



March 30, 2006

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

Re: Petition for Rulemaking/Section 20 of IGRA

Dear Secretary Norton:

On behalf of the individuals and organizations¹ who are signatories below, we submit this Petition for Rulemaking pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 553(e), and Department of the Interior (DOI or Department) regulations, 43 C.F.R. Part 14. This Petition requests that the Secretary direct the Bureau of Indian Affairs (BIA) to promulgate standards to govern through rulemaking the designation of an initial reservations and determinations of whether land qualifies as "restored land" under 25 U.S.C. § 2719(b)(1)(B)(ii), (iii) (Section 20) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*

IGRA provides the federal authority to locate gambling facilities on Indian lands throughout the nation. Section 20 of IGRA prohibits gaming on lands acquired in trust after October 17, 1988, unless one of the enumerated exceptions applies or an applicant tribe undergoes what is referred to as the two-part determination test. The

¹ A description of each signatory organization is provided in Attachment A.

two-part determination test requires the Secretary's approval of the proposed gaming on the proposed land, as well as gubernatorial concurrence. Section 20 provides, in large part, the crucial balance between tribal and community rights under IGRA. Congress has recognized in recent Congressional hearings the need for such balance and the existence of substantial threats to that balance under the current implementation of Section 20.

As an example, the National Indian Gaming Commission (NIGC) recently made a determination that lands sought in trust on behalf of the Cowlitz Tribe of Washington State for gaming purposes qualified as "restored lands." The NIGC, which we believe has no authority to make restored lands decisions, provided no public notice or process whatever. Its decision was plagued by other legal and procedural deficiencies. If the NIGC's erroneous and unprecedented decision stands, allowing the Cowlitz Tribe to evade the two-part determination test under Section 20, the principal right Congress accorded to local governments, the states, and the public on trust land conversions for tribal gaming will have been circumvented.

The significant number of restored lands requests filed by tribes in California also illustrates the prevalence of tribal efforts to circumvent the two-part determination test. These decisions have the potential to undermine the rights of local governments and local communities. Restored lands requests have been filed by tribes nationwide, so problems in this area are widespread.

Despite the critical importance of this provision, the BIA has not promulgated regulations to govern its application in the 18 years since IGRA was first enacted. As a consequence, decisions regarding the applicability of section 20 have been fraught with controversy and confusion, undermining the public's faith in the federal decision-making process, and leaving states, local governments and communities frustrated.

Further, with Indian tribes increasingly seeking to conduct gaming on land located far from existing reservation land or aboriginal lands in order to exploit favorable economic markets, it is becoming increasingly important that standards be established to guide decision-making, to provide the public with an understanding of how such decisions are being made, to define standards, and to provide a substantial process for public participation. Defining a process that treats states, local governments, communities and the public fairly during the federal decision-making process, particularly where decisions often result in detrimental impacts, is essential. This Petition asks specifically for the Department to make rules regarding the two discretionary exceptions to Section 20 – i.e., the reservation and restored lands exceptions – so that balance and openness can be achieved in the process through

which tribal gaming is being established across the nation. While this Petition does not directly address the issue, we note that it would be productive to promulgate regulations for all gaming-related trust acquisitions, even those falling outside the section 20 exception.

We understand that, in response to Congressional pressure, the Department of the Interior is circulating a draft Proposed Rule that would implement section 20. Acting Deputy Assistant Secretary George Skibine has announced that the draft will be circulated to tribal officials, but has not indicated that comment will be sought from any other party, including any state or local officials, prior to publication in the Federal Register. As section 20 provides substantial rights to state and local governments, it is inexplicable that the Department will not be seeking their advance comment as well. For that reason, it appears necessary for community organizations and citizens to file the enclosed Petition, in the expectation that, as Secretary, you will also represent the broader non-tribal interests of communities, local and state governments, and the public.

We thank you for your attention to this critical matter and remain ready to assist you with any questions or concerns you may have.

Very truly yours,

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cc: Jim Cason, Associate Deputy Secretary of the Interior
George Skibine, Acting Deputy Assistant Secretary of the Interior
Phil Hogen, Chair, National Indian Gaming Commission
John McCain, Chair, Senate Indian Affairs Committee
Richard Pombo, Chair, House Resources Committee

Enclosures

ATTACHMENT A

Citizens Against Reservation Shopping (CARS) is an organization Clark County, Washington citizens formed in June 2005. Longtime Vancouver businessman and civic leader Edward Lynch is the Chairman of CARS. CARS supports the Cowlitz Tribe's right to establish a reservation and to pursue economic opportunities that will benefit its people, but opposes its plan to build a casino in Clark County. The group's concern stems in part from CARS' objection to "reservation shopping" – the practice of selecting an ideal casino site and then working to have it given reservation status. CARS membership represents a broad spectrum of Vancouver and Clark County citizens.

Stand Up For California is a statewide coalition building organization that has been in existence for over a decade. It is a non-profit charitable organization tax exempt at both the state and federal levels of government. Stand Up acts as an advocate and informational resource to community groups, individual elected officials, and members of law enforcement trying to respond to the complexities caused by the rapid expansion of tribal gaming. Stand Up does not seek to impede the economic progress and advancement of California's native peoples; rather Stand Up seeks regulatory reforms believed to be in the best interest of all the inhabitants of California.

One Nation United is a non-profit, nonpartisan, public educational organization representing over 300,000 concerned citizens and property owners, elected officials, state and national trade associations, small businesses, and local governments in thirty-seven states across America. One Nation United works to reform federal Indian policy for the benefit of Indians and non-Indians alike.

Stand Up For Clark County Citizens is a citizen-based, grass-roots organization in Washington State founded by citizens concerned about the potential impacts from the Class III casino proposed by the Cowlitz Indian Tribe for Clark County. The potential impacts of the proposed development include: the significant loss of habitat for endangered species, given the sites location between two wildlife refuges; and severe economic and social impacts to an area that is largely low crime and rural in nature. Stand Up For Clark County Citizens' primary goal is to gain information through research about the potential for severe impacts associated with casino development, the irregular process being employed at the federal level and the breakdown in governmental agency procedures and disseminate that information to others. Stand Up For Clark County Citizens is strongly opposed to the proposed development because of the severe harm it would cause to the surrounding communities.

The American Land Rights Association was founded in 1978 as a grassroots organization. ALRA and its members are dedicated to the wise use of resources, access to Federal lands and the protection of private property rights. With 26,000 members located in all 50 states, ALRA is a national informational clearinghouse and support coalition that encourages the multiple-use of federally-controlled and state lands for family recreation, and commodity production. Its purpose is to oppose selfish, restrictive land use designations that damage local economies, schools and roads in rural America.