allowing a greater role for local government would further the original goals of IGRA while helping to minimize abuses that have created a backlash against Indian gaming and the opportunities it affords.

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ATTACHMENT A:
CSAC Policy Document Regarding Compact Negotiations for Indian Gaming

Adopted by the CSAC Board of Directors
February 6, 2003

In the spirit of developing and continuing government-to-government relationships between federal, tribal, state, and local governments, CSAC specifically requests that the State request negotiations with tribal governments pursuant to section 10.8.3, subsection (b) of the Tribal-State Compact, and that it pursue all other available options for improving existing and future Compact language.

CSAC recognizes that Indian Gaming in California is governed by a unique structure that combines federal, state, and tribal law. While the impacts of Indian gaming fall primarily on local communities and governments, Indian policy is largely directed and controlled at the federal level by Congress. The Indian Gaming Regulatory Act of 1988 is the federal statute that governs Indian gaming. The Act requires compacts between states and tribes to govern the conduct and scope of casino-style gambling by tribes. Those compacts may allocate jurisdiction between tribes and the state. The Governor of the State of California entered into the first Compacts with California tribes desiring or already conducting casino-style gambling in September 1999. Since that time tribal gaming has rapidly expanded and created a myriad of significant economic, social, environmental, health, safety, and other impacts.

CSAC believes the current Compact fails to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts. The overriding purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States. Towards that end, CSAC urges the State to consider the following principles when it renegotiates the Tribal-State Compact:

1. A Tribal Government constructing or expanding a casino or other related businesses that impact off-reservation[3] land will seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances including the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.

2. A Tribal Government operating a casino or other related businesses will mitigate all off-reservation impacts caused by that business. In order to ensure consistent

[3] As used here the term "reservation" means Indian Country generally as defined under federal law, and includes all tribal land held in trust by the federal government. 18 U.S.C. § 1151.

regulation, public participation, and maximum environmental protection, Tribes will promulgate and publish environmental protection laws that are at least as stringent as those of the surrounding local community and comply with the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.

3. A Tribal Government operating a casino or other related businesses will be subject to the authority of a local jurisdiction over health and safety issues including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, food inspection, and law enforcement, and reach written agreement on such points.

4. A Tribal Government operating a casino or other related businesses will pay to the local jurisdiction the Tribe's fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, and other similar types of costs typically paid by non-Indian businesses.

5. The Indian Gaming Special Distribution Fund, created by section 5 of the Tribal-State Compact will not be the exclusive source of mitigation, but will ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming.

6. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes will meet and reach a judicially enforceable agreement with local jurisdictions on these issues before a new compact or an extended compact becomes effective.

7. The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act. 25 U.S.C § 2719. The Governor should also establish and follow appropriate criteria/guidelines to guide his participation in future compact negotiations.

ATTACHMENT B:
CSAC Revised Policy Document Regarding Development on Tribal Lands

Adopted by CSAC Board of Directors
November 18, 2004

Background

On February 6, 2003, CSAC adopted a policy, which urged the State of California to renegotiate the 1999 Tribal-State Compacts, which govern casino-style gambling for approximately 65 tribes. CSAC expressed concern that the rapid expansion of Indian gaming since 1999 created a number of impacts beyond the boundaries of tribal lands, and that the 1999 compacts failed to adequately address these impacts. The adopted CSAC policy specifically recommended that the compacts be amended to require environmental review and mitigation of the impacts of casino projects, clear guidelines for county jurisdiction over health and safety issues, payment by tribes of their fair share of the cost of local government services, and the reaching of enforceable agreements between tribes and counties on these matters.

In late February, 2003, Governor Davis invoked the environmental issues re-opener clause of the 1999 compacts and appointed a three member team, led by former California Supreme Court Justice Cruz Reynoso, to renegotiate existing compacts and to negotiate with tribes who were seeking a compact for the first time. CSAC representatives had several meetings with the Governor's negotiating team and were pleased to support the ratification by the Legislature in 2003 of two new compacts that contained most of the provisions recommended by CSAC. During the last days of his administration, however, Governor Davis terminated the renegotiation process for amendments to the 1999 compacts.

Soon after taking office, Governor Schwarzenegger appointed former Court of Appeal Justice Daniel Kolkey to be his negotiator with tribes and to seek amendments to the 1999 compacts that would address issues of concern to the State, tribes, and local governments. Even though tribes with existing compacts were under no obligation to renegotiate, several tribes reached agreement with the Governor on amendments to the 1999 compacts. These agreements lift limits on the number of slot machines, require tribes to make substantial payments to the State, and incorporate most of the provisions sought by CSAC. Significantly, these new compacts require each tribe to negotiate with the appropriate county government on the impacts of casino projects, and impose binding "baseball style" arbitration on the tribe and county if they cannot agree on the terms of a mutually beneficial binding agreement. Again, CSAC was pleased to support ratification of these compacts by the Legislature.

The problems with the 1999 compacts remain largely unresolved, however, since most existing compacts have not been renegotiated. These compacts allow tribes to develop two casinos, expand existing casinos within certain limits, and do not restrict casino development

to areas within a tribe's current trust land or legally recognized aboriginal territory. In addition, issues are beginning to emerge with non-gaming tribal development projects. In some counties, land developers are seeking partnerships with tribes in order to avoid local land use controls and to build projects, which would not otherwise be allowed under the local land use regulations. Some tribes are seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of a county's land use jurisdiction.

CSAC believes that existing law fails to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. The purpose of the following Policy provisions is to supplement CSAC's February 2003 adopted policy through an emphasis for counties and tribal governments to each carry out their governmental responsibilities in a manner that respects the governmental responsibilities of the other.

Policy

1. CSAC supports cooperative and respectful government-to-government relations that recognize the interdependent role of tribes, counties and other local governments to be responsive to the needs and concerns of all members of their respective communities.

2. CSAC recognizes and respects the tribal right of self-governance to provide for the welfare of its tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and respects the counties' legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of all members of their communities.

3. CSAC also supports Governor Schwarzenegger's efforts to continue to negotiate amendments to the 1999 Tribal-State Compacts to add provisions that address issues of concern to the State, tribes, and local governments. CSAC reaffirms its support for the local government protections in those Compact amendments that have been agreed to by the State and tribes in 2004.

4. CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land[4]. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.

5. CSAC supports legislation and regulations that preserve—and not impair—the abilities of counties to effectively meet their governmental responsibilities, including the provision

[4] As used here the term "tribal land" means trust land, reservation land, rancheria land, and Indian Country as defined under federal law.

of public safety, health, environmental, infrastructure, and general welfare services throughout their communities.

6. CSAC supports federal legislation to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without the consent of the State and the affected county.

7. CSAC opposes the practice commonly referred to as "reservation shopping" where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.

8. CSAC does not oppose the use by a tribe of non-tribal land for development provided the tribe fully complies with state and local government laws and regulations applicable to all other development, including full compliance with environmental laws, health and safety laws, and mitigation of all impacts of that development on the affected county.

ATTACHMENT C:
CSAC Indian Gaming Survey
2003 Results By County

County Impacts – Amador County

Indian Tribes: Buena Vista Rancheria (Current Compact for Gaming)
Ione Reservation (Request for Compact pending)
Jackson Rancheria (Current Compact for Gaming)

Summary

Amador County has one operational casino and two proposed casinos. The Jackson Rancheria is the only casino in the county and the county receives limited mitigation payments from the Tribe. This Tribe is also considering an expansion of a hotel, parking lot and food court for the casino.

Impact Analysis

Amador County has provided an impact analysis for the Jackson Rancheria. The following are the impacts noted by the county regarding the expansion plans proposed by the Tribe:

Law Enforcement	$460,157
Judicial System	$416,815
Roads	$6,455,600
Total Costs	**$7,332,572**

Memorandum of Understanding

Amador County has two Memorandum of Understandings (MOUs) with two different tribes in the county. The first is with the Jackson Rancheria and provides $212,625 annually for Sheriff and District Attorney costs. The current MOU will not be adequate if the casino expansion is approved. The County notes that the current MOU will cause a shortage of at least $818,947 annually to the County's General Fund.

The County also has an MOU with the Buena Vista Rancheria regarding the proposed casino, which will provide $436,000 annually for Police and Fire services that the County will provide to the casino. The MOU also provides that the Tribe is responsible for several road improvements in the county (please see attached MOU).

County Impacts – Butte County

Indian Tribes: Berry Creek Rancheria (Current Compact for Gaming)
Chico Rancheria (Status Unknown)
Enterprise Rancheria (Request for Compact for Gaming Pending)
Mooretown Rancheria (Current Compact for Gaming)

Summary

Butte County has two casinos (Berry Creek Rancheria and Mooretown Rancheria) and one proposed casino. The two casinos in the County both have significant proposals for expanding the casinos, but the County does not have any Memorandum of Understanding with either Tribe.

*The Enterprise Rancheria is proposing to build a casino in Yuba County and the information regarding that Tribe will be found in the Yuba County results.

Impact Analysis

Berry Creek Rancheria: The County has completed a preliminary impact analysis for one Tribe, Berry Creek Rancheria, and has identified a minimum impact of $376,500 annually to the County. The specific information is in response the Draft Environmental Review for the Proposed Gold Country Casino Expansion in which the County responded with the following impacts and comments (attached in Background):

Transportation: The County has noted that the Tribe's assessment that the traffic impacts would total $350,000 annually is not adequate and has asked for a full traffic study by the Tribe.
Law Enforcement: The County has identified costs of $26,500 annually for Sheriff services.
Fire: The Fire Department notes that the Rancheria has been receiving free fire service and requests that the Tribe develop its own fire fighting capabilities or enter into an agreement with the County Fire Department to provide services.
Infrastructure: The County has requested that the project provide for full containment of excess runoff.

Mooretown Rancheria: The County is currently preparing an analysis on the Mooretown Rancheria and has preliminary identified impacts in the areas of transportation, roads, law enforcement and fire service. The County does note that the Tribe has worked with the County on some road improvements.

Memorandum Of Understanding

Butte County does not have any agreements or Memorandum of Understanding with any of the Tribes in the County.

County Impacts – Imperial County

Indian Tribes: Ft. Yuma Quechan Reservation (Current Compact for Gaming)

Summary

Imperial County currently has one casino, which has recently opened in 2003. However, the Quechan Reservation has operated a casino on the Arizona side of the border since 1998 with significant impacts to Imperial County.

Impact Analysis

The County has conducted a preliminary analysis noting impacts to roads and solid waste. However, it should be noted that the County does receive some reimbursement for law enforcement according to a Memorandum of Understanding with the Tribe.

The County has noted the following impacts:

Roads	$20,000,000
Judicial System	Minor impact on courts
Solid Waste	$100,000 annually
Total	**$20,100,000**

The $20 million impact on roads is an approximate cost to widen 4 lanes of highway for two miles from Interstate 8 to the casino and to provide a bridge over a railroad crossing and canal where there is currently a narrow two lane underpass under the tracks and a deficient bridge over the adjacent canal.

Memorandum of Understanding

Imperial County currently has a Memorandum of Understanding (MOU) with the Quechan Tribe which was in effect prior to the operation of gaming on the California side of the reservation. The MOU provides for cross deputization of Tribal members and the agreement is for five years. Details of the MOU are as follows:

Tribal Responsibilities

- Tribal Deputies must enroll and complete law enforcement training courses at no cost to the county.
- Tribe is responsible for payment of compensation of Tribal Deputies and for providing other benefits including annual sick leave, vacation, paid holidays, workers' compensation, health and medical insurance, cost of living adjustments, merit raises, etc.
- Tribe shall acquire and maintain public liability insurance for personal injury in an amount not less than $3 million per person and $3 million per incident. The Tribe's

insurance shall be the primary insurance for Tribal Deputies and the County is only required to provide excess insurance should liability exceed the limits of the Tribe's insurance.

County Responsibilities

- Tribal Deputies are subject to the primary supervision of the County Sheriff.
- The County Sheriff must contribute salary compensation for each Tribal Deputy in the amount of 50% of the base salary of a Deputy Sheriff and must supply all safety equipment for the Tribal Deputies.
- The County's excess insurance for personal injury shall be in an amount not less than $3 million for any person and $3 million per incident.

County Impacts – Kings County

Indian Tribes: Santa Rosa Rancheria (Current Compact for Gaming)

Summary

Kings County currently has only one operational casino, which was finalized in 2000. There is currently a proposal for the expansion of a hotel, parking and additional slot machines. The County does not have a Memorandum of Understanding with the Tribe.

Impact Analysis

Kings County has conducted an impact analysis on three specific county departments which total approximately $4 million in one-time costs and $5,700 in annual costs as specified:

Roads	$4,435,000	(One-Time)
Fire Service	$5,700	(Annually)
Total	**$4,440,700**	

In addition, the County notes that there are increased costs to law enforcement due to an increase in the number of calls for service and an increase in the number of criminal reports related to the casino filed with the County Sheriff.

Memorandum of Understanding

The County currently does not have a Memorandum of Understanding with the Santa Rosa Rancheria.

County Impacts – San Bernardino County

Indian Tribes: Ani Yvwi Yuchi (Petitioning for Federal Recognition)
Chemehuevi Reservation (Current Compact for Gaming)
Ft. Mojave Indian Reservation (Request for Compact)
San Manuel Reservation (Current Compact for Gaming)

Summary

San Bernardino County has two operating casinos and one proposed casino. Of the two active casinos, the San Manuel Band is proposing to expand with a hotel, parking and events counter. The County does not receive any mitigation payments and the current fiscal impacts to the county are approximately $2,366,884 from San Manuel Casino with additional projected costs for the proposed expansion of several casinos.

Impact Analysis

San Bernardino County has analyzed the impacts to county services for both the San Manuel Band and the Chemehuevi Reservation for some services and this should not be considered a complete fiscal analysis.

