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

Against Reservation Shopping.

2. Letter to NIGC Chairman Philip Hogen from Kamie Biehl, Founder of Stand Up For Clark County Citizens

3. Letter to NIGC Chairman Philip Hogen from Chuck Cushman, Executive Director of American Land Rights Association

4. Document 1: BIA letter (July 27, 2005) stating that it had not received the Cowlitz restored lands request.

5. Document 2: BIA letter (April 8, 2004) in response to FOIA request by SUFCCC.

6. Document 3: SUFCCC letter (April 20, 2004) addressing BIA letter and other correspondence.

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