

MOU Fact Sheet
Citizens Against Reservation Shopping
January 2007

What is the Cowlitz Tribe-Clark County MOU?

Negotiated by the Cowlitz Tribe and Clark County, this Memorandum of Understanding (MOU) is an agreement in which the county agrees to extend certain services at the La Center junction should the land be taken into trust. The tribe agrees to comply with some county regulations and be consistent with others. It also pledges some financial compensation to the county.

Washington state courts have been considering a challenge to the MOU's validity for the past two and a half years (see below).

How did the MOU come to be?

Legal representatives of Clark County and the Cowlitz Tribe began negotiating a Memorandum of Understanding in 2002. The county was told only that the tribe wanted the land taken into trust. The tribe did not disclose that it would apply for an initial reservation or restored lands, exceptions to the Indian Gaming Regulatory Act's prohibition on gaming on lands acquired after 1988 that take away the state's ability to override a federal decision to allow gaming.

Pressed by Cowlitz Tribe representatives, the county commissioners signed the MOU on March 2, 2004. Ten days later, the county received two letters from the Northwest Regional Office of the Bureau of Indian Affairs (BIA)—one said the tribe had applied to have the land taken into trust for a casino and the other said it had applied to have it made its initial reservation. The county quickly expressed its dismay in letters to the BIA.

How does the MOU compare with other MOUs?

The Cowlitz-Clark MOU offers meager benefits to the county when compared with other MOUs nationwide. An analysis by the economics consulting firm ECONorthwest finds that the Cowlitz agreement plus a proposed MOU with the city of La Center

would result in \$65,683,684 to \$68,078,600 fewer dollars being allocated to state and local government, and charities in 2013 than would be allocated had agreements like those the Menominee negotiated been in place. The Menominee agreements are 5.9 to 7.2 times more remunerative to the affected state and local governments than the Cowlitz agreements are.

Over 20 years, that would represent a loss of more than \$1 billion.

Like the proposed Cowlitz project, the Menominee project is being developed in partnership with the Mohegan Tribe of Connecticut.

The study goes on to say that when compared with MOUs negotiated with two California tribes, the communities working with those tribes come out four and five times farther ahead.

Why is the MOU's validity being questioned?

In June 2004, a property owner adjacent to the proposed casino site and owners of the La Center cardrooms appealed the county's adoption of the MOU to the Western Washington Growth Management Hearings Board. The petitioners contended that in the MOU, the county agrees to extend services to a site that is not intended for intense commercial development. Further, they said it is a violation of state law for the county to agree to the MOU without first amending the county's land use plan to reflect this type of development.

The Hearings Board dismissed the MOU appeal stating that it had no authority to consider the challenge. The petitioners appealed to Superior Court, which affirmed the Hearings Board's decision. Then, the petitioners took their case to the Appeals Court, which said the MOU is a "de facto" amendment to the county's land use plan and that the Hearings Board did have jurisdiction. The case was remanded to the Hearings Board. All sides agree that the Board of Clark County Commissioners did not follow the state-required public process to make changes to the county's land use plan.

What if the MOU is found to be invalid?

It could cause a number of problems. For one thing, the Draft Environmental Impact Statement (EIS) for this project relies heavily on the MOU—mentioning it more than 150 times when describing environmental consequences and mitigation measures. The fee-to-trust application also relies on the MOU to fulfill BIA criteria. If the MOU is invalidated, BIA might find it difficult to issue any decisions on applications on which it is based. We anticipate the tribe would need to revise and resubmit, at the very least, its fee-to-trust application and its Draft EIS.

Where in the process is the MOU now?

On January 18, Washington's Appeals Court mandated the case to Superior Court in Thurston County. Our understanding is that within the next week or so, the case file will be returned to the Western Washington Growth Management Hearings Board.