The identified fiscal impacts are as follows:

San Manuel Band (Existing and Proposed Development)
*Proposed expansion casino and event center

Transportation	$5,000
Fire Service	$121,000
Law Enforcement	$146,288
Judicial System	$64,596
Infrastructure Needs	$2,000,000
Social Services	$30,000
Total Annual Costs	**$2,366,884**

Chemehuevi Reservation (Proposed Development)
*Proposed casino, hotel, golf course and resort project

Fire Service	$131,000
Sheriff	$600,000
Total Annual Costs	**$731,000**

Ft. Mojave Reservation (Proposed Development)

Sheriff $130,000

In addition, the County has noted concern regarding the proposal by the Timbasha Band of Shoshone Indians to build a casino near the City of Hesperia. The Sheriff's Department believes that this will significantly impact traffic and require additional Sheriff's personnel, which require funding in the amount of $600,000. This information is not included in the attached spreadsheet of survey results due to the fact that this Tribe is not located in San Bernardino County. CSAC believes that this Tribe is based in Inyo County.

Attached to this information please find background materials from the County regarding comments on the Tribal Environmental Study. The County also notes that the San Manuel Tribe has refused to provide the County with a copy of the Tribe's current environmental protection ordinance.

Memorandum of Understanding

Currently the County does not have any agreements with the Tribes in San Bernardino.

**Please note that San Bernardino County currently has a philosophical difference of opinion regarding the impacts of Indian Gaming on county services, and as such the numbers provided may be lower than other counties have experienced or documented.

County Impacts – San Diego County

Indian Tribes: Barona Reservation (Current Compact for Gaming)
Campo Reservation (Current Compact for Gaming)
Capitan Grande Reservation (Status Unknown)
Cuyapaipe Reservation/Ewiiaapaayp (Current Compact for Gaming, Non-Gaming)
Inaja-Cosmit Reservation (Status Unknown)
Jamul Indian Village (Current Compact for Gaming, Non-Gaming)
La Jolla Reservation (Current Compact for Gaming)
La Posata Reservation (Request for Compact)
Los Coyotes Reservation (Status Unknown)
Manzanita Reservation (Current Compact for Gaming, Non-Gaming)
Mesa Grande Reservation (Current Compact for Gaming, Non-Gaming)
Pala Reservation (Current Compact for Gaming)
Pauma and Yuima Reservation (Current Compact for Gaming)
Rincon Reservation (Current Compact for Gaming)
San Luis Rey Band of Mission Indians (Petitioning for Federal Recognition)
San Pasqual Reservation (Current Compact for Gaming)
Santa Ysabel Reservation (Request for Compact)
Sycuan Reservation (Current Compact for Gaming)
Viejas Reservation (Current Compact for Gaming)

Summary

San Diego County has nineteen Tribes in the County with eight casinos and one slot arcade currently in operation, which is the most for any county in the state. The County does have cooperative agreements with three Tribes in the county to pay for road impacts, and due to the large number of casinos, has prepared a comprehensive impact analysis. Besides the eight casinos currently in operation there are also three additional proposed casinos by the Cuyapaipe Reservation, Jamul Indian Village, and the Manzanita Reservation.

Impact Analysis

San Diego County has conducted a thorough impact analysis on all of the Tribes operating in the County and has specifically analyzed impacts to transportation and roads. The County has also noted on environmental concerns including air quality, pollution, multiple species conservation program, community characteristics, general plan, and water quality. The full impact analysis by San Diego County is attached in a separate binder.

Below please find the fiscal impacts as well as additional comments made by San Diego County on the impacts.

District Attorney

The fiscal impact on the judicial system, as it pertains to Tribal gaming in San Diego County, is significant, yet indefinable in cost. Currently there is no tracking system in place to determine the number of "casino related" cases being handled by the district attorney's office or the courts. Crimes related to the casinos extend beyond reservation boundaries and include various offenses. Robberies and burglaries committed to satisfy a gambling addiction can only be considered if the habits of the perpetrators are known or admitted. A recent murder/suicide at a local casino evidenced this fact, as several local robberies were attributed to the suspect. The cost of the hours spent investigating, reviewing and prosecuting casino related cases is not quantifiable under the present system.

The San Diego County District Attorney's Office employs a full time investigator as the "Tribal Gaming Liaison" and has done so for the past two years. The salary and benefits for this position is approximately $86,000. The District Attorney's Office has prosecuted and will continue prosecuting cases from the nine gaming facilities in the county. The fiscal impact on the judicial system will most likely increase as the number and size of existing and planned facilities increases.

Sheriff

Law enforcement has felt the impact of Tribal gaming in the northern and eastern geographic regions of the county. It is too early to attach specific costs at this time; any estimate would be inaccurate. Calls for service have increased and the need for criminal intelligence has increased. Two of the tribal governments have contracted with the Sheriff's department for law enforcement services: specifically one deputy sheriff is assigned to each of the tribal lands to enhance patrol coverage. This has increased law enforcement protection, decreased response time, and enhanced the relationship of the Sheriff's department with those tribes. The sheriff wants to replicate this relationship with the other gaming tribes. More information on this issue can be found in Chapter 5 (5.8) of the impact analysis.

Planning

One impact that is not discussed in the County's impact analysis relates to the General Fund impact of reviewing tribal projects, including environmental reports for gaming projects and fee-to-trust application. To date the Department of Planning and Land Use and Public Works have incurred General Fund costs totaling almost $77,000 and $100,000 respectively.

Memorandum of Understanding

San Diego County currently has three Cooperative Agreement (Memorandum of Understanding) with the Tribes in the County, as well as two pending agreements. Each of these agreements address transportation issues and provides for reimbursement of county expenses to repair the roads to the casinos. Attached please find fact sheets on the agreements in the background. The specific payments are as follows:

Pauma Band	$1,451,800
Rincon Band	$7,030,855
San Pasqual Band	$6,149,349

Total **$14,632,004**

The pending agreements are as follows:

- Pala Band has an MOU pending for $243,000.
- Barona Band has an agreement pending for $4,041,000.

County Impacts – Santa Barbara

Indian Tribes: Coastal Band of Chumas Indians (Petitioning for Federal Recognition)
Santa Ynez Reservation (Current Compact for Gaming)

Summary

Santa Barbara County currently has one operational casino, which opened in 1994 prior to a Tribal-State compact. The Tribe is operating 2000 slot machines under the current compact and is operating out of the original casino building and temporary tent facility. The Tribe is currently constructing an expanded casino facility, which includes a restaurant, parking garage, proposed hotel, and wastewater package treatment plant.

Impact Analysis

The County has conducted an impact analysis regarding the Chumash Casino and has identified a total impact of $7,876,275 for both capital improvements and annual costs to the County. Attached in the Background please find the analysis of the costs and a more specific breakdown of the costs. The specific impacts to the delivery of County services is as follows:

Transportation	$300,000
Transit	$390,000
Roads	$1,000,000
Law Enforcement	$130,000
Fire Service	$344,500
Housing	$5,190,000
Air Quality	$31,800
Outdoor Recreational	$489,975
Total for Capital and Annual	**$7,876,275**
Total Annual Costs Only	**$407,525**

Memorandum of Understanding

The County has a Memorandum of Understanding (MOU) with the Tribe, which provides $285,507 annually to fund one firefighter position, which was finalized in April 2002. Currently, Santa Barbara County and the Tribe are negotiating two cooperative agreements limited to the subject of access to the casino and reservation, and involving widening and realignment of an existing access road and construction of a bridge.

County Impacts – Yolo County

Indian Tribes: Rumsey Rancheria (Current Compact for Gaming)

Summary

Yolo County has one operational casino, which expanded substantially in 1992 and is proposing another expansion in 2002-2004. The County has an adopted Memorandum of Understanding with the Rumsey Rancheria, which is considered to be one of the most comprehensive of its kind in California.

Impact Analysis

The County has provided an internal cost analysis of Indian Gaming on the County. The County notes that the actual costs will be at least $5,270,000 per year, well in excess of the annual payment amounts received through the Memorandum of Understanding with the Tribe. The County indicates, for example, that more than 10% of the Public Defender caseload originates at the casino. Below please find the specific impacts to the County (also provided in Background section):

Law and Justice	$3,248,764
Land and Recreation	$102,850
Roads	$422,085
General Government	$322,881
Health and Human Services	$384,293
Other Departments	$789,860
Total Impact to County	**$5,270,733**

Memorandum of Understanding

Yolo County has a comprehensive Memorandum of Understanding with the Rumsey Rancheria, which provides annual payments starting at $3 million, and capped at $5 million in the year 2007 for off-site impacts of the casino. The off-site mitigation payments are to address the following: water resources, traffic, noise impacts, increased demand for emergency services, gambling addiction, planning, police, and affordable housing.

Besides the annual payments the Tribe is also required to pay approximately $3 million for various road improvements.

Other Conditions

- Provides for limitation on alcoholic beverage service on the casino.

- Limitation on future expansion of the hotel until January 2008, including provisions related to the proposed golf course.
- Provides that all non-trust lands contiguous to the casino be placed in agricultural conservation easements at no cost to the County.
- Provisions in the MOU for the operation of a diesel power plant by the Tribe.
- Tribe will provide water recycling and conservation program and other water quality measures.

~end~

TESTIMONY OF PRESIDENT EUGENE LITTLE COYOTE
NORTHERN CHEYENNE TRIBE OF TONGUE RIVER RESERVATION
ON OFF-RESERVATION GAMING PROCESS
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE
February 1, 2006

Thank you, Chairman McCain and members of the Indian Affairs Committee for the opportunity to provide testimony on off-reservation gaming and the process for applications. My name is Eugene Little Coyote and I am the President of the Northern Cheyenne Tribe. I present this testimony on behalf of our Tribe, located on and near the Tongue River Reservation (the original name of the Northern Cheyenne Reservation) in southeast Montana.

This testimony is strictly about application to the Secretary of the Interior for Indian Gaming Regulatory Act Section 20 two-part determinations. The tiny number of tribal casinos made possible by such a determination show that the Indian Gaming Regulatory Act works to limit gaming to sites on and near reservations. This process affords our Tribe the opportunity to develop our Tongue River Trust Lands Casino Project.

Our Tribe is not seeking to develop a business near a city. Our business development is focused entirely on our Reservation and putting our people to work. Perhaps some of you have been to this beautiful land in southeast Montana that our ancestors died for and that our people--serving faithfully in Iraq and Afghanistan--are today ready to die for.

Our Tribe has off-reservation trust lands located near the Northern Cheyenne Reservation on which we plan to locate a casino. The U.S. holds in trust for the Tribe 320 acres of trust land on the west bank of the Tongue River Reservoir within 20 miles of the southern boundary of the Reservation. The land was acquired in trust for economic development pursuant to the Act of Congress implementing the State of Montana-Northern Cheyenne Tribe Water Compact. Northern Cheyenne Indian Reserved Water Rights Settlement Act, Public Law No. 102-374. Thus, the trust acquisition was agreed to by the Governor of Montana and the Montana congressional delegation.

Most of you voted for the Settlement Act and thus for returning this land to our people. For this, we are very grateful.

The tribal trust land is wholly within Bighorn County, Montana. This county contains the western half of our Reservation. There are no cities or towns nearby. It is near the homesteads of tribal members filed and improved prior to establishment of the Tongue River Reservation in 1884, as a homeland for the Northern Cheyenne people.

The Tribe sought the land for tourism development. The U.S. acquired the land in trust for the Tribe in 1993, transferring it from the Bureau of Land Management. The Tribe

proposes to develop a small casino on the lands to serve the Tongue River Reservoir recreation market and the northern Wyoming gaming market. This project and every dollar it will provide is essential to maintaining tribal services to the people and for the diversity of economic development projects the Tribe is undertaking.

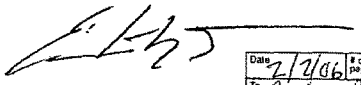
The Tribe has taken the following steps to develop the casino on the trust lands:

1. Secured the support of Bighorn County in May 2005.
2. Entered into a construction contract with Flintco in August 2005.
3. Submitted a Section 20 two-part determination request to the Northern Cheyenne Agency Superintendent on September 15, 2005 (to which the Regional Director responded on December 6).
4. Retained HKM Engineering, which conducted the geotechnical investigation of the site in October 2005.
5. Commenced Class III gaming compact negotiations with the Governor of Montana's Class III Gaming Compact Team on November 3, 2005.
6. Commenced the environmental review process with the BIA with a notice regarding the environmental assessment for the Section 20 determination published in local newspapers on December 7-11, 2005.
7. Started drafting of the Section 20 two-part determination response letter (to be submitted this month).
8. Started negotiations with the Bighorn County Sheriff for additional law enforcement at the site.
9. Negotiated a gaming management agreement with Full House Resorts, Inc., which we are about to submit to the National Indian Gaming Commission.

The Secretary of the Interior and the Governor of Montana will make the decision whether gaming on our unique trust lands is beneficial to our Tribe, struggling with 70% unemployment, and not detrimental to the surrounding community of the 100 coalminers and ranchers as well as the Crow Indian Reservation. The Secretary and Governor will have the able assistance of the BIA Office of Indian Gaming Management and the National Indian Gaming Commission. We trust them to make a well-informed and well-considered decision.

Our Tribe is engaged with the United States, the State of Montana, and Bighorn County in an open process for our casino development. The EA on our project will be published this quarter and public comment will be taken. We believe the IGRA Section 20 two-part determination process works very well. The Secretary has worked diligently to make sure the public has its say.

We see no reason to change the off-reservation gaming determination process and urge the Committee to support the good work of the Office of Indian Gaming and the National Indian Gaming Commission.



