



Citizens Against Reservation Shopping
PO Box 61801
Vancouver, WA 98660

November 30, 2006

Re: 1076-AE-81/25
Proposed rules for CFR Part 292, “Gaming on Trust Lands Acquired After
October 17, 1988”

Mr. George Skibine
Director, Office of Indian Gaming Management
Office of the Deputy Assistant Secretary—Policy and Economic Development
U.S. Department of the Interior
1849 C Street, NW
Mail Stop 3657-MIB
Washington, DC 20240

Dear Mr. Skibine:

We remain concerned about the rules that are being written to implement the Indian Gaming Regulatory Act (IGRA). The concerns we submitted April 28 as comments on the March 15 draft regulations have not been addressed and the proposed rules published October 5 in the Federal Register contain new language that concerns us further. We will begin by addressing the latter issue.

The 25-mile clause is arbitrary

Twenty-five appears to be the magic number in these rules, and there is no question that it is the magic number for the Cowlitz Tribe of Washington. It is clear that the Cowlitz Tribe would not qualify for its selected site at the La Center junction with Interstate 5 under the March 15 draft regulations. Why? Because to qualify for an initial reservation exception or restored lands exception, § 292.6(a)(2) and § 292.7(b)(2)(i) required “a

majority of the tribe's members to reside within fifty (50) miles of the location of the land," and the Cowlitz Tribe's members do not.¹

The proposed rules published October 5 in the Federal Register give tribes such as the Cowlitz a way around the 50-mile requirement, because they could qualify for initial reservation or restored lands by having headquarters "located within 25 miles of the location of the land" (§ 292.6(b) and § 292.12(a)). The Cowlitz Tribe's headquarters currently is in Longview, Washington, a little less than 25 miles from the proposed casino site.

What is particularly disturbing about this new 25-mile clause is that there appear to be no criteria for where a tribe may site its headquarters. The Cowlitz Tribe has in the not-too-distant past had its headquarters at Tacoma, Washington—approximately 120 miles north of its proposed casino site and just south of Seattle. Recall that Cowlitz Tribe councilman Philip Harju made news while attending your March meeting in Connecticut when he balked at the 50-mile requirement. The *Norwich (Connecticut) Bulletin* paraphrased him saying "that would be almost impossible for the 3,500-member tribe unless it took downtown Seattle into trust." Seattle is approximately 150 miles north of the proposed casino site.

The move of the tribe's headquarters to Longview—approximately 10 miles from the southernmost boundary of its adjudicated homeland—took place after IGRA was passed. However, the tribe's cultural hub and tribal housing remain in Lewis County, approximately 50 miles north of the proposed casino site, and as you know that site is outside the tribe's adjudicated homeland.

It makes no sense to set the 25-mile criterion when it is dependent on a factor governed by no rules—especially when the location of a tribe's headquarters could be influenced by a desire to establish a casino—unless you are trying to qualify a tribe that happens to meet that criterion, such as the Cowlitz Tribe.

We request that you strike this provision and instead require the majority of a tribe's members to live within 50 miles of the location of its proposed casino site. (You might also consider requiring tribes to set up their headquarters within 50 miles of the majority of their population.) It only makes sense when a tribe states that its purpose and need for a casino is related to developing an economic opportunity for the tribe and providing employment, housing and other benefits for its members that the hub of those services should be near the majority of its population. Setting up programs and facilities far from a

¹ According to the 2000 Census, the Washington counties with the greatest population of Cowlitz Tribe members are Pierce, Thurston, Cowlitz, King, Lewis and Snohomish, in that order. The economic consulting firm ECONorthwest conducted a central feature analysis to determine the most centrally located place for Cowlitz Tribe members to reach, nationwide. Their finding is that the most central location to tribe members is Lewis County, Washington, two counties north of the proposed site at La Center and in the center of the tribe's adjudicated aboriginal homeland. ECONorthwest's study states that, "Half of all Cowlitz Indians live north of the Cowlitz River in Lewis County" (Robert Whelan, ECONorthwest, *Alternative Site Analysis for Trust Land: The Financial & Economic Development Feasibility of a Cowlitz Tribal Casino Near Vader, Washington*, March 9, 2006, p. 34.).

tribe's membership ensures that members either will be unable to use and benefit from them or that they will be forced to leave their current homes and support networks and relocate.²

We also would encourage a rule that addresses tribes that propose casinos outside their federally adjudicated aboriginal homelands. They should be required to analyze alternative sites that are within their aboriginal homelands and likely more closely tied to their history and culture—not to mention closer to headquarters that have been reasonably established with an interest in serving tribe members rather than as staging points for future casino proposals.

Subpart B fails to address process

We also remain concerned about the lack of process articulated in the proposed rules for the granting of exceptions under IGRA Sec. 2719(b)(1)(B)(i-iii). In the list of pending gaming applications released in May 2006, one third of the tribes have pursued these exceptions.³ Unlike the process described in the proposed rule under Subpart C—Secretarial Determination and Governor's Concurrence, Subpart B—Exceptions to Prohibition on Gaming on After-Acquired Trust Lands offers no assurances that citizens with an interest in or concerns with a tribe's application will have any way to provide relevant information.

