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SECRETS OF THE MOU

Negotiators for the Cowlitz Tribe withheld important information from Clark County and misrepresented the tribe's intentions regarding the casino it one day hopes to build. While negotiating a Memorandum of Understanding (MOU) with the county, the tribal representatives were keeping at least four important secrets from the county.

Because the county was not let in on these secrets, its representatives could not negotiate effectively. Instead, from 2002 until March 2, 2004, the county was forced to anticipate a broad range of potential developments that could occur along Interstate 5 at Exit 16, on land purchased by David Barnett, son of the tribe's chairman.

"They underrepresented what they were going to do—they misrepresented it," said Judie Stanton, who was a Clark County commissioner at the time. "I now feel they intentionally deceived us."

Only days after the commissioners signed the document, the secrets began coming to light.

1. **The Cowlitz developers had long planned a casino.**
2. **The tribe badly needed the MOU for its application.**
3. **The Cowlitz developers planned to prevent local governments from participating in the gaming/siting process.**
4. **Agreements made in the MOU would be heavily relied on in the environmental review.**

Secret No. 1: The Cowlitz developers had long planned a casino.

Ten days after the commissioners signed the MOU, the county received a letter from the Bureau of Indian Affairs (BIA) telling them the Cowlitz Tribe had applied to develop a casino at Exit 16. The tribe had made its decision long before but its representatives knew it was to their advantage to keep the county guessing until after the agreement had been signed.

The county commissioners responded with [a letter to the BIA](#) that said, in part, "...we developed the memorandum of understanding in an atmosphere of significant uncertainty amid no small measure of frustration."¹

In fact, not long before the county and tribe began negotiating the MOU, David Barnett was quoted in *The Oregonian* saying, "We are not doing a casino. We have no plans to do a casino." He said that the tribe was considering a cultural enterprise for the site.²

Holding their secret, the tribe and its representatives appealed to the county's goals and interests, but the county could not have similar insight into the tribe's.

"We really were not thinking 'casino'—at least in the size and scope currently proposed," Stanton said.

Secret No. 2: The tribe badly needed the MOU for its application.

The county was negotiating in the dark, seeking to protect the county's resources but not knowing what sort of development the tribe would pursue and not understanding the implications of dealing with a tribe recognized as a sovereign nation. What the county did not realize was how much strength it could have brought to the table.

The tribe's lead negotiator, Washington, D.C., attorney Dennis Whittlesey, addressed this issue in a paper he presented sometime after working on the Clark County-Cowlitz Tribe MOU. He wrote that the challenge faced by tribes seeking to develop casinos is that of securing local services with local governments. But obtaining the services is only the beginning. For a tribe wanting a casino, an MOU with a local government has additional significance that Whittlesey revealed:

... it is a fact that an increasingly important element to Indian casino development is contracting with local governments for services because both the state and federal officials reviewing gaming proposals will look to the relationship between tribes and the local population. *Inter-governmental agreements for services can be an important ingredient in those review and approval processes.*³

The preliminary Final Environmental Impact Statement (EIS) reflects this sentiment, referencing the MOU as evidence of the tribe's relationship with local communities:

... it should be noted that the Tribe has enter(sic) into an MOU with Clark County and has offered to enter into one with the City of La Center. These actions

¹ Board of Clark County Commissioners, Letter to Stanley Speaks, Northwest Regional Bureau of Indian Affairs, April 2, 2004, 2.

² Foster Church, "Tribe asks to put land in trust," *The Oregonian*, March 13, 2002.

³ Dennis Whittlesey, "A Look at the World of Indian Law and Indian Gaming Law," 5.

indicate that a good faith effort has been made by the Tribe and the BIA to enter into a collaborative relationship with local communities.⁴

By signing the MOU, the county sent a message to federal decision-makers that the local government supports the tribe's future development plans. Those decision-makers do not know that the county had no idea at the time that it was signing on for a casino.

Secret No. 3: The Cowlitz developers planned to prevent local governments from participating in the gaming/siting process.

The same day the county received notice that a casino was the proposed use for Barnett's property, it received notice that the tribe had applied not only to have the land taken into trust but also to have it made its "initial reservation."

The county had been told by tribal representatives that their application was to have the property taken into trust, a process by which the federal government takes title to the land and removes it from state jurisdiction.

But an initial reservation designation would up the ante, and it was not something the county anticipated. Under the Indian Gaming Regulatory Act (IGRA), an initial reservation takes away the state's ability to override a federal decision to allow gaming on trust land. ***It also takes away much of the impact local governments and other stakeholders have on the federal decision-making process.***

In March 2005, the tribe took further action to cut out local input by secretly applying for restored lands status, a designation with an effect similar to the initial reservation.

Secret No. 4: Agreements made in the MOU would be heavily relied on in an environmental review.

The Draft EIS for the Cowlitz Tribe's proposed casino-resort project mentions the MOU more than 150 times in an effort to demonstrate that the tribe's agreement with the county would prevent negative impacts.

But when the MOU was negotiated, the county did not envision it would have to protect itself from what could become the largest casino-resort on the West Coast.

"Relying on the current MOU to protect the interests of county taxpayers is a mistake," Stanton said.

At its best, the Memorandum of Understanding should be regarded as a Memorandum of *Misunderstanding*—one that the current county commissioners should distance themselves from as far and as quickly as possible.

⁴ Analytical Environmental Services, administrative draft of the Final Environmental Impact Statement for the Cowlitz Indian Tribe Trust Acquisition and Casino Project, Response 477-3.