

MOU Fact Sheet
Citizens Against Reservation Shopping
September 18, 2010

The Cowlitz Tribe's only substantive intergovernmental agreement, the one that ensured that the proposed casino-resort would get necessary services, is dead.

The nature of the MOU

The memorandum of understanding (MOU) between the Cowlitz Tribe and Clark County said the county would extend services to the casino and that the Tribe would comply with some county regulations and be "consistent" with others. It also said the Tribe would provide some financial compensation to the county.¹ However, its benefits to the county were meager when compared with other MOUs nationwide.²

The beginning and end of the MOU

When legal representatives of the Cowlitz Tribe began negotiating the MOU with Clark County in 2002, the county was told that the Tribe was requesting the federal Department of the Interior to take land acquired by Cowlitz developer David Barnett at the Interstate 5 La Center junction into trust. The Tribe would need county services there, including water, sewer and law enforcement, and wanted an agreement in place ensuring those services.

The county became interested in an agreement because the Tribe's status as a "sovereign nation" meant that any businesses it would place on trust land would not be required to pay property tax, and local laws such as building and health codes would not apply. The county saw an agreement as a way to protect itself financially and to ensure the safety of people at that site, whatever the development.

The Tribe did not disclose that it was planning to develop a casino there and would apply for an initial reservation and restored lands, exceptions to the federal prohibition on gaming on newly acquired lands and classifications that take away the state's ability to override a federal decision.

Pressured by Cowlitz Tribe representatives, the county commissioners signed the MOU on March 2, 2004. Ten days later, the county received two letters from the regional 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.³ The county expressed its dismay in a letter to the BIA.⁴ In July 2004,

¹ *Clark County-Cowlitz Tribe Memorandum of Understanding*, 2 March 2004; *Clark County-Cowlitz Tribe Supplemental Memorandum of Understanding*, 2 March 2004; Clark County, *Resolution No. 2004-03-02*, 2 March 2004.

² Robert Whelan, Memorandum to John Bockmier, "Comparison intergovernmental agreements," 27 February 2006.

³ Stanley Speaks, Northwest Regional Director, Letters to the Board of County Commissioners, received 12 March 2004.

⁴ Board of Clark County Commissioners, Letter to BIA Northwest Regional Director Stanley Speaks, 2 April 2004.

Cowlitz developer David Barnett partnered with the Mohegan Tribe of Connecticut to develop a mega-casino in Clark County.

Later, then-County Commissioner Judie Stanton said, “They underrepresented what they were going to do—they misrepresented it. I now feel they intentionally deceived us.”^{5 6}

Al Alexanderson, a Clark County resident living near the proposed casino site, joined the owners of the private card rooms in nearby La Center, Washington, and sued the county saying the MOU agreed to extend services to a site that is not intended for intense commercial development. Further, they said it was 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 MOU was invalidated in June 2007 by the Western Washington Growth Management Hearings Board because the county did not allow for the public participation required by state law to make changes to the county’s land use plan.

Unhappy that an appointed board killed an agreement signed by an elected body, the county appealed the decision to Thurston County Superior Court, which upheld the invalidation in December 2007.

The county again appealed the ruling but in April 2009 decided to drop its appeal.

The effort to replace the MOU

In January 2008, the casino developers convinced the National Indian Gaming Commission (NIGC) to approve tribal ordinances containing stipulations similar to those in the dead MOU. However, the NIGC itself wrote that it could not vouch for the ordinances’ enforceability.⁷

In April 2009, the county and the Tribe each rescinded the MOU. For the county’s part, the rescission was crucial because it brought the county back in compliance with state law, thus returning it to eligibility for certain state grants and loans.

The county’s rescission document stated that it would rely on the contents of the Cowlitz Tribe’s 2008 unilateral ordinance.⁸ The county commissioners later clarified their position in a resolution adopted unanimously August 25, 2009, explaining that the rescission agreement “could be construed incorrectly to contemplate that the County will provide its resources to facilitate the proposed tribal casino development. The County has no contracts to provide any services, resources, facilities, or other support to the Tribe.”