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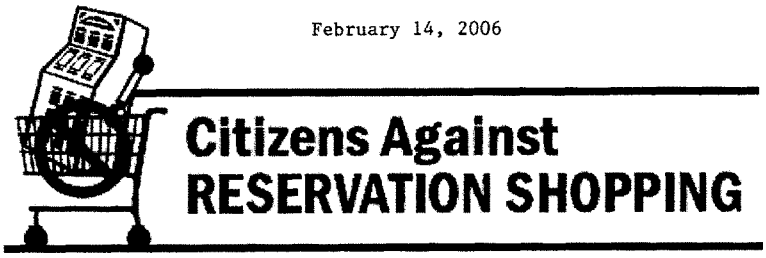
Fax Transmittal Memo

Date 2/2/06 # of pages ▶ 2	
To Richard Litsey	From M. D. Mason
Co./Dept. Sen. Baucus's Office	Co./Dept. N. Cheyenne Tribe
Phone #	Phone # (503) 280-6361
Fax # (202) 224-0515	Fax #

February 14, 2006



Testimony of Edward C. Lynch, Chair

Citizens Against Reservation Shopping

Regarding the Bureau of Indian Affairs Trust Land Acquisition Process and the Restored Lands Exception to the Two-Part Determination of Section 20

Before the

Senate Indian Affairs Committee

Mr. Chairman and members of the Committee, thank you for the opportunity to present this testimony on the important question of the rules and procedures used by the Bureau of Indian Affairs (BIA) to take land into trust for Indian tribes for gaming purposes. This testimony is submitted on behalf of Edward C. Lynch, Chair and founder of Citizens Against Reservation Shopping (CARS), a citizens' organization located in Clark County, Washington. CARS is concerned about the practice of

reservation shopping and is dedicated to keeping large-scale casino gambling out of southwestern Washington.

We are rapidly becoming familiar with the problems inherent in BIA's trust acquisition process, and through this testimony we request that the Committee undertake significant legislative measures to bring reform in this area. It is apparent from the day of hearings, which we attentively watched, that members of the Committee are beginning to understand these issues and wish to address them, but we would emphasize the importance of doing so as soon as possible, and not allowing cases under the current system to slip through.

Our specific concerns are the result of a request by the Cowlitz Tribe to take 157 acres of land located at LaCenter, Washington into trust for gaming purposes. This action would devastate our local economy, put existing businesses out of business, and cause serious damage to the character and environment of Clark County. The history of this trust request, and the manner in which it is currently being handled by BIA and the National Indian Gaming Commission (NIGC), demonstrate the serious problems with the federal law in this area.

The problems with trust land acquisitions can be traced to six primary factors.

- First, the pervasive influence of Indian gaming has created significant pressure to have land taken into trust to allow for the development of

Indian casinos. In addition, the success of many such casinos, especially on regulation-free and tax-exempt land, has attracted significant investments from non-Indian financial backers of casinos, or from tribes that have already attained great success through gaming operations. This infusion of capital has resulted in widespread efforts to take land into trust and made these federal decisions essentially franchising arrangements for casino gaming interests. This is specifically true in our situation as one already wealthy gaming tribe is bankrolling and taking a financial interest in another proposed gaming operation by a tribe a continent away.

- Second, the BIA rules that do exist in 25 C.F.R. Part 151 are so vague and weak that tribes can avoid full disclosure and either hide their true intent or change the purpose for the trust land after title has transferred to the United States. BIA has done little or nothing to resolve these ambiguities, so regional offices of the agency are largely free to implement the underlying law in a broad range of approaches.

- Third, there is often no relationship in BIA decisions between the true need by a tribe for taking land into trust and the BIA decision to grant such a request. Often, and unless significant public pressure is applied,

as in our case, gaming intended trust land requests are not initially identified for this purpose.

- Fourth, the exceptions to the prohibition on gaming on off-reservation land acquired into trust after 1988 are set forth in section 20 of the Indian Gaming Regulatory Act (IGRA). These exceptions are far too broad and ambiguous. The result is that tribes are facilitated in what has become well-known as reservation-shopping, and to do so with inadequate review.

- Fifth, neither BIA nor the NIGC have promulgated regulations governing section 20. As a result, there is no defined process for making section 20 findings or standards to apply to govern decisions. From the public perspective, there is not even any understanding as to which entity, BIA or NIGC, even has authority and responsibility for such standards and how the two agencies relate to one another on these determinations.

- Sixth, the BIA and NIGC have not defined their respective roles and, as a result, ill-advised decisions are being made on key issues. For example, although existing law appears quite clearly to require the Secretary to issue restored land determinations that serve as exceptions to section 20, the NIGC recently ruled, with no public process whatever,

that the LaCenter lands qualify for this status and did so in the context of an unrelated ruling on the Tribe's gaming ordinance. The result was an incorrect decision that lacked a public review process, despite its importance for our local community.

All of these problems are apparent in the efforts of the Cowlitz Tribe to have the LaCenter land taken into trust for gaming purposes, and to create a classic case of reservation shopping. This serves as the focal point for our testimony.

Background

The Tribe's Trust Land Request. The Cowlitz Tribe began the casino development process in 2002, when it applied to BIA for annexation of this land and failed to identify any proposed use of the parcel. Although it was clear that the Tribe had its mind made up to use this land for casino development, the Tribe said it had no plans to change the use of that land from its current agricultural purpose. The apparent reason for taking this position was the Tribe's desire to conceal its actual plans and avoid any federal gaming-related reviews or standards including the environmental review that would be associated with casino development. The BIA regional office in Portland was only too happy to go along with this request, and it proceeded to process the application on that basis, even though it had every reason, including public input, to understand that what was intended was gaming.

Fortunately, these concerns were heard at the policy level of the Department of the Interior, and the Tribe was required to indicate whether it would use the land for gaming purposes or not. Once again, however, the public was forced to confront a misleading representation by the Tribe. Rather than reveal its full plans, the Tribe asserted that the use of the land was "unclear", and undecided whether the land would be used for gaming. Over time, the tribal assertion evolved that, even if the land was subsequently used for gaming purposes, it would be for a relatively small-scale casino. The tribe took this position despite the close location of the land to the Portland market, which experts agree presents a huge target of "gaming opportunity" and the prospect for immense profits. Pursuant to BIA acceptance of this evolved representation, still well short of the truth, an environmental assessment (EA) was prepared and released for public review.

The Clark County MOU. While the Tribe was pursuing this small casino/EA approach, it entered into an agreement with Clark County for the purported purpose of addressing the impacts to local governments. The Clark County agreement received strong opposition from citizens throughout the region. Nevertheless, the County approved it on the assumption that the Tribe was only seeking to have the land placed into trust, not declared to be the Cowlitz Reservation.

The Initial Reservation Request. No sooner was the ink dry on the Clark County agreement than the Tribe filed with BIA a request to have the 157-acre parcel

declared its "initial reservation". In subsequent public meetings held throughout our region, tribal representatives made no secret of the specific reason they were pursuing initial reservation status. The Tribe's attorney said that it wanted to have the land established as an initial reservation specifically so it could avoid the requirements under section 20 of IGRA, which include consultation with local governments and a finding of no detriment to the surrounding community. One of the exceptions to section 20 is for the initial reservation of a new tribe. The Cowlitz lawyer explained the obvious truth that it was easier and quicker for a tribe to be able to develop a casino by avoiding section 20. Thus, the Tribe's own representative acknowledged that an effort was being made to skirt the very provision in IGRA, section 20, which was enacted to avoid reservation-shopping and protect local communities, and the state. While admission of this tactic to avoid the reasonable requirements for local consultation and state review were candid, they appeared to show no recognition that to local governments, the state and the public, these requirements were the very essence of a fair process.

To facilitate its effort to avoid section 20, the Tribe also has argued that the LaCenter lands are part of its historic territory. The Tribe repeatedly sets forth the views of its hired consultant, Dr. Steven Beckham, to support this argument. The Tribe is using this factual claim to support its initial reservation exemption from section 20, and possibly seek other exemptions from section 20 as well.

Dr. Beckham's view is in the minority, however, as both the Indian Claims Commission and the Bureau of Indian Affairs itself, through the tribal acknowledgment process, determined that the Clark County lands are not within this Tribe's territory. We will return to this issue further in this testimony.

The Decision to Prepare an EIS. Not surprisingly, the public did not accept the Tribe's claims in its EA that only a small-scale casino would be built on this site. The strong public opposition to the proposed Cowlitz casino, and the concern over the effect that development would have on the local community, led to overwhelming public opposition to the EA. The end result was a forced decision by BIA in the summer of 2004 to require an EIS for the Tribe's proposal. The Tribe then attempted to characterize this as a magnanimous and "voluntary decision" on its part. In reality, it was simply an example of federal law working as a result of public involvement to force the truth out. The Tribe then came forward and revealed its true plans for a mega-casino. It entered into a partnership with the wealthy Mohegan Tribe from Connecticut in an effort to develop a massive casino resort on the 157-acre parcel. Overall then, it had taken well over two years for the true purpose of the trust land request to be revealed.

We are now awaiting the release of a draft EIS. Once again, the process leaves much to be desired and suggests the intent to reach the predetermined result of approving the Tribe's LaCenter proposal. BIA appears to have delegated the EIS

preparation virtually wholesale to the Tribe. This is resulting in a singular focus on the LaCenter parcel, even though numerous alternatives exist that meet the Tribe's legitimate needs, make possible a very successful casino, and cause far less conflict and controversy. Despite this fact, BIA and the tribal consultants are simply ignoring these options. Lurking in the background is the fact that Mr. David Barnett of the Tribe, and the business entity established with the Mohegan Tribe, have real estate investments in the LaCenter parcel. More detailed information on the NEPA process will be forthcoming shortly.

The NIGC Restored Lands Opinion. The most recent example of the problems with the trust land and off-reservation gaming process is the result of yet another focused attempt by the Tribe to avoid the section 20 process. In this case, it is the effort to avoid the local government consultation process, two-part determination, and gubernatorial concurrence requirement of section 20 through the so-called "restored lands" exception. Once again, in the pursuit of this outcome, the same tribal tactics of seeking government decisions behind closed doors without public involvement are evident.

In this case, the Cowlitz Tribe applied for this exception from the NIGC in March 2005. The Tribe told no one, despite the fact that the question of the Tribe's historic relationship to these lands is the subject of strong public debate. Even more troubling is the fact that neither BIA nor the NIGC announced that this issue was

under review. In fact, Mr. George Skibine of BIA testified in July on the restored lands questions and did not mention the Cowlitz request among those under review.

To make matters worse, in August, 2005, the Tribe filed a gaming ordinance approval request with the NIGC. Since the Tribe is years away from opening a casino in any location, there was no apparent reason for doing so on this schedule other than the desire to force a favorable decision on the LaCenter parcel. The Tribe did this by including a site-specific provision in the gaming ordinance focused on the LaCenter land, thus pre-judging the site. By doing so, the Tribe sought to up the ante on its March 2005 restored land request, which had no timeframe, by slipping the question into the ordinance approval process, which was subject to a 90-day review. This ploy with NIGC compliance worked for the Tribe. Even though word about this tactic became public, purely by accident, in October, 2005, the wheels were in motion, and the NIGC approved the gaming ordinance and issued a restored lands decision in favor of the Tribe right on schedule on November 23, 2005. It reached this result on the most questionable of grounds, even acknowledging that the Tribe had only occasional contacts with these lands historically.

As problematic as the NIGC decision is on the merits, the process used to achieve it is inexcusable. The NIGC had many options for resolving the gaming ordinance request without reaching a secretive decision on the restored lands question with no public or State and local government involvement.

Today the Tribe is trumpeting the restored lands opinion as its "free pass" around the requirements of section 20. At the same time, there is a strong public and local government uproar over having been deprived of IGRA's substantive and procedural protections through a clandestine process. In addition to these procedural concerns and the deficiencies with the grounds for the NIGC decision, the public wants to know who makes a restored lands decision. When members of the Senate Indian Affairs Committee, in the recent hearings, asked: "why, after 17 years, are there no regulations?," they asked exactly the right question. A large part of the answer, we believe, is that BIA and NIGC disagree on who has the authority and responsibility for such regulations. At the minimum, there is great confusion. In our view, this is not a decision for the NIGC at all.

In 2001, Congress passed Public Law No. 107-63, which made it clear the Secretary, not the NIGC, was to determine the closely related question of what constitutes "reservation land" for IGRA purposes, including section 20. In the 2003 decision in *State of Oregon v. Norton*, the courts subsequently construed this law to mean that the Secretary, and not the NIGC, should rule on the restored lands question as well. Despite this ruling, neither the NIGC nor BIA have come forward to explain the government's view on who makes a restored lands decision, under what standards, and by what process, even though the Cowlitz Tribe continues to push forward with its plans to force a casino into a location where it is not wanted. The poor result, in

the La Center (Cowlitz) case, and others, is reservation-shopping for casino locations which takes place without the legitimate checks and balances of a fair public process with local government and state consultation.

The Process Today. More than four years after the Cowlitz Tribe began its trust acquisition strategy, the problems are only getting larger. Controversy and conflict is growing. The current version of the draft EIS reveals a singular and unlawful focus on the LaCenter parcel, and while the NIGC and BIA have failed to address fundamental questions about the decision-making process. To fill the void, the NIGC is taking actions that deprive the State, local governments and the public of their rights through a secretive and rushed process. All of these problems are building to a major confrontation, due primarily to the absence of procedures and standards that would ensure a fair and objective decision based upon the full exploration of alternatives. Simply put, good government is missing on this issue, and its absence is indicative of a large problem on a national-scale that requires sweeping reform. The Committee cannot hope to effectively address reservation-shopping unless it deals with situations like that created by the Cowlitz Tribe, and the BIA/NIGC actions on this gaming proposal.

Requested Action

This summary dramatically demonstrates the problems inherent in the current approach to federal decision-making for off-reservation casinos. It is deeply

troubling, as Committee members stated, that 17 years after the enactment of IGRA and with major controversies arising across the country, neither BIA nor the NIGC have developed regulations or standards for even the most fundamental decisions. It therefore must fall upon Congress to act. We commend this Committee for its strong and critical look at this process, and we ask you to take appropriate action to achieve the following:

1) Clarification that the Secretary, not the NIGC, makes restored lands and initial reservation decisions;

2) Procedural standards, including for administrative appeal, to involve the public and State/local government parties in those decisions;

3) Substantive standards to guide such decisions;

4) A moratorium on all initial reservation and restored lands determinations and exceptions to section 20 until these procedures and standards are in place and applied;

5) New trust land regulations under 25 C.F.R. Part 151 that ensure the public and all affected local governments have a right to participate and impose standards with clear limits on when land can be placed in trust, especially over local objection; and

6) Regulations to implement the section 20 process and guide decision-making under the two-part determination.

