

## **The Restored Lands Opinion Fact Sheet Citizens Against Reservation Shopping September 18, 2010**

The Cowlitz Tribe does not now own and never has owned the land proposed as the site for the Cowlitz casino,<sup>1</sup> nor has the Tribe ever had a substantive connection to the land. However, the National Indian Gaming Commission (NIGC) issued a highly controversial opinion November 22, 2005, stating that this land qualified as the Tribe's restored lands.<sup>2</sup> If allowed to stand, this opinion will set precedent and change the criteria by which Indian lands are determined.<sup>3</sup>

### **An unprecedented opinion**

The NIGC opinion ignored BIA findings in 1997 and Indian Claims Commission findings in 1969 and 1971 that the Cowlitz tribal lands were along the Cowlitz River to the north, never on lands today located in Clark County. It also failed to recognize the 2,500 square miles of uncontested, federally adjudicated Cowlitz lands, many of which are bisected by Interstate 5 and appropriate for gambling. Additionally, it disregarded the fact that historically the Clark County land had been occupied by the Chinook Indian Tribe.

The NIGC opinion broke recklessly from precedent in its admission that the Tribe had no serious connection to the land in question and, in effect, extended the definition of restored lands to include areas to which tribes have had minimal connections.<sup>4</sup> (See "The issue of location" section for more information.) This opinion contrasts strongly with the July 27, 2005, testimony of DOI Acting Deputy Assistant Secretary George Skibine to the Senate Committee on Indian Affairs in which he said tribes receiving restored lands must have "a strong historical nexus as well as geographic proximity to the land."<sup>5</sup>

### **Problems with process<sup>6</sup>**

The process by which the Cowlitz Tribe pursued the restored lands opinion was unusual, raising red flags on the federal level at a U.S. Senate Committee on Indian Affairs hearing February 1, 2006, and leading to a call for IGRA regulations.<sup>7</sup>

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<sup>1</sup> To date, the nearly 152 acres at the Interstate 5 La Center junction are the property of Salishan-Mohegan, the company of Cowlitz developer David Barnett and the Mohegan Tribe of Connecticut.

<sup>2</sup> Penny J. Coleman, Memorandum to Philip N. Hogen, "Cowlitz Tribe Restored Lands Opinion," 22 November 2005.