⁵ CARS, “Secrets of the MOU.”

⁶ After a wide-ranging discussion with DOI Associate Deputy Secretary James Cason and OIGM Director George Skibine in February 2006 in Vancouver, CARS followed up with a letter and documents regarding how the Cowlitz Tribe-Clark County MOU evolved and the confusion surrounding it. CARS, letter to Cason and Skibine, 15 March 2006, 5-7.

⁷ Philip N. Hogen, Letter to Cowlitz Tribal Council Chairman William Iyall, 8 January 2008.

⁸ Clark County-Cowlitz Tribe, “*Rescission Agreement*,” April 2009.

The August resolution goes on to say that the Tribe's unilateral ordinance and waiver of sovereign immunity "do not alleviate or fully mitigate the significant concerns that serve as the basis for the County's lack of support for the Tribe's trust land acquisition, reservation designation and opposition to the proposed casino."⁹

The MOU's importance to the developers

The MOU's importance as part of a casino application is clear:

- In a December 2007 conversation with CARS, Assistant Secretary for Indian Affairs George Skibine said DOI has "a problem" with the Cowlitz application for trust land in Clark County. He said, "the absence of a MOU with the county is really a substantial issue for us."¹⁰
- In a January 3, 2008, memo, DOI wrote that applications for tribal land and casinos should include copies of intergovernmental agreements—MOUs—and, "Failure to achieve such agreements should weigh heavily against the approval of the application."¹¹

For a long time the Cowlitz casino developers had said they were not willing to renegotiate the MOU with the county, but later, when the MOU had been invalidated by the Washington courts, they began pushing for a new MOU. It is an integral piece of the Cowlitz application in many ways, not the least of which is the Environmental Impact Statement (EIS), which references the MOU more than 150 times when describing means of mitigating environmental consequences.

The county's view of the MOU

The county negotiated the 2004 MOU without understanding the Cowlitz project's scope or impacts, and two of the three commissioners who signed it later joined CARS' Steering Committee, opposing the casino. In 2008, the Board of County Commissioners passed a resolution opposing the casino.¹²

Prior to its rescission of the MOU, the county had stated that it regarded the MOU as an insurance policy—protection in case an undesired and resource-requiring casino should be developed in Clark County.

A second MOU effort at La Center

The casino developers also have repeatedly attempted to negotiate an MOU with La Center, the city closest to the proposed Cowlitz casino-resort. Despite heavy pressure beginning with a presentation of the first version of the MOU in February 2006,¹³ the

⁹ Clark County, *Resolution No. 2009-08-12*. 25 August 2009.

¹⁰ CARS, "Transcription of conversation with George Skibine," 10 December 2007, 4-6.

¹¹ Carl Artman, DOI assistant secretary, *Memorandum to BIA regional directors*, "Guidance on taking off-reservation land into trust for gaming purposes," 3 January 2008.

¹² Clark County, *Resolution No. 2008-04-06*. 8 April 2008.

¹³ CARS describes some of the bullying tactics used by representatives of the Tribe in La Center in a letter to Cason and Skibine, 15 March 2006, 8-9.

City of La Center has refused to sign any MOU proposed by the Cowlitz Tribe and its attorneys.¹⁴

In short, the majority of city council members have understood that signing an MOU would further the Tribe's plans to establish a major casino-resort near La Center. They also understand that the proposed casino would have innumerable heavy impacts on their city, not the least of which would be to decimate its primary source of tax revenue: four existing private card rooms, which contribute approximately 50 percent of the city's total operating revenues.¹⁵

¹⁴ Jeffrey Mize, "La Center council again rejects casino talks," *The Columbian*, 11 June 2009.

¹⁵ Mize, "La Center council again rejects casino talks."