These are actions that require immediate attention, and we pledge our support to your efforts to achieve these important reforms. Thank you for considering this testimony.

STATEMENT
OF
GEORGE T. SKIBINE
ACTING DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS
FOR POLICY AND ECONOMIC DEVELOPMENT
DEPARTMENT OF THE INTERIOR
AT THE OVERSIGHT HEARING
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
CONCERNING OFF-RESERVATION GAMING:
THE PROCESS FOR CONSIDERING GAMING APPLICATIONS

February 1, 2006

Good morning, Mr. Chairman and Members of the Committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development at the Department of the Interior. I am pleased to be here today to discuss the role of the Department in the process for considering applications for off-reservation gaming.

When an Indian tribe decides that it wants to engage in gaming activities under the Indian Gaming Regulatory Act of 1988 (IGRA) on an off-reservation parcel of land, assuming that the parcel is not already into trust, it will have to submit an application to the appropriate regional office of the Bureau of Indian Affairs (BIA) to have the land taken into trust. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by Section 5 of the Indian Reorganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary applies the applicable criteria for trust acquisitions in our "151" regulations (25 CFR Part 151). However, when the acquisition is intended for gaming, consideration of the requirements of Section 20 of IGRA apply before the Indian tribe can engage in gaming on the trust parcel. Section 20 of IGRA does not provide authority to take land into trust for Indian tribes. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law.

For a discretionary land into trust acquisition the BIA regional office will process the tribe's application by complying with the various requirements of the "151" regulations, which includes consultation with State and local officials having regulatory jurisdiction over the land to be acquired, and compliance with the requirements of the National Environmental Policy Act (NEPA). The public has an opportunity to comment during the NEPA process, which includes a review of socioeconomic impacts such as housing, jobs, and the rate of population growth in the area. The regional office will also request from the BIA central office a determination whether the parcel will qualify for one or more of the statutory exceptions to the prohibition on gaming on "after-acquired"

lands contained in Section 20(a) of IGRA.

Section 20 provides that if lands are acquired in trust after October 17, 1988, the lands may not be used for gaming, unless one of the following statutory exceptions applies:

(1) the lands are located within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988;

(2) the tribe has no reservation on October 17, 1988, and "the lands are located...within the Indian tribe's last recognized reservation within the state or states where the tribe is presently located;"

(3) the "lands are taken into trust as part of: (i) the settlement of a land claim; (ii) the initial reservation of and Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition."

There is also a specific exception for lands taken into trust in Oklahoma for Oklahoma tribes. Tribes in Oklahoma may game on lands that are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or are contiguous to other land held in trust or restricted fee status for the tribe in Oklahoma.

An Indian tribe may also conduct gaming activities on after-acquired trust land (land taken into trust after 1988 that does not meet one of the above exceptions) if it meets the requirements of Section 20(b)(1)(A) of IGRA, the "two-part determination" exception. Under Section 20(b)(1)(A), gaming can occur on the land if the Secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly-acquired land will be in the best interest of the tribe and its members, and not detrimental to the surrounding community. The Governor of the state in which the gaming activities are to occur must concur with the Secretary's determination. Since 1988, state governors have concurred in only three positive two-part determinations for off-reservation gaming on trust lands: the Forest County Potawatomi gaming establishment in Milwaukee, Wisconsin; the Kalispel Tribe gaming establishment in Airway Heights, Washington; and the Keweenaw Bay Indian Community gaming establishment near Marquette, Michigan.

As a matter of practice, the decision of whether the parcel will be subject to the two-part determination in Section 20(b)(1)(A) is made at Central Office . The Department has developed criteria to determine whether a parcel of land will qualify under one of the various statutory exceptions in Section 20. For instance, to qualify under the "initial reservation" exception, the Department reviews the tribe's historical and cultural ties to the land. To qualify under the "restoration of land" exception, the Department requires that either the land is either made available to a restored tribe as part of its restoration legislation or that there exist substantial historical and modern connections to the land, as well as temporal indicia between the land and the restoration of

the tribe. The Department's definition of restored land has been guided by fairly recent federal court decisions in Michigan, California, and Oregon. Since 1988, the Secretary has approved 34 applications that have qualified under these various exceptions to the gaming prohibition contained in Section 20(a) of IGRA. I have attached to my testimony a document listing the various tribes that have qualified under the exceptions since October 17, 1988.

The BIA regional office will submit its recommendation on the tribe's land-into-trust application for gaming and gaming related purposes to the Central Office where it will be evaluated by the Office of Indian Gaming. That office will provide a final recommendation to the Assistant Secretary for Indian Affairs whom the Secretary has delegated the final decision-making authority for land acquisitions. If the proposed parcel is subject to the two-part determination in Section 20(b)(1)(A) of IGRA, the regional director's recommendation will also include proposed Findings of Fact relative to that determination. The Secretarial two-part determination will be made before the decision is made on whether to take the land into trust. If the Secretary agrees with a proposed positive two-part determination, she will ask the governor of the state where the proposed gaming establishment is to be located to concur in her determination. If the governor does not affirmatively concur in the determination, gaming cannot take place on the land.

The Department's process for reviewing these acquisitions, "Checklist for Gaming Acquisitions and IGRA Section 20 Determinations," is attached to my testimony. Finally, the Department is in the process of formulating regulations that implement Section 20 of IGRA. The Department intends to begin tribal consultation on this regulatory proposal before a proposed rule is published in the Federal Register.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.

APPROVED GAMING & GAMING RELATED ACQUISITIONS
SINCE ENACTMENT OF IGRA
OCTOBER 17, 1988

	TRIBE	CITY, COUNTY & STATE	ACRES	DATE APPROVED
1	**Grand Ronde Community** 25 U.S.C. 2719 (b)(1)(B)(iii)	Grand Ronde, Polk County, Oregon	5.55	03/05/90
2	***Forest County Potawatomi** 25 U.S.C. 2719 (b)(1)(A) – Off reservation - Governor's Concurrence 07/24/90	Milwaukee, Milwaukee County, Wisconsin	15.69	07/10/90
3	**Cherokee Nation** 25 U.S.C. 2719 (a)(2)(A)(i)	Catoosa, Rogers County, Oklahoma	15.66	09/24/93
4	**Tunica-Biloxi Tribe** 25 U.S.C. 2719 (a)(1)	Avoyelles Parish, Louisiana	21.05	11/15/93
5	**Cherokee Nation** 25 U.S.C. 2719 (a)(2)(A)(i)	Siloam Springs, Delaware County, Oklahoma	7.81	02/18/94
6	**Coushatta Tribe** 25 U.S.C. 2719 (a)(1)	Allen Parish, Louisiana	531.00	09/30/94
7	**Sisseton Wahpeton Sioux** 25 U.S.C. 2719 (a)(2)(B)	Richland County, North Dakota	143.13	09/30/94
8	**Siletz Tribe** 25 U.S.C. 2719 (b)(1)(B)(iii)	Lincoln City, Lincoln County, Oregon	10.99	12/05/94
9	**Coquille Tribe** 25 U.S.C. 2719 (b)(1)(B)(iii)	Coos Bay, Coos County, Oregon	20.0	02/01/95
10	**White Earth Chippewa** 25 U.S.C. 2719 (a)(1)	Mahnomen, Mahnomen County, Minnesota	61.73	08/14/95
11	**Mohegan Tribe** 25 U.S.C. 2719 (b)(1)(B)(ii)	New London, Montville County, Connecticut	240.00	09/28/95
12	**Wyandotte Tribe** 25 U.S.C. 2719 (a)(1)	Kansas City, Wyandotte County, Kansas	.52	06/06/96
13	**Saginaw Chippewa** 25 U.S.C. 2719 (a)(1)	Mt. Pleasant, Isabella County, Michigan	480.32	04/14/97
14	**Klamath Tribes** 25 U.S.C. 2719 (b)(1)(B)(iii)	Chiloquin, Klamath County, Oregon	42.31	05/14/97
15	***Kalispel Tribe** 25 U.S.C. 2719 (b)(1)(A) Governor's Concurrence 06/26/98	Airway Heights, Spokane County, Washington	40.06	08/19/97

APPROVED GAMING & GAMING RELATED ACQUISITIONS
SINCE ENACTMENT OF IGRA
OCTOBER 17, 1988

16	**Little River Band of Ottawa** 25 U.S.C. 2719 (b)(1)(B)(iii) Restored Tribe	Manistee, Manistee County, Michigan	152.80	09/24/98
17	**Fort Sill Apache** 25 U.S.C. 2719 (a)(2)(A)(i)	Lawton, Comanche County, Oklahoma	.53	03/11/99
18	**Little Traverse Bay Bands** 25 U.S.C. 2719 (b)(1)(B)(iii)	Petoskey, Emmett County, Michigan	5.0	08/27/99
19	***Keweenaw Bay Indian Community** 25 U.S.C. 2719 (b)(1)(A) Governor's Concurrence 11/07/00	Chocolay Township, Marquette County, Michigan	22.28	05/09/00
20	**Paskenta Band of Nomlaki Indians** 25 U.S.C. 2719 (b)(1)(B)(iii)	Corning, Tehema County, California	1898.16	11/30/00
21	**Lytton Band of Pomo Indians** 25 U.S.C. 2719 (b)(1)(B)(iii)	San Pablo, Contra Costa County, California	9.3	01/18/01
22	**Pokagon Band of Potawatomi** 25 U.S.C. 2719 (b)(1)(B)(iii)	New Buffalo, Berrien County, Michigan	675	01/19/01
23	**United Auburn Indian Community** 25 U.S.C. 2719 (b)(1)(B)(iii)	Placer County, California	49.21	02/05/02
24	**Nottawaseppi Huron Band of Potawatomi** 25 U.S.C. 2719 (b)(1)(B)(ii)	Battle Creek, Calhoun County, Michigan	78.26	07/31/02
25	****Seneca Nation** 25 U.S.C. 1774	Niagara Falls, Niagara County, New York	12.8	11/29/02
26	**Ponca Tribe** 25 U.S.C. 2719 (b)(1)(B)(iii)	Crofton, Knox County, Nebraska	3	12/20/02
27	****Elk Valley Rancheria** Gaming Related	Elk Valley Rancheria, Del Norte County, California	5.10	06/03/03
28	**Little Traverse Bay Bands** 25 U.S.C. 2719 (b)(1)(B)(iii)	Petoskey, Emmett County, Michigan	96.00	07/18/03
29	****Skokomish Indian Tribe** Gaming Related	Skokomish Reservation, Mason County, Washington	2.0	10/10/03

APPROVED GAMING & GAMING RELATED ACQUISITIONS
SINCE ENACTMENT OF IGRA
OCTOBER 17, 1988

30	**Skokomish Indian Tribe** 25 U.S.C. 2719 (a)(1)	Skokomish Reservation, Mason County, Washington	3.0	12/08/03
31	***Seneca Nation** 25 U.S.C. 1774 Gaming Related	Niagara Falls, Niagara County, New York	8.5	12/08/03
32	*** **Agua Caliente Band of Cahuilla Indians** Gaming Related	Palm Springs, Riverside County, California	1.71	04/21/04
33	**Suquamish Indian Tribe** 25 U.S.C. 2719 (a)(1)	Suquamish, Kitsap County, Washington	13.47	04/21/04
34	**Picayune Rancheria of Chukchansi Indians** 25 U.S.C. 2719 (a)(1)	Coursegold, Madera County, California	48.53	06/30/04
35	***Seneca Nation** 25 U.S.C. 1774 Gaming Related	Niagara Falls, Niagara County, New York	.40	07/21/04
36	***Seneca Nation** 25 U.S.C. 1774 Gaming Related	Niagara Falls, Niagara County, New York	2.15	11/5/04
37	**Match-E-Be-Nash-She-Wish Band (Gun Lake Tribe) of Pottawatomi Indians** 25 U.S.C. 2719 (b)(1)(B)(ii)	Wayland Township Allegan County Michigan	147.48	04/18/05
38	**Snoqualmie Indian Tribe** **25 U.S.C. 2719 (b)(1)(B)(ii)**	King County Washington	56	01/13/06

*** Gaming Related
** Seneca Nation Land Claims Settlement Act of 1990 (Land is held in restricted fee)
* "Off Reservation" acquisitions approved for gaming with Governor's concurrence.

CHECKLIST FOR GAMING ACQUISITIONS GAMING-RELATED ACQUISITIONS and IGRA SECTION 20 DETERMINATIONS

Office of Indian Gaming Management
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March 2005

CHECKLIST FOR GAMING and GAMING-RELATED ACQUISITIONS

The Office of Indian Gaming Management (OIGM) is responsible for Indian gaming functions and activities remaining with, or delegated to, the Secretary under the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. §§ 2701-2721. The OIGM is also responsible for the review of recommendations from Regional Offices regarding requests for the acquisition of land into trust for gaming and gaming-related purposes. This function includes acquisitions either for a new gaming facility, for the expansion of a present gaming facility, or for projects that are essential to the operation of a gaming facility, such as parking lots or the construction of a waste water treatment facility serving the gaming establishment. The following criteria should be used to determine whether the acquisition is gaming-related: (1) If the land and the improvements on the land are going to be used exclusively to support the gaming facility, the acquisition is gaming-related; (2) if the land and the improvements on the land are not used exclusively to support the gaming facility but the gaming facility cannot operate without it, the acquisition is gaming-related; and (3) if the land and the improvements are not used exclusively for the gaming facility and are not essential to its operation, but the gaming facility is merely sharing in infrastructure improvements, the acquisition is not gaming-related.