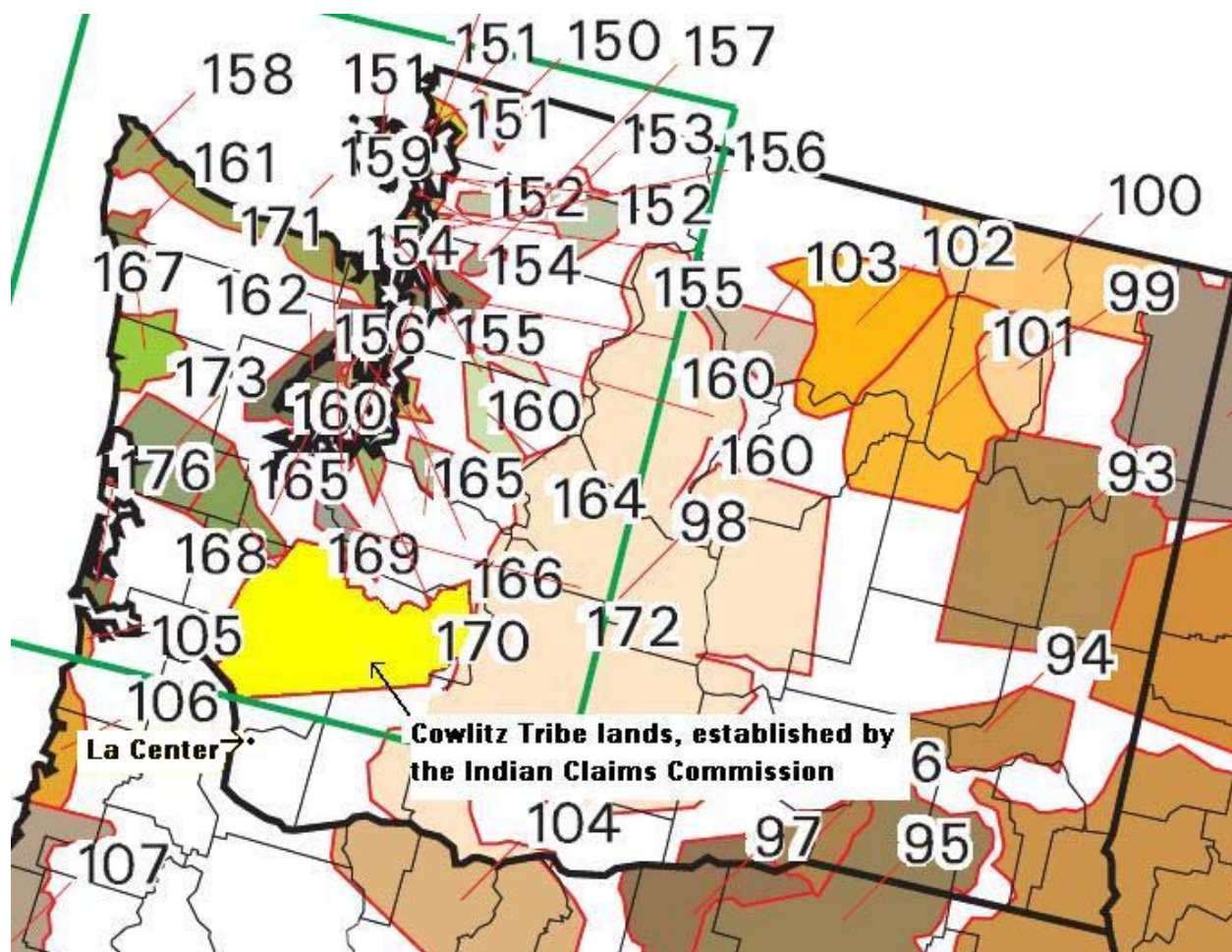
<sup>3</sup> Dragonslayer Inc. and Michels Development, *Request to the Associate Deputy Secretary to Reject The National Indian Gaming Commission's Restored Lands Finding For the Cowlitz Indian Tribe*, 7 June 2006, 22..

<sup>4</sup> For a detailed analysis, see "Response to the Request of the Cowlitz Indian Tribe for a Restored Lands Determination," submitted to the NIGC by Perkins Coie, 15 November 2005. Also see Dragonslayer Inc. and Michels Development, *Request to the Associate Deputy Secretary*.

<sup>5</sup> George Skibine, "Testimony of George Skibine, Acting Deputy Assistant Secretary-Indian Affairs, for Policy and Economic Development, Department of the Interior, at the Oversight Hearing before the Senate Committee on Indian Affairs on Section 20 of the Indian Gaming Regulatory Act."