The way Subpart B is set up, the Department of the Interior would likely receive information solely from the applying tribe as was our experience with the Cowlitz Tribe's applications. The Cowlitz Tribe quietly applied to the National Indian Gaming Commission for a restored lands exception in March 2005, but citizens groups and communities did not find out until October 2005, when CARS representatives were alerted during a meeting with you, Mr. Skibine. The NIGC released its findings for the tribe in November 2005 and clearly had not taken into account non-tribal input that communities and citizens groups had hastened to send after learning of the tribe's application.

When analyzing the tribe's historical and modern connections to the land, scholars, community governments and residents should be consulted to develop a complete and accurate assessment. That is, this information should not be provided solely by those with the most to gain from approval. We addressed this issue in our comments dated April 28, 2006, in addition to requisite ties to the land, jurisdiction of decision-makers and the issue of memoranda of understanding. We enclose those comments again.

Additionally, communities should be consulted regarding a proposed casino's potential impact on land-use guidelines and long-term planning at the local level. It would be

² The Cowlitz Tribe's purpose and need statement states in part that it "wishes to create a Tribal land base for its members and establish a Tribal Headquarters from which its Tribal Government can operate to provide housing, health care and other governmental services, and ... provide employment opportunities for its members" (Cowlitz Tribe Draft Environmental Impact Statement, 1-6.)

³ The Cowlitz Tribe is the only one, according to the list, to apply for two of them—the initial reservation and the restored lands exceptions.

useful to include as criteria in the application process indicators of whether a casino proposal would fit with local planning, zoning and laws.

Subpart C burdens communities

Although the rules proposed in Subpart C have much of the detail we would like to see in Subpart B, they also provoke some concern. Section 292.20(b) states that the consultation letter from the Regional Director should request comments from state and local officials, as well as nearby tribes. It requests:

- (1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts;
- (2) Reasonably anticipated impacts 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 identification of sources of revenue to mitigate them;
- (5) Proposed programs, if any, for compulsive gamblers and the sources of funding; and
- (6) Any other information that may provide a basis for a Secretarial Determination that the proposed gaming establishment is not detrimental to the surrounding community.

First, the rules give the consultees only 60 days to respond, with a possible extension of 30 days. This is a tremendous amount of information to compile, analyze and produce in such a short period of time. Second, it seems absurd that local communities and nearby tribes should be asked to come up with funding sources to mitigate problems that might emerge from a tribe's proposed casino and to propose programs to deal with compulsive gambling. These tasks should be required of the tribe proposing the development and should be included in the consultation letter along with the tribe's full application. The local officials and area tribes should be given the opportunity to evaluate the proposing tribe's analyses.

It is also our feeling that stakeholder organizations as well as individual stakeholders should be included in the consultation process.

Rules must address expansion, fair play

We also have a concern regarding contiguous lands. Although the rules seem to preclude the taking of contiguous lands into trust for gaming purposes (§ 292.4(b)), we would like to see gaming defined in this rule to include structures and activities that support gaming or are ancillary to gaming operations. As the law is currently written, land contiguous to reservations can be taken into trust under 25 CFR 151 allegedly for non-gaming purposes but then used to support gaming operations with hotels, entertainment facilities and parking lots on land with which it is contiguous. Surely this is not the agency's intent.

Finally, we would encourage adding to the rules a fair-play clause. First, it should consider whether the applicant tribe is being used by speculators. The intent of IGRA is to support economic development opportunities that benefit tribes, not business magnates. Second, it should examine whether the applicant tribe has been forthright about its plans. If a tribe or its developer has misrepresented its plan, one can presume that the location or proposal would be detrimental to surrounding communities. Third, it should consider whether the tribe or developers have employed intimidation tactics. Again, this would indicate that the proposed site or project is not in the local area's best interest.

Through the establishment of these rules, the Department has an opportunity to create a fair-minded, predictable and transparent process for state and local governments, and citizens groups to provide meaningful input regarding exceptions granted tribes for after-acquired lands. It is our sincere expectation that you will seize this opportunity and close the damaging loopholes inadvertently provided by IGRA.

We respectfully urge you to consider our comments as you move forward with the rulemaking process.

Sincerely,

Edward C. Lynch

Enclosures: April 28, 2006, letter from Citizens Against Reservation Shopping

cc: Mr. Dirk Kempthorne, Secretary of the Interior
Mr. James Cason, Associate Deputy Secretary, Department of the Interior
Sen. John McCain, Senate Committee on Indian Affairs
Sen. Byron Dorgan, Senate Committee on Indian Affairs
Sen. Maria Cantwell, D-Wash.
Sen. Patty Murray, D-Wash.
Rep. Brian Baird, D-Wash.