In order to assist you in preparing a complete land acquisition package for review and final action, the OIGM has prepared this checklist for your use. The checklist is designed to address the factors found in Title 25, Code of Federal Regulations (CFR), Part 151, the requirements of Section 20 of IGRA, and the environmental laws which most likely would be applicable. We also have included information on certain procedural steps that should be followed to assure that a complete file of the tribe's application, information, and supporting documentation is properly submitted to the Central Office. These procedural steps are:

A. All requests for the acquisition of land for gaming must be transmitted to OIGM regardless of whether the land is located on, contiguous to, or off the applicant's reservation. This directive applies to trust-to-trust, restricted-to- restricted/trust, and fee-to-trust land acquisitions. The authority to approve or disapprove land acquisitions for gaming and gaming-related purposes is vested with the Assistant Secretary - Indian Affairs (AS-IA); however, the authority to accept title in trust for BIA is vested with the Regional Director.

B. The acquisition package submitted to Central Office, OIGM must contain a complete file of information and documents which clearly indicates compliance with 25 CFR Part 151, IGRA, the National Environmental Policy Act (NEPA) and other applicable Federal laws, regulations, and Executive Orders. The Regional Office's transmittal memorandum must contain Proposed Findings of Fact and Conclusions relative to 25 CFR Part 151, Section 20 of IGRA, and NEPA, and any other information deemed appropriate by the Regional Director. Further, it must contain the Regional Director's recommendations for approval or disapproval of the acquisition. For ease in cross-referencing to specific findings or conclusions, the acquisition package should be organized with an index, and all exhibits should be tabbed and numbered. The initial request or application received from the tribe should be kept intact and tabbed as one exhibit. For example, responses to the BIA's request for input/comments should be kept intact and tabbed as a single exhibit, e.g. the 30-day notices to states, county, city, etc. All of these documents can be under one tab with each full document manually numbered for ease in citation and location. No additions or deletions should be made to the tribe's application package. Any additional information obtained by BIA offices to supplement or clarify the tribe's application should be maintained separately and should be identified in a manner that will enable the reader to readily make a determination as to which office obtained or prepared the additional information.

C. The Regional Director must independently analyze the factors, and make independent findings and recommendations even when the Tribe submitting the application has contracted the realty services program under Title I of the Indian Self-Determination and Education Assistance Act (ISDEA), or has entered into a self-governance compact pursuant to Title IV of the ISDEA.

D. When the acquisition is subject to Section 20 (b)(1)(A) of IGRA, 25 U.S.C. Sec. 2719(b)(1)(A), which requires consultation, a two-part Secretarial determination, and the concurrence of the Governor of the State, the Regional Director must recite separate proposed factual findings to support a determination by the Secretary that the gaming establishment on newly acquired lands is in the best interest of the tribe and its members and is not detrimental to the surrounding community. The specific factors and consideration for the Section 20 analysis are identified in Part 2 of this Checklist.

E. When the Regional Director believes that the acquisition satisfies one of the Section 20 exemptions other than (b)(1)(A), the transmittal memorandum from the Regional Director must so indicate and must include an analysis establishing that such an exemption exists, and include supporting documentation, i.e., an appropriate Solicitor's Office legal opinion, in the acquisition file.

F. The completed acquisition package must be reviewed by the appropriate Regional or Field Solicitor to ensure that all legal requirements have been adequately addressed.

G. The Regional Director's Memorandum must contain a statement certifying that the documents submitted for the acquisition are copies of the original documents.

PART 1 - LAND ACQUISITION - 25 CFR PART 151

I. 151.3 Land acquisition policy

☐ A. The Regional Director's Proposed Findings of Fact and Conclusions must include a statement and statutory citation to the specific act(s) of Congress authorizing the trust acquisition, e.g., Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465.

Additionally, the Regional Director's Proposed Findings of Fact and Conclusions must include a discussion of applicable provisions in the tribe's governing documents authorizing the tribe to take the requested action.

☐ B. The Regional Director must include a statement that indicates which circumstances listed in 25 CFR § 151.3(a) support the request for the trust acquisition.

II. 151.4 Acquisitions in trust of lands owned in fee by an Indian

☐ A. The trust acquisition package must include a discussion of the ownership status of the property, a legal land survey or other document that provides an accurate description of the property to be acquired, and a plat or map to show the distance and/or proximity of the property to the reservation, the reservation boundaries, or to trust lands, whichever is applicable (see also Part 1, Section VII, Paragraph A of this Checklist).

☐ B. The acquisition package must include a copy of the resolution of the appropriate governing body of the tribe authorizing the trust acquisition request and must include a copy or excerpt of the tribe's governing document, if any, which identifies the scope of authority for the tribe's actions. The resolution should include a request to take the land into trust, the exact legal description of the property, the location, the intended purpose, and a citation to the applicable portion of the tribe's governing document which permits the governing body to make the request. The legal description of the property must be identical throughout the acquisition package. Any discrepancies in the legal description should be noted and fully explained.

☐ C. The Regional Director must provide an assurance that the information provided pursuant to 25 CFR § 151.4 was reviewed and found to be sufficient. The Regional Director's assurance must include a brief summary of the tribe's history, organization, and governing practices to illustrate the tribe's operating standards. Legal issues must be reviewed by the appropriate Regional or Field Solicitor. A copy of the Solicitor's opinion or response must be included as part of the package.

III. 151.5 Trust acquisitions in Oklahoma under Section 5 of the Indian Reorganization Act

☐ A. When 25 CFR § 151.5 applies, the acquisition package must include all the information required under Part 1, Section II of this Checklist.

IV. 151.6 Exchanges

☐ A. When 25 CFR § 151.6 applies, the acquisition package must include all the information required under Part 1, Section II of this Checklist, in addition to information required in 25 CFR Part 152, if applicable.

V. 151.7 Acquisitions of fractional interests

☐ A. When 25 CFR § 151.7 applies, the acquisition package must include all the information required under Part 1, Section II of this Checklist.

VI. 151.8 Tribal consent for non-member acquisitions

☐ A. When 25 CFR § 151.8 applies, the acquisition package must include all the information required under Part 1, Section II of this Checklist.

☐ B. A copy of any written documentation, such as a letter or resolution, executed by the tribe proposing to acquire land on a reservation other than its own, to the tribe having jurisdiction over such reservation must be included as part of the package. This documentation should identify the property proposed for trust acquisition and the parties involved in the transaction.

☐ C. The acquisition package must also include a copy of the written consent of the tribe having jurisdiction over such reservation for the proposed acquisition. This documentation should also identify the property and the parties involved in the transaction.

VII. 151.9 Request for approval of acquisitions

☐ A. The information required under 25 CFR Part 151 should be organized to provide a complete picture of the tribe's request. The Tribes should be encouraged to submit their requests in a manner which will facilitate the analysis of the request. At the onset of a request, the tribe should be instructed on the nature of the required submissions which support the request. Documents received from the tribe should be kept intact. NO ADDITIONS OR DELETIONS SHOULD BE MADE TO THE TRIBE'S APPLICATION PACKAGE. ANY ADDITIONAL INFORMATION OBTAINED BY BIA OFFICES TO SUPPLEMENT OR CLARIFY THE TRIBE'S APPLICATION SHOULD BE MAINTAINED SEPARATELY AND IDENTIFIED IN A MANNER THAT WILL ENABLE THE READER TO READILY MAKE A DETERMINATION AS TO WHICH OFFICE OBTAINED OR PREPARED THE ADDITIONAL INFORMATION. Although there is no particular application format required, the organization of information should follow the following logical sequence: (1) The identification of the parties; (2) a citation of the statutory authority which authorizes the acquisition; (3) a statement justifying the need for the additional land [151.10(b)]; (4) a full and complete explanation of the intended purpose for the land [151.10(c)]; (5) a physical description of the location of the land; (6) present and past uses of the land; (7) proof of present ownership, or a description of those circumstances which will lead to tribal ownership; (8) a legal description supported by a survey or other document; (9) an indication of the location and proximity to the tribe's reservation, the reservation boundaries or to trust lands; (10) a plat/map indicating such location and proximity of the land to the reservation; and (11) the tribal resolution. The tribal resolution must include the information listed in Part 1, Section II, Paragraph B of this Checklist.

VIII. 151.10 On-reservation acquisitions

☐ A. The notification process will be conducted by letter inviting the state and local governments having regulatory jurisdiction over the land to be acquired to provide written comments on potential impacts (regulatory jurisdiction, real property taxes, and special assessments). The notification letters should include information on the location of the proposed gaming facility, the scope of gaming proposed, and other pertinent information which will assist the consulted officials should they wish to comment on the proposed acquisition.

☐ B. 151.10(a): The Regional Director must determine that there is statutory authority for the acquisition. A brief summary of the specific statute or act(s) of Congress should be provided along with an independent, factual analysis of the application of such statutory authority to the tribe's request. (See Part 1, Section I of this Checklist).

☐ C. 151.10(b): The Regional Director must conclude that the tribe has sufficiently justified the need for the additional land. The Regional Director's conclusion should be based on a factual finding which may be supported by independent information, or by information and evidence provided by the tribe. The tribe may justify its request by establishing that existing tribal land is inadequate for gaming because of size, location, and market conditions. In support of this contention the tribe may have developed feasibility or market study, or a business plan which the Regional Director

should independently review to determine whether it supports the tribe's assertions.

☐ D. 151.10(c): The Regional Director must conclude that the tribe has adequately described the intended purposes for the land.

E. 151.10(d) NOT APPLICABLE

☐ F. 151.10(e): The Regional Director must make a conclusive statement regarding the impact on the State and any political subdivisions expected to result from removing the land from the tax rolls. The Regional Director will come to a conclusion on the basis of information received from the state and local governments having regulatory jurisdiction over the land to be acquired, and other independent information. At the expiration of the required 30-day comment period for State and local governments, the appropriate BIA official will prepare a record that indicates the contacts made and the responses received, and that includes any other additional comments or information. The record will also include any objections made by the contacted governmental entities. The Regional Director must consider any and all objections, and must provide an analysis of the merits of specific objections. The Regional Director will include any information on the outcome of any objection referred to the tribe. Copies of the record on the 30-day notification process shall be included in the submission to the Central Office.

☐ G. 151.10(f): The Regional Director must include, in the same manner as described in Part 1, Section VIII, paragraph F of this Checklist, a conclusion regarding any jurisdictional problems and potential land use conflicts. The Regional Director's conclusion should be based on information received as a result of the BIA notification, on information obtained independently, or on information known about the jurisdictional issues inherent in the status of Indian lands. If jurisdictional problems or conflicts in land use have been identified, existing agreements between the tribe and local jurisdictions resolving these issues should be included in the acquisition package.

☐ H. 151.10(g): The Regional Director must include an independent assessment of the impact on the BIA should the land be acquired in trust. The Regional Director should consider the type of services required for the land, if any; the availability of staff to carry out the additional responsibilities; and such other considerations which may be relevant in making this assessment. In the assessment of the impact, an analysis is required of the intended and future uses of the property, and a statement should be written based on the analysis indicating the extent to which the BIA Agency and Regional offices will be impacted by the proposed trust acquisition. A fully documented assessment is needed to assess how the added responsibilities (i.e. leases, rentals, easements, emergencies, environmental concerns, roads, traffic, etc.) will affect the present BIA staff. To state merely that the BIA's only duty to the property will be routine or administrative is insufficient. If the applicant tribe has contracted the realty services program under Title I of the ISDEA, or has entered into a self-governance compact under Title IV of the ISDEA, the Regional Office should provide an analysis of the tribe's role in the supervision/administration of the land.

☐ I. 151.10(g): The acquisition package must include a pre-acquisition environmental site assessment, no matter whether the proposed acquisition is discretionary or non-discretionary, as required by 602 DM 2. This Department Manual release requires the assessments to be conducted or supervised by qualified individuals, as determined by the Bureau, and provides that assessments will generally be considered adequate for one year prior to the date of acquisition, with documented exceptions for real property located in adverse climatic or geographical areas.

With respect to discretionary acquisitions, the Regional Director must also comply with the requirements of NEPA and its implementing regulations. NEPA is codified at 42 U.S.C. §§ 4321-4347. The NEPA regulations promulgated by the Council on Environmental Quality (CEQ) are published at 40 CFR Parts 1500-1508. In addition, the Regional Director must comply with Departmental NEPA requirements in 516 DM 1-6, as well as the BIA-specific NEPA requirements in 516 DM 6, Appendix 4. The Bureau's NEPA Handbook is published in 30 BIAM Supplement 1. The *Checklist of Environmental Issues for NEPA Review of Proposed Gaming-Related Actions*

reproduced in Part 2 of this Checklist must be included with NEPA documents which are being submitted to the AS-IA for review. A more detailed description of the pertinent NEPA requirements is provided in Part 2, Section III of this Checklist.

IX. 151.11 Off reservation acquisitions

☐ A. When 25 CFR 151.11 applies, the acquisition package must include all the information required under Part I, Section VIII, of this Checklist.

☐ B. The greater the distance the acquired land is from the tribe's reservation will require that the Regional Director's analysis more fully justify the anticipated benefits to the tribe. The information obtained under Part 2, Section II(B) (best interests factors) of this Checklist may be considered, if the application requires submission of this information pursuant to Section 20 of the IGRA, in analyzing the tribe's application to determine if the acquisition sufficiently satisfies the anticipated benefit to the tribe. As the distance from the reservation increases, the greater the justification will have to be to support the additional benefits to the tribe.

☐ C. The Regional Director must review the tribe's comprehensive economic development plan required under 25 CFR § 151.11(c), which specifies the anticipated financial benefits associated with the acquisition.

X. 151.12 Action on requests

☐ A. The AS-IA will use the information provided by the tribe, Superintendent, and Regional Director to make a decision on the request. Therefore, the Regional Director must ensure that the acquisition package is complete in all respects to allow for a timely and informed decision. The package must include all documents, exhibits, and information relied on or provided in support of the proposed acquisition. Should the AS-IA decide to approve the tribe's application to acquire the land in trust for gaming, the Central Office will publish the required *Federal Register* notice.

XI. 151.13 Title Examination

☐ A. The acquisition package must include an *Abstract of Title* or *Commitment for Title Insurance Policy* covering the property to be acquired. The title evidence must be examined by the appropriate Regional or Field Solicitor who must prepare a preliminary title opinion to identify any liens, encumbrances or other legal infirmities which may exist. The accuracy of all legal descriptions must be verified and must match the legal descriptions of the property contained in other documents within the acquisition package prior to submission to the appropriate Regional or Field Solicitor. Copies of correspondence or documented contacts between the Regional Office and the Solicitor's Office must be included as part of the acquisition package. A draft of the instrument of conveyance must be prepared and provided to the Solicitor to ensure compliance with all legal requirements.