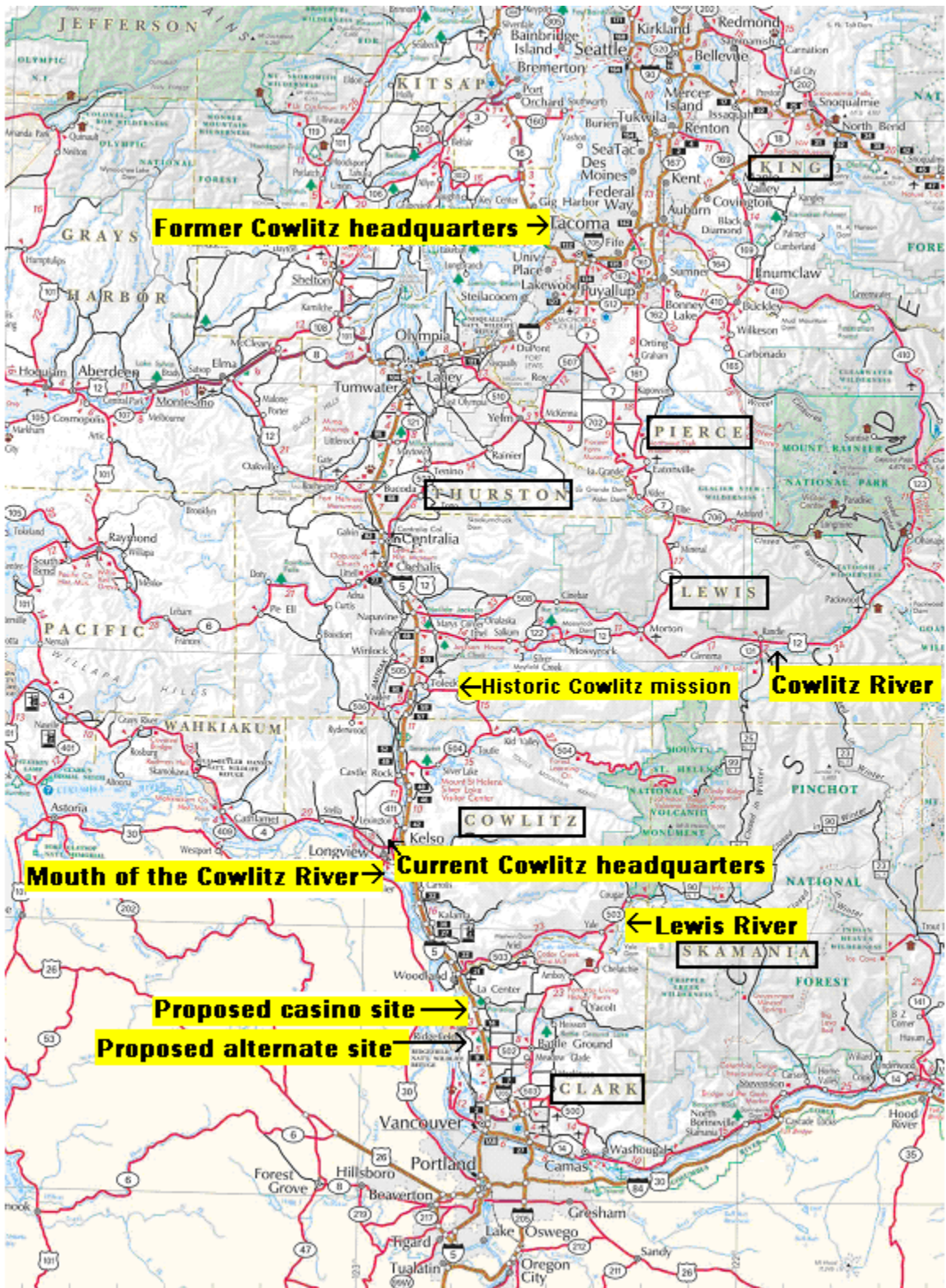
<sup>6</sup> After a wide-ranging discussion with DOI Associate Deputy Secretary James Cason and OIGM Director George Skibine in February 2006 in Vancouver, CARS followed up with a letter and documents regarding how the Cowlitz casino developers pursued the restored lands opinion and the protests of local elected officials. CARS, letter to Cason and Skibine, 15 March 2006, 2-5.

<sup>7</sup> CARS, "Selected testimony: Senate Committee on Indian Affairs, Oversight Hearing on Off-Reservation Gaming: The Process for Considering Gaming Applications," 1 February 2006.



“Indian Land Areas Judicially Established 1978,” Washington state.

This is a detail of the Native America Graves Protection and Repatriation Act map, found on the DOI/National Park Service Web site <<http://www.nps.gov/history/nagpra/DOCUMENTS/ClaimsMAP.htm>>. The lands of each tribe, adjudicated by the Indian Claims Commission (ICC) and the U.S. Court of Claims, are outlined. The Cowlitz Tribe’s area of exclusive use and occupation is shown in yellow.



Southwest Washington and northern Oregon.

After filing for initial reservation status under the Indian Gaming Regulatory Act in March 2004, the casino developers quietly filed for restored lands in March 2005. They took the unusual step of tying the application to the time-sensitive gaming ordinance application, a strategy that appears to have propelled the restored lands question through NIGC's review process. This apparently prevented thorough research of the matter—even though the gaming ordinance will not be employed for years, if ever.

