

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](http://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