After an Abstract of Title has been submitted by the tribe for the title evidence, an appraisal of the property by the BIA is required. The appraisal is used to alert the appropriate Regional or Field Solicitor of the value of the property in the event that office does not have authority to examine title evidence on property exceeding the value of $100,000. The Department of Justice is authorized to examine an Abstract of Title on the property valued at $100,000 or more.

XII. 151.14 Formalization of acceptance

☐ A. The Regional Director will be notified in writing of the AS-IA's approval of the acquisition request and authorized to proceed with the formal acceptance of the land in trust subject to satisfactory completion of all title requirements, and following expiration of the 30-day period after publication of the *Federal Register* notice required under 25 CFR § 151.12. A copy of the final title opinion by the appropriate Regional or Field Solicitor, and a copy of the approved and recorded conveyance instrument must be provided to OIGM for inclusion as part of the file.

☐ B. The appropriate Regional or Field Solicitor's approval of the draft conveyance document must be obtained before a final instrument of conveyance is prepared and signed. A copy of the draft conveyance instrument should be included as part of the acquisition package.

☐ C. The approved instrument of conveyance must

be recorded in the appropriate BIA title office. When fee property is approved for trust, the approved instrument of conveyance to trust should also be recorded in the appropriate county office.

PART 2 - INDIAN GAMING REGULATORY ACT - 25 U.S.C. § 2719, SECTION 20

Section 20 of IGRA, 25 U.S.C. § 2719, governs the use of land acquired in trust when the intended use of the land is for gaming. Section 20 of IGRA prohibits gaming on lands acquired in trust after October 17, 1988, with certain exceptions.

The first section of this Part describes the exceptions to the gaming prohibition on lands acquired in trust after October 17, 1988. The second section of this Part describes the instances when the general prohibition on gaming on newly acquired lands will not apply to lands acquired in trust after October 17, 1988. The third section of this Part describes the responsibility of the BIA Regional Office regarding compliance with the requirements of NEPA. The fourth section of this part describes the preparation of the Section 20 documentation by the Regional Office for transmittal to Central Office.

All applications for the trust acquisition of land intended for gaming must be processed with Section 20 considerations in mind. Typically, the acquisition will be for the construction and operation of a gaming facility. There will be projects however, which on first impression may not readily appear to be intended for gaming. For instance, if a tribe intends to expand an existing gaming facility through the addition of a hotel with additional gaming space thereon, the acquisition should be deemed to be for gaming. However, if a tribe intends to expand parking facilities for an existing gaming establishment, the acquisition should not be deemed to be for gaming because there is no gaming conducted in the parking lot. Although an acquisition for the expansion of parking facilities would not be subject to the two-part determination in 25 U.S.C. § 2719(b)(1)(A), the acquisition is still subject to approval by the AS-IA, as stated in PART ONE, above because it is gaming-related. A tribe's contention that gaming on newly acquired lands is not prohibited because one or more exceptions apply will require a conclusive factual and legal finding that the particular exception does apply to the trust acquisition.

I. Section 20(a), 25 U.S.C. § 2719(a)

This section of IGRA prohibits gaming on land acquired by the Secretary in trust for an Indian tribe after October 17, 1988, UNLESS one of the following exceptions apply:

☐ **A. Section 20(a)(1): The land to be acquired qualifies as either:**

- ☐ land that is located within the boundaries of the tribe's reservation as the reservation existed on October 17, 1988, OR
- ☐ land that is contiguous to the boundaries of the tribe's reservation as the reservation existed on October 17, 1988. Include documentation establishing that the land is contiguous and the appropriate Field or Regional Solicitor's concurrence with this determination.

☐ **B. Section 20 (a)(2)(A): The tribe had no reservation on October 17, 1988, AND the land is located in Oklahoma, AND:**

- ☐ the land to be acquired is within the boundaries of the Indian tribe's former reservation as defined by the Secretary, (2)(A)(i). Include an Office of the Solicitor's opinion that the land is within the tribe's former reservation, OR
- ☐ the land to be acquired is contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma, (2)(A)(ii). Include documentation establishing that the land is contiguous and the appropriate Field or Regional Solicitor's concurrence with this determination.

When the application indicates that the proposed acquisition of land in Oklahoma is located in the Indian tribe's "former reservation," the Regional Director must provide a legal opinion from the Office of the Solicitor that the land qualifies as "former reservation lands" and should be treated as such for the purposes of IGRA.

When the application indicates that the proposed acquisition is contiguous to other trust land, or to land held in restricted status by the United States for the Oklahoma tribe, the acquisition package must include documentation of the trust or restricted status of the land which is contiguous to the proposed acquisition. A plat or map showing the contiguous status of the respective parcels of land should be included in the acquisition package. The Regional Director's findings should include all legal descriptions of the lands (lengthy descriptions can be noted as attachments, exhibits, etc.), references to significant dates such as the acquisition date and

approval date of trust status. Any and all facts, historical and present, which will establish the finding that the proposed acquisition is contiguous should be discussed and included in the Regional Director's findings. The appropriate Regional or Field Solicitor's concurrence that the land is contiguous must be included.

☐ **C. Section 20 (a)(2)(B): The tribe had no reservation on October 17, 1988, AND the land is located in a State other than Oklahoma AND:**

☐ such land is within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

When the application indicates that the proposed acquisition is located within the Indian tribe's "last recognized reservation," the Regional Director must provide documentation that the proposed acquisition is in the tribe's last recognized reservation. The Regional Director's analysis of this issue must include documented information relating the history of the tribe to show that the tribe is presently located in the state in which the land proposed for trust acquisition is located. A legal opinion from the Office of the Solicitor addressing this issue must be included.

II. Section 20(b)(1), 25 U.S.C. § 2719(b)(1)

This section provides that the general prohibition on gaming on newly acquired lands will not apply under several circumstances. Because the circumstances numbered (b)(1)(B) are not frequently presented, they are discussed before (b)(1)(A).

☐ **A. Section 20 (b)(1)(B): Gaming can be conducted on newly acquired land if the land(s) are taken in trust as part of:**

☐ a settlement of a land claim, (b)(1)(B)(i); OR

☐ the initial reservation of a newly acknowledged Indian tribe given Federal recognition under the Federal acknowledgment process, (b)(1)(B)(ii); OR

☐ the restoration of lands for an Indian tribe restored to Federal recognition, (b)(1)(B)(iii).

When the application indicates that the proposed acquisition falls within one of these exceptions, the Regional Director must provide documentation that the particular exception is applicable to the case. Copies of the enabling acts or legislation such as the settlement act, the restoration act, the reservation plan, the final determination of federal recognition and other documentary evidence relating to the tribe's history and existence must be included as part of the acquisition package. A legal opinion from the Office of the Solicitor concluding that the proposed acquisition comes within one of the above exceptions must be included.

☐ **B. Section 20(b)(1)(A): Gaming can be conducted on newly acquired land if the Secretary:**

☐ Consults with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, **and**

☐ Issues a two-part determination: that the gaming establishment on newly acquired lands (1) will be in the best interest of the Indian tribe and its members, and, (2) will not be detrimental to the surrounding community, **and**

☐ Obtains the concurrence of the Governor of the State in which the gaming activity is to be conducted in the Secretary's two-part determination.

The BIA has been delegated responsibility to conduct the consultation on behalf of the Secretary. The consultation process must be completed by the Regional Director at the Regional Office level. Consultation will be conducted by letter inviting the applicant tribe and appropriate state (including the Governor), local and other nearby tribal officials to comment on the proposed acquisition by addressing questions/issues relating to the two-part determination. The consultation letter should include pertinent information regarding the proposed trust acquisition for gaming including information on the location of the proposed gaming facility, the scope of gaming proposed and other information which will assist the consulted officials to comment on the proposed acquisition. A consultation letter should always be sent to the Governor of the State in which the gaming activity is to be located.

☐ Appropriate state and local officials include the governor of the state in which the land is located and state and appropriate officials of units of local governments located within ten (10) miles of the site of the proposed gaming establishment.

☐ Nearby tribal officials include the tribal governing bodies of all tribes with Indian lands located within 50 miles of the site of the proposed trust acquisition.

The Regional Director may decide that broader consultation is required, or that another method of consultation is necessary in addition to the consultation conducted by letter. When an additional method is used, the Regional Director must fully describe the process and the outcome or results, and provide verification of the use of the process. For example, if public hearings or meetings were held copies of the hearing transcripts, minutes or videotapes must be provided as part of the file. Newspaper articles or other written verification of the public's response to the proposed acquisition should also be included to illustrate public sentiment. Sample letters are attached for your information. Note that two letters are used - one for the applicant tribe (13 factors); and one for the appropriate State, and local officials, including officials of other nearby Indian tribes (6 factors). It is recommended that the letters be adjusted to reflect the facts of the transaction being processed. Also, it is very important that this process be differentiated from the Part 151 notification process which requires the 30-day notice for determination of taxation, special assessments, services, zoning, etc. (151.10(e)).

The Regional Director should provide a minimum of 30 days for the consulted officials to comment and respond to the consultation letter. In determining the proper length of the consultation period, the Regional Director should take into consideration the number of parties contacted, the scope and magnitude of the proposed gaming project, the preliminary indications of public sentiment, support, opposition, the potential impact on other gaming operations and such other factors which likely will be issues of concern to the consulted parties. Additional time may be granted upon written request; however, the request should provide a good reason for the additional time.

- ☐ The consultation letters to the applicant tribe and to the appropriate state, local and nearby tribal officials must request specific information useful in making the two-part determination. The responses provided, whether they oppose or support the proposed acquisition, should be supported by factual data and documentary information justifying the position taken. To assist the Secretary in determining whether the gaming establishment on newly acquired land will be in the best interest of the tribe and its members, the applicant tribe should be requested to address items such as the following:

  1. Projections of income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe prepared in accordance with Generally Accepted Accounting Principles and National Indian Gaming Commission standards. There should be sufficient detail in expenses and assumptions to allow evaluation of the accuracy and reasonableness of the projections. Projections should cover at least the term of any financing or management agreement, but not less than three years.

  2. Projected tribal employment, job training, and career development, including the basis for projecting an increase in tribal employment considering the off-reservation location of the facility, and the impact on the tribe if tribal members leave to take jobs off-reservation.

  3. Projected benefits to the tribe from tourism and basis for the projection.

  4. Projected benefits to the tribe and its members from the proposed uses of the increased tribal income.

  5. Projected benefits to the relationship between the tribe and the surrounding community.

  6. Possible adverse impacts on the tribe and plans for dealing with those impacts.

  7. Any other information which may provide a basis for a Secretarial determination that the gaming establishment is in the best interest of the tribe and its members, including copies of any consulting agreements, financial agreements, and other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming facility, or the acquisition of the land where the facility will be located.

- ☐ To assist the Secretary in determining whether the gaming establishment on newly acquired land will not be detrimental to the surrounding community, the officials consulted and the applicant tribe should be requested to address items such as the following:

  1. Evidence of environmental impacts and plans for mitigating adverse impacts.

  2. Reasonably anticipated impact on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

3. Impact on the economic development, income, and employment of the surrounding community.

4. Costs of impacts to the surrounding community and sources of revenue to accommodate them.

5. Proposed programs, if any, for compulsive gamblers and the source of funding.

6. Any other information which may provide a basis for a Secretarial determination that the gaming establishment is not detrimental to the surrounding community.

Consulted officials should be advised that the fact that an official does not have extensive information or documented proof on the items listed above should not prevent the consulted official from addressing the items to the extent possible.

Because the impacts of a gaming facility established on newly acquired land will be difficult to quantify in concrete or tangible terms, the officials consulted should also be invited to address such additional concerns or factors which they believe more fully demonstrate the actual or potential impact of the proposed gaming facility. The consulted officials should not be limited to the listed items.

III. Guidance for preparing NEPA documents for proposed gaming-related actions

The following information provides general guidelines for compliance with NEPA in cases involving gaming-related Federal actions. The Regional Director must comply with the requirements of NEPA when making recommendations pursuant to the two-part determination in Section 20(b)(1)(A) of the IGRA, even when this determination is made for lands already held in trust for an Indian tribe.

NEPA is codified in 42 U.S.C. §§ 4321-4347. Section 102 of NEPA, 42 U.S.C. § 4332, requires all Federal Agencies to include in every recommendation or report on proposals for major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on: (1) the environmental impact of the proposed action, (2) any adverse environmental effects which cannot be avoided should the proposal be implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

In 1978, the Council on Environmental Quality (CEQ) promulgated regulations implementing NEPA in 40 CFR Parts 1500-1508. These regulations, which are binding on all Federal agencies, address the procedural requirements of NEPA and the proper methods for the administration of the NEPA process. Further guidance on NEPA compliance can be found in Department of the Interior Manual, Part 516. Departmental Manual 516 DM 6, Appendix 4 (augmented by a *Federal Register* Notice of July 7, 1995) addresses BIA's NEPA policy and procedures. The BIA's NEPA Handbook is published in 30 BIAM Supplement 1.

The law and regulations defining the parameters of NEPA are well-defined and explicit. The implementing regulations for NEPA require the use of an interdisciplinary approach, consultation with all interested parties, and a speedy commencement of the process (40 CFR § 1501.2). The NEPA regulations also require that the paperwork be concisely written (40 CFR § 1500.4), that the entire process be completed without delay (40 CFR § 1500.5), and that consideration of NEPA occur early in the planning process (40 CFR §§ 1501.1 and 1501.2). NEPA documents must be supported by evidence which is adequate to show that the agency in question has made sufficient environmental analyses (40 CFR § 1500.2(b)). The lead agency may, if it wishes, set specified page limits and time limits for NEPA documents (40 CFR § 1501.8); the BIA has so far not chosen to set such limits.