Community members and citizens groups were unable to confirm the restored lands application through the regional BIA or other channels until October 2005, when CARS Chairman Ed Lynch learned of it in a conversation with Mr. Skibine.<sup>8</sup> (In fact, the Cowlitz restored lands application was omitted from the testimony of BIA Central Office [listing pending requests for initial reservation and restored lands designations](#) that was submitted July 27, 2005, to the Senate Committee on Indian Affairs.)<sup>9</sup>

Inundated with correspondence on the matter, Representative Brian Baird (D-Washington) sent a letter to the Secretary of the Interior at the end of October 2005 requesting an ombudsman to communicate with residents, a public meeting in Southwest Washington and a delay on any decisions until at least 30 days after the public meeting. The NIGC proceeded with issuing its opinion, and Representative Baird received no response until after it was issued.

At the February 1, 2006, Senate Committee on Indian Affairs hearing, NIGC counsel Penny Coleman described the manner in which the Cowlitz Tribe had applied for restored lands—by tying the application to the time-sensitive gaming ordinance—as “an anomaly.” She said, “...when the Tribe came to us and told us they were going to do it, we were not exactly thrilled with it because we knew that this was a very unusual situation...”<sup>10</sup> (CARS finds it extremely curious that a purported regulatory agency would allow an applicant to establish its own application procedure. We wonder who is in charge: the agency or the tribes.) Coleman testified that the Indian Gaming Regulatory Act requires NIGC make a decision on an ordinance application within 90 days. (During the application process, the Tribe was allowed to withdraw and resubmit its application.)

In a letter dated February 17, 2006, Washington's deputy attorney general disputed Coleman's February 1 testimony that the attorney general's office knew about the restored lands application before late November 2005. Washington Attorney General Rob McKenna wrote NIGC Chairman Philip Hogen November 21, 2005, to urge him not to make a restored lands determination at that time.<sup>11</sup>

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<sup>8</sup> For more information on the difficulties local citizens groups experienced trying to get information on the Cowlitz Tribe's Indian lands applications, please see CARS-Stand Up For Clark County Citizens-American Land Rights Association, letter to Interior Secretary Gale Norton, 9 January 2006.

<sup>9</sup> “Pending Gaming Applications Under Section 20(b)(1)(B)” in George Skibine, 27 July 2005, 9.

<sup>10</sup> CARS, “Selected testimony,” 1

<sup>11</sup> See Robert K. Costello, letter to Penny Coleman, 17 February 2006; and Rob McKenna, letter to Phillip N. Hogen, 21 November 2005.

### **Problems with content**

The NIGC's restored lands opinion for the Cowlitz Tribe contains numerous factual errors that contribute to an illusion that the Tribe might have had a connection to the proposed casino site.

For example, the restored lands opinion says the Cowlitz Tribe had a presence along the Lewis River. That, however, contradicts the Historical Technical Report (HTR) prepared by the Office of Federal Acknowledgement for the Cowlitz Tribe's acknowledgement proceedings, which clearly identifies the Lewis River band of Indians not as Cowlitz but as Klickitat.<sup>12</sup>

In another example, the NIGC opinion asserts that Cowlitz Tribe members hunted along the Lewis River and presents the example of Zack hunting there in 1855-56 as evidence. However, had the NIGC consulted the HTR, it would have found that Zack was most likely Yakima. The idea that he was Cowlitz had been promoted by a Cowlitz Tribe member whom the HTR explained had been confused by anthropologist Verne Ray's assertion that the Lewis River Indians were Cowlitz.<sup>13</sup>

### **A review?**

In 2006, CARS wrote to Assistant Secretary James Cason explaining its concerns with the Cowlitz restored lands opinion—both in content and process—and requested DOI conduct an independent evaluation of the NIGC restored lands opinion.<sup>14</sup> Mr. Cason indicated that BIA would conduct such a review, but it appears it was never completed.

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<sup>12</sup> For more detail, see Dragonslayer, 29-30; and Daniel L. Boxberger, *Comments on the Cowlitz Indian Tribe Request for a Restored Lands Opinion Submitted to the National Indian Gaming Commission*, 31 October 2005.

<sup>13</sup> Dragonslayer, 30-31.

<sup>14</sup> CARS, letter to DOI Associate Deputy Secretary James Cason, 5 May 2006.