Under the NEPA process there are several levels of analysis that may be applied to a particular Federal action. The level which will eventually be chosen for the analysis is generally dependent upon whether or not an undertaking could significantly affect the environment. The basic levels are: a categorical exclusion determination (CX), an environmental assessment (EA), and an environmental impact statement (EIS).

- ☐ A Federal action may be categorically excluded from a detailed environmental analysis if it meets certain criteria, criteria which a Federal agency has previously determined would have no significant environmental impact. A number of agencies, including the BIA, have developed lists of actions which are normally categorically excluded from environmental evaluation under the NEPA regulations. See 516 DM 6 Appendix 4.

- ☐ The next level of analysis, the EA, is used to determine whether or not a Federal action would significantly affect the environment (for the

definition of "significantly" see 40 CFR § 1508.27). If it would not, the agency can then issue a Finding of No Significant Impact (FONSI). The EA is described in 40 CFR § 1508.9. An EA usually contains the following information: the need for the proposed action; the alternatives to the proposed action (always including the no-action alternative); the environmental impacts of the proposed action and the alternatives; and a listing of the agencies and persons consulted.

- ☐ If the EA determines that the environmental consequences of a proposed Federal undertaking may be significant, an EIS is prepared. The EIS, the most comprehensive level of analysis, is described in 40 CFR § 1502. Proposals for large, and/or potentially controversial gaming establishments should require the preparation of an EIS, especially if mitigation measures are required to reduce significant impacts. The EIS should discuss the purpose of, and need for, the action; the alternatives; the affected environment; the environmental consequences of the proposed action; mitigation measures; lists of preparers, agencies, organizations and persons to whom the statement is sent; an index; and an appendix (if any). It is also a good practice to include in a NEPA document a large-scale map with a legend, showing the proposed site in detail. A smaller-scale map with a legend, showing the site in relation to the surrounding features and areas is also a desirable feature of a NEPA document.

Following is a *Checklist of Environmental Issues for NEPA Review of Proposed Gaming-related Actions.* The Regional Director must include this *Checklist* with NEPA documents which are being submitted to the AS-IA for review. Diskette copies of the *Checklist* are available from the OIGM upon request.

OFFICE OF INDIAN GAMING MANAGEMENT

Checklist of Environmental Issues for NEPA Review of Proposed Gaming-related Actions

Title of NEPA Document:_____ Regional Office:_____

NEPA Document Number:_____ Case File Number:_____ Date:_____

Print Name & Title of Lead Area Preparer/Reviewer:_____

Common Environmental Issues	Addressed in Document?		Significant Impact?♣		Signature of BIA Field Specialist	Date
	Page(s)	No	Yes	No		
Air Quality (40 CFR 50-85, 29 CFR 1910.134(d), etc.)♥						
Archaeological, Historical & Cultural (36 CFR 800)♥						
Biota & Threatened & Endangered Species (50 CFR)♥						
Coastal Zone Issues (15 CFR 930) (♥ if applicable)						
Construction, Demolition, Landscaping & Reclamation						
Crime Potential, Protection and Prevention						
Current, Past and Future Cumulative Impacts ♣♥						
Demographic Trends (♥ if alterations will be notable)						
Energy (electrical, fuel, etc.) Resource Use & Changes ♥						
Fire Potential, Protection and Prevention						
Floodplain, River, Lake, Wetland & Riparian Areas ♥						
Forests, Forestry Resources and Logging						
Geology, Seismic and Mining (♥ if a hazard is present)						
Hazardous Substances and Wastes (40 CFR 260-373)♥						
Health and Safety: OSHA (29 CFR 1900-1999), etc.						
Indian Religious Issues (AIRFA: 25 CFR 211.7, etc.)♥						
Land-use Plans (40 CFR 1508.18(b) and 25 CFR 151)						
Noise (29 CFR 1910.95 & 1926.52, 40 CFR 205, etc.)						
Non-hazardous Wastes (solid, liquid or confined gas)♥						
Paleontological Resources						
Prime and Unique Farm Lands (7 CFR 658.3-5)♥						
Protected, Sensitive and Special-management Areas ♥						
Rangelands, Range Resources and Range Activities						
Recreational/Subsistence Hunting, Fishing & Gathering						
Releases (40 CFR 112-117, 40 CFR 300-373, etc.)♥						
Socioeconomic Issues (tribe & other affected parties)♥						
Stormwater Discharges (40 CFR 122.26)♥						
Utilities Issues and Changes						
Vehicular and Pedestrian Traffic Issues and Changes ♥						
Visual Resources (light pollution, views, aesthetics, etc.)						
Wastewater Treatment & Disposal (40 CFR 122-129)♥						
Water Quality (surface, ground and drinking water)♥						
Water Quantities Needed and/or Affected ♥						
Other (specify)						
Other (specify)						

♥ Indicates those issues, at a minimum, which must be addressed in all EAs and EISes. Other issues must be addressed if they would be affected.

♣ "Significance" is defined in 40 CFR 1508.27. An EA or an EIS must show an assessment of the degree of significance of any expected impact -- individual, cumulative, direct, indirect, beneficial, adverse, present, reasonably-foreseeable-future, residual and/or synergistic -- of the proposed action. See 42 USC 7609; 40 CFR 1501.2(a and b), 1502.16, and 1508.8; and 516 DM 5.3(B). "Cumulative impact" is defined in 40 CFR 1508.7.

IV. Preparation of Section 20 documentation by Region

This section describes the duties of the BIA Region Office after completion of the Section 20 requirements for the proposed acquisition:

- ☐ Upon completion of the consultation process, (i.e. receipt of responses, expiration of allowed response time), the Regional Director will review and prepare a summary of the comments and responses received from the consulted officials. When a response raises an issue with actual or potential negative implications which may affect a favorable two-part determination, the Regional Director will analyze the issue and determine what action may be appropriate. The Regional Director should request the applicant tribe to make an effort to resolve the issue. The tribe should be given 30 days to resolve the issue. Additional time may be granted upon written request; however, the requester must justify the need for the additional time. The Regional Director should also advise the tribe that failure or reluctance to respond will result in the Regional Director making conclusive findings on the issue without input from the tribe.

- ☐ Upon completion of all actions or activities relating to the proposed acquisition, including an independent analysis of all the information and factual evidence provided by the tribe and the parties consulted, the Regional Director must prepare Proposed Findings of Fact addressing the two-part determination and the items of information relating to such a determination. The proposed findings made and conclusions reached must be supported by the facts, supporting exhibits or other documentation.

The Regional Director's Proposed Findings of Fact should include an analysis by program officers (i.e. social services, law enforcement, finance, environmental and tribal operations), to ensure that aspects of those program areas have been adequately addressed by the tribe's application. For example, suppose that the tribe had indicated that in furtherance of its relationship with the surrounding community, the tribe and the local governments will enter into mutual-aid or crossdeputization agreements to facilitate better police services. Clearly, the law enforcement staff would provide a valuable analysis of the agreements and the merits of the proposal.

The Regional Director's Proposed Findings of Fact should also include an analysis of all agreements relied on to arrive at conclusions on the two part determination. For example, if the management agreement is the document used to figure projections of income to the tribe, the Regional Director's Proposed Findings of Fact must include an analysis and conclusion regarding the validity of the finding.

To assure that all important documents and issues are received and adequately reviewed and considered, the acquisition package should be organized in such a manner to allow easy access for review. The information and exhibits should be tabbed and indexed for easy reference. For purposes of organization, the Regional Director's factual findings relative to the two-part determination should be placed under the topical heading identified for each of the two-parts. For example, the "Best Interest of the Tribe" category should serve as a topical heading, and be followed by facts, findings and conclusions on each factor listed under that category.

STC101
Stop the Casino 101 Coalition
Representing the People of Marin County & Sonoma County, California
www.stopthecasino101.com

February 1, 2006

The Honorable Arnold Schwarzenegger
Governor of the State of California
State Capitol Building
Sacramento, CA 95814

The Honorable Bill Lockyer
Attorney General for the State of California
1300 I Street, Suite 1740
Sacramento, CA 94244

Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

re: State sovereignty/Federated Indians of Graton Rancheria

Ladies and Gentlemen:

Stop the Casino 101 Coalition (STC101) is a multi-cultural, multi-ethnic, non-partisan, secular organization representing thousands of Marin County and Sonoma County residents in the fight to stop a casino proposed for the City of Rohnert Park by the Federated Indians of Graton Rancheria (FIGR) . We are writing to express our support for and endorsement of, the theories laid out in the January 19, 2006 letter signed by Alan Titus, Fred Jones, and Barb Lindsay, regarding the Lytton San Pablo Casino, key components of which have been previously asserted in the August 26, 2005, letter from the Office of the Governor[1] to James J. Fletcher of the Bureau of Indian Affairs regarding the Chumash Indians in Santa Ynez.

Sonoma County is facing the same problem with regard to the illegal assertion of tribal sovereignty over California's soverign territory, specifically, that proposed by the FIGR. We believe that the salient points in the Titus/Jones/Lindsay letter apply, in almost every instance, to the FIGR . STC101 strongly believes that attempts by the Lyttons, the FIGR and other of California's Rancherias to gain sovereignty over any portion of the State violates California's

[1] *"Notice of Non-Gaming Land Acquisition (5.68 acres) Santa Ynez Band of Mission Indians", August 26, 2005, Peter Siggins, Author*

sovereignty, and presents a clear threat to the health, safety and well-being of the people of California.

Like the Chumash mentioned in Mr. Siggins letter[2], the designation of "Coast Miwok" was given to a general population group of "several dozen bands of Indians" by anthropologists and linguists in the early 20th century. According to BIA documents going back almost 100 years, the so-called "Graton Rancheria" or "Sebastopol Rancheria" was established for the benefit of "Marshall and Sebastopol bands of homeless Indians" in 1921.

The record shows that the several individuals who lived on "Graton" or "Sebastopol" rancheria in the fifty-five years it existed never had a tribal organization or governmental body of any kind, nor are there any assertions of same in the record. In fact, according to BIA records, when tribes were voting on the Indian Reorganization Act (IRA) of 1936, Sacramento Indian Agency Superintendent Roy Nash wrote to Washington to advise them that there were no Indians living on the "Sebastopol" (Graton) rancheria, and thus, no one to vote on the Act. [3] There was never any vote by "Graton" rancheria to organize under the IRA of 1936, and the official IRA voting records from that period list no Coast Miwok, Graton or Sebastopol tribes. [4] In his 1952 field notes made upon a visit to the rancheria, Agency representative Leonard Hill reiterates that, stating, "This rancheria is not organized under IRA."[5] A 1958 Senate Report, under "Graton", also states "The group is not organized, either formally or informally."

By 1937, there was still no one - Indians or non-Indians - living on the property. In a letter dated June 9, 1937, from Sacramento Indian Agency Superintendent Roy Nash to the Commissioner of Indian Affairs in Washington, Mr. Nash states, "The purchase was intended 'for use and occupancy by the Marshall and Sebastopol Bands of homeless California Indians', but said bands never occupied the tract, nor has any Indian ever lived on the tract from date of purchase up to now."[6] In fact, the records seem to indicate that no one may have been assigned land on the rancheria until the early 1940's; there is no record of any kind for the period from 1937 to 1945, at which time a Thomas Pete, identified as a Pomo Indian in later records, had gained permission for his mother Nora Sears and his step-father Andrew Sears, to live on the land, and an application has been made for Mrs. Laura Faber by her son, Arthur.[7]

At its peak in 1952, the property had a "House occupied by Andrew Sears... (and Fred Everill)", a "tent occupied by Frank Truvido....", three "small tent houses constructed by Arthur Faber for his mother...." which according to Mrs. Faber had been unoccupied since 1950 , and an "incomplete house occupied by Lawrence Bellman...." [8].

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[2] *Page 5, Para. 1* of *"Notice of Non-Gaming Land Acquisition (5.68 acres) Santa Ynez Band of Mission Indians", August 26, 2005, Peter Siggins, Author*

[3] *Letter from Roy Nash, Superintendent, Sacramento Indian Agency to the Commissioner of Indian Affairs, dated April 17, 1936.*

[4] *Document entitled "Tribal Organization-California Tribes", 1936, showing IRA votes of all CA tribes voting*

[5] *Field notes of Leonard Hill, Agency representative, dated August 21, 1952*

[6] *Letter from Roy Nash, Superintendent, Sacramento Indian Agency to the Commissioner of Indian Affairs, dated June 9, 1937*

[7] *Letter from John G. Rockwell, Superintendent, Sacramento Indian Agency, to Mr. Arthur Ray Faber of Upper Lake, dated November 20, 1945*

[8] *Field notes of , dated August 21, 1952*

By 1954, the year the Eisenhower administration began to terminate forty-one small California land holdings, the records show that the land was occupied by three assignees: Frank Truvido, Fred Everill (a Karok Indian from Siskiyou County, where the Karoks still have a reservation), and Andrew Sears.[9] A fourth assignee, Lawrence Bellman, was by that time living in Inverness, and had not lived on the rancheria for over a year.[10] A Frank and Carrie Drake also lived in a cabin, but had "no approved assignment".[11]

In 1959, official distributees Frank Truvido, Fred Everill and Andrew Sears, voted 3-0 in favor of termination of the "Graton" rancheria. The referendum dated September 17, 1959, shows each man's signature, as do the individual ballots. A very pleasant hand-written note was sent by Frank Truvido to a Mr. Lowe in the Sacramento office of the BIA, which the BIA stamped as "RECEIVED Nov 20 1959 Sacramento" . In that note, the work of any obviously intelligent, individual with a good level of education, Mr. Truvido writes:

> "Graton Rancheria
> 10091 Occidental Road
> Sebastopol Calif.
>
> Mr. Lowe. Dear Sir
> I have written Mr. Scudder that we are in favor of the
> Termination Bill, and we a hopeing that this Bill passes this January.
> All the members of this Rancheria signed this letter to Mr. Scudder
> Thank you Mr Lowe for doing your best for us indians.
> Sincerely yours,
> Frank Truvido
> Graton Rancheria
> Sebastopol, Calif"

In 1965-66, the final distribution of the Graton rancheria had been completed, with the distributees not only receiving rancheria land, but also improvements to the land such as a septic system, a well, and modern bathrooms, kitchens, etc., for the houses on the rancheria. This work was done free of charge to the distributees. In addition, conservator arrangements were made for one of the distributees whose advanced age had made it difficult for him to manage his affairs. Each distributee received letters in February, 1965 and again in December, 1965, which advised them of "...the approximate value of the property received and that the property was tax-free at the time of distribution and further that from the date of recording at the time of recording in the county records the same taxes apply to the property as apply to property generally."[12]

By 1966, both Frank Truvido and Fred Everill were deceased, and it was through the common, human experience of "death and taxes", that the few heirs eventually lost all but one acre of the original property. Upon completion of the transfer of land out of trust and into private

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[9] *Agency Field notes of visit to rancheria dated December 13, 1955*
[10] *Agency Field notes of visit to rancheria dated December 13, 1955*
[11] *Ibid.*
[12] *Graton Rancheria Completion Statement, M.G. Ripke, Acting Director, December 20, 1965*

ownership, their several Indian heirs had their individual rights under Federal Indian Policy terminated. No "tribe" had it rights terminated because no "tribe" existed.

In his testimony to the House Resource Committee on May 16, 2000, in the matter of H.R. 946, "The Graton Restoration Act", FIGR Chairman Greg Sarris states in the Congressional Record that "15.45 acres were purchased in Graton for our members. Seventy-five members moved on in 1920". There are two glaring errors in this statement: (1) The land was not purchased until 1921, and, (2), *No* Indians moved onto the land at all until sometime after 1937.

In statements to the Press, FIGR leaders claim that the assignees were somehow taken advantage of, or they weren't all present when the vote took place, but the record proves otherwise. One report in the December 14, 2000, edition of the *Point Reyes Light*, says, "For Sarris, the decision (*restoration*) corrects a 42-year-old mistake by Congress, which dissolved federal recognition of the tribe in 1958 after deciding wrongly that all the Rancheria's members were dead", a statement that is patently untrue. In fact, according to official records, the government went to great lengths to ensure that any and all heirs of the rancheria's three assignees were found and awarded their interest in the property after the deaths of Fred Everill, Frank Truvido and Andrew Sears.

We do not dispute that members of the FIGR are or may be descendants of California Indians of various tribes. We strongly dispute the "restoration" of a "tribe" based on the fallacy that there was a tribe in residence on the "Graton Rancheria" from its inception. It is clear from the official records that in the fifty-five years that the "Graton Rancheria" or "Sebastopol Rancheria" existed, there was never any tribal structure or tribal government or tribal or political entity at all. There never existed at any time in the rancheria's history, a government-to-government relationship between the federal government and/or the State of California and the "Graton" rancheria. There was *never* any tribe.

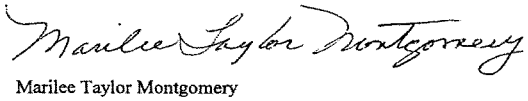
Nor was there at any time since the United States gained possession of California, a government-to-government relationship with any of the several dozen tribes known as the Coast Miwok. By the end of the Mission Period, at the time when Mexico acquired California in 1821, the Coast Miwok had been effectively obliterated. At no time since then did they exist as a political entity until the creation of the FIGR in the year 2000 through the Graton Restoration Act, an act which was based on a gross misrepresentation of the facts surrounding the Graton Rancheria. The federal government can recognize the Graton as a tribe for the purpose of qualifying them for federal benefits. However, such recognition cannot confer a sovereignty to this group that they did not have over the rancheria. Nor can it unilaterally deny California and its citizens of sovereignty over newly acquired land that has been under the state's jurisdiction for over 150 years.

The FIGR is a prime example of what has come to be known as "designer tribes", tribes of questionable origin formed with the express purpose of building a casino. California is Ground Zero for these tribes, and the State now stands at a crossroads: it can either assert its sovereignty over the land within its borders, or it can allow the Balkinization of the state into 106 -or more - sovereign nations throughout the state.

This letter is being submitted for inclusion as a formal record of testimony in the February 1, 2006, Senate Indian Affairs Committee Oversight Hearing on "Off-Reservation Gaming: The

Process for Considering Gaming Applications". We urge you to review the theories set forth in both the Titus/Jones/Lindsay letter of January 19th, and the Peter Siggins letter of August 26th, and to take immediate action to protect California's sovereignty.

Very truly yours,



Marilee Taylor Montgomery
Stop the Casino 101 Coalition
Home Address: 152 Wilfred Avenue
Santa Rosa, CA 95407
Home Telephone: 707-588-9926
Email: marilee@stopthecasino101.com

/mtm

cc: Sonoma County Board of Supervisors
Sonoma County Administration Building
575 Administration Drive, Room 100A
Santa Rosa, CA 95403-2815

The Honorable Stephan R. Passalacqua
Sonoma County District Attorney
Hall of Justice, Second Floor
600 Administration Drive, Room 212-J
Santa Rosa, CA 95403

Bcc

Fax and Mail Deadline Monday, February 27, 2006

Senate Indian Affairs Committee Hearing
Congressional Testimony Questionnaire
Reservation Shopping and Tribal Casinos

Honorable PATTY MURRAY **(Write in either Senator Maria Cantwell or Patty Murray) US Senate.**

Below are my concerns regarding Indian Gaming, Reservation Shopping and the proposed Cowlitz-Mohegan Casino near La Center, WA. Please take note of my responses to the statements below and insert my testimony in the official record of the Senate Indian Affairs Committee Hearing held on February 1st, 2006 in Washington, DC. Please consider a photocopy of this document as valid as the original. **I have signed my name below.**

Dear Clark County and Cowlitz County Property Owner:

The Senate Indian Affairs Committee chaired by Senator John McCain held a hearing on Reservation Shopping and the National Indian Gaming Commission (NIGC) on February 1, 2006. You have until Monday, February 27th to mail your testimony to be included in the official Senate record. You can get your opinion about the proposed Cowlitz-Mohegan Casino on the record by filling out this Testimony Questionnaire and writing your Senators name in the appropriate place. You need to sign the document at the bottom. Please return it in the enclosed envelope. It will be hand delivered to your Senator and delivered for the hearing record. Please make sure you mail yours by Monday, February 27th.

For other versions of this Testimony Questionnaire, go to www.landrights.org or call (360) 687-3087.

Please note that **private property and community decision-making advocates AGREE** with all the statements below, but you don't have to. You may also edit the following statements. This is your testimony.

Please circle your answer – You may write additional comments by each question or in the comment section on the back. Your personal handwritten or typed comments make this document more valuable.

1. Communities have a right to be part of any decision placing a Tribal casino in their community. They should have the right to say no.

   AGREE **DISAGREE** **NO OPINION**

2. The Cowlitz Tribe has 2,500 square miles of territory up north in Washington State. If they want a development they should go back to their own territory and get the acceptance of any local affected community.

   AGREE! **DISAGREE** **NO OPINION**

3. Recently the Cowlitz Tribe carried out a back door sneak attack on local communities by requesting a Restored Lands Opinion from the National Indian Gaming Commission (NIGC) without telling local communities or giving any notice. They held no hearings or any public involvement. If their application for Restored Lands is accepted by Interior Secretary Norton, they will have bypassed our ability to be part of the process as well as that of the Governor. It is unfair that we lose our rights because of this sneak attack.

   AGREE **DISAGREE** **NO OPINION**

4. The Cowlitz Tribe has continually tried to hide their intentions and mislead the public about what they planned. They should not now be rewarded for this behavior by being granted a Restored Lands exception to the Tribal gaming lands rules. They must play fair by going through the entire Section 20 application procedures.

   AGREE **DISAGREE** **NO OPINION**

5. The Cowlitz tribe has largely hidden the fact that their casino will offer more gambling space than all casinos in Las Vegas with the exception of the MGM Grand. They've hidden so much, what else are they hiding? Local communities must be able to block a casino, ~~in order to force tribes to be honest.~~

   AGREE **DISAGREE** **NO OPINION**

6. Indian tribes should not be able to move into a community and be able to take unchecked power to impose their will affecting non-Indian citizens. THE RESTORED LANDS DOCTRINE HAS NO PLACE IN OUR SOCIETY IN 2006. ELIMINATE IT!

   AGREE **DISAGREE** **NO OPINION**

7. Indian Casinos typically do not pay property taxes or most of the other fees, taxes and regulatory burdens borne by non-tribal business, but tribes and their patrons nonetheless use all of the same public services with local taxpayers bearing the biggest cost of providing those services. Congress should impose a system to make sure tribes pay their fair share. THIS IS IN ADDITION TO MONIES ALREADY PAID BY TAXPAYERS TO SUPPORT INDIANS. WE GET SCREWED O BOTH ENDS. IT MUST S

   AGREE **DISAGREE** **NO OPINION**

8. After four years, no local governments support the Cowlitz casino. I stand behind my community leaders in opposing this project.

AGREE DISAGREE NO OPINION

9. Major national news reports continually describe how tribal government actions are causing soil erosion, water shortages, snarled traffic, increased crime, bankrupt neighboring businesses, and dramatically reducing property values in communities that host Indian Mega-Casinos. I don't want that to happen where I live. IF WE WANTED GAMBLING, WE'D LEGALIZE IT.

AGREE DISAGREE NO OPINION

10. Since the Federal government created this Casino boondoggle by passing the Indian Gaming Regulatory Act in 1988, Congress needs to step forward and help solve the problem. REVERSE THE 1988 ACT. THE INDIANS ARE WAY OUT OF CONT

AGREE DISAGREE NO OPINION

11. The Cowlitz Tribe has been untruthful about the intention of their casino, untruthful about the size of their casino, untruthful about their indigenous history in the area, and untruthful with their dealings with elected officials. Because of this, their application should be disqualified. This will provide incentives to other tribes to tell the truth and face penalties when they don't.

AGREE DISAGREE NO OPINION

12. The Cowlitz Tribe picked their proposed reservation and casino site because it is close to the major city of Portland, Oregon and close to a freeway exit with an off-ramp. This is their new definition of "sacred ground". The Cowlitz are not indigenous to the Clark County Washington area. Congress must stop this kind of "Reservation Shopping". INDIANS ARE NO BETTER THAN THE [redacted] MAFIA IN LAS VEGAS. HIDING BE "SACRED GROUND" IS ABS

AGREE DISAGREE NO OPINION

13. Reservation Shopping should be stopped. It should be defined as a tribe moving from an area where they have indigenous history to one where they don't. This would be within a state or state to state.

AGREE DISAGREE NO OPINION

14. No casino should be allowed on land that was private fee land and converted into Federal Indian Trust Land without a vote of the people within jurisdictions inside a 10-mile radius.

AGREE DISAGREE NO OPINION

15. Any tribe should have to agree to covering the full costs of the impacts of their casino including treatment for gambling addition, impacts on schools, water, sewage and traffic. STOP THE CASINOS ALL TOGETHER

AGREE DISAGREE NO OPINION

16. The Bureau of Indian Affairs appears to be biased when dealing with pending applications for fee to trust status and for reservation status. There is no place in the process for local citizens or governments to be officially recognized or have a say in their own future. At present, the Governor of a state is the only elected official with the ability to say no. The recent Restored Lands sneak attack by the Cowlitz took that away. Congress must change the law to give local government to power to control their future.

AGREE DISAGREE NO OPINION

(Your written comments here will make this document more valuable)

AS A TAXPAYER AND A CITIZEN I WANT THIS INDIAN CASINO STOPPED. INDIANS WANT US TO THINK THAT BY ALLOWING THEM TO RUN CASINOS THEY REGAIN THEIR PRIDE AND HERITAGE. THAT'S RIDICULOUS! INDIANS ARE BECOMING AS POWERFUL AS THE DRUG CARTELS AND MAFIA. WE DONT NEED THIS IN OUR COMMUNITY. THE COWLITZ HAVE DEMONSTRATED THEIR TRUE COLORS OF BEING DISHONEST AND UNDERHANDED. PLEASE REPRESENT US! STAND UP FOR OUR COMMUNITY! BE OUR ~~RE~~ CHAMPION AND END THIS ABUSE!

(If needed, use additional sheets or attach a personal letter)

To validate your comments please fill in completely (PRINT or TYPE) and be sure to sign.

Signature: [signature] Name: MARK ANDRUS

E-mail: Phone: Fax:

Address: 19301 NE 226TH CR Town: BATTLE GROUND State: WA Zip: 98604

IMPORTANT — Do not fail to send this comment questionnaire even if it is late. It will likely be accepted.

Fax, E-mail and Mail Deadline Monday, February 27, 2006

FROM : PRICHARDS WESTERN ANGLERS PHONE NO. : 3606731543 Feb. 24 2006 05:47PM P1

Fax and Mail Deadline Monday, February 27, 2006

Senate Indian Affairs Committee Hearing
Congressional Testimony Questionnaire
Reservation Shopping and Tribal Casinos

Pg 1

Honorable MARIA CANTWELL **(Write in either Senator Maria Cantwell or Patty Murray) US Senate.**

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FROM : PRICHARDS WESTERN ANGLERS PHONE NO. : 3606731543 Feb. 24 2006 05:48PM P2

8. After four years, no local governments support the Cowlitz casino. I stand behind my community leaders in opposing this project.

AGREE **DISAGREE** NO OPINION

Pg 2

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AGREE **DISAGREE** NO OPINION

(Your written comments here will make this document more valuable)

Our native American friends have been here long before we stepped foot on this continent we should not deprive them of the right to take advantage of us as we did to them many years ago. Whats Right is Right.

(If needed, use additional sheets or attach a personal letter)

To validate your comments please fill in completely (PRINT or TYPE) and be sure to sign.

Signature: Barbara C. Orzel Name: BARBARA C. ORZEL

E-mail: Phone: 360 673-4449 Fax (360) 673.1543

Address: 2104 Kalama Rv. Rd Town: Kalama State: WA Zip: 98625

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