UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLARK COUNTY, WASHINGTON,
1300 Franklin Street,
Vancouver, WA 98666,

CITY OF VANCOUVER, WASHINGTON,
210 E. 13th St.,
Vancouver, WA 98668,

CITIZENS AGAINST RESERVATION SHOPPING (CARS),
703 Broadway, Suite 610
Vancouver, WA, 98660,

AL ALEXANDERSON,
4219 NW 328th Street, Ridgefield
Washington, 98642,

GREG AND SUSAN GILBERT,
2600 NW 329th Street, Ridgefield,
Washington, 98642,

DRAGONSLAYER, INC.,
225 W. 4th Street
La Center, WA 98629, and

MICHELS DEVELOPMENT, LLC
8200 Tacoma Mall Blvd.
Lakewood, WA 98499,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, 1849 C Street, N.W. Washington, DC 20240,

KENNETH SALAZAR, *in his official capacity as* Secretary, U.S. Department of the Interior, 1849 C Street, N.W. Washington, DC 20240,

BUREAU OF INDIAN AFFAIRS, U.S.

Civ. No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Department of the Interior, 1849 C Street, N.W., Washington, DC 20240,

LARRY ECHOHAWK, *in his official capacity as* Assistant Secretary Bureau of Indian Affairs U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC 20240,

NATIONAL INDIAN GAMING COMMISSION, 1441 L Street NW, Suite 9100, Washington, DC 20005,

TRACIE STEVENS, *in her official capacity as* Chairwoman, National Indian Gaming Commission, 1441 L Street NW, Suite 9100 Washington, DC 20005,

Defendants

INTRODUCTION

1. The acquisition of land in trust on behalf of a tribe, and its corresponding removal from state and local jurisdiction, must be carried out in compliance with certain standards that afford local governments and other affected parties some measure of consideration. As an initial matter, the Secretary of the Department of the Interior may acquire land in trust only for tribes that meet specific statutory requirements. Second, the regulations implementing the Secretary's authority require measured consideration of the jurisdictional and revenue impacts of the acquisition on state and local government. When gaming is involved, Congress has sought to balance the sovereign interests of the federal government, state governments, and Indian tribes and, in doing so, has established clear limitations on where tribes may operate casinos. Finally, agencies must take a "hard look" at the environmental consequences of a proposed trust acquisition. Defendants failed on every count.

2. This case involves a dispute over the Department of the Interior's ("DOI") decision to acquire approximately 152 acres of land ("Casino Parcel") in trust on behalf of the Cowlitz Tribe ("Tribe") so that the Tribe can develop a casino-resort. Since 2002, the Tribe has been urging DOI to acquire the land, which is outside the Tribe's historic territory, at first for no apparent purpose, then for the purpose of building a small-scale casino, and ultimately for a casino boasting a 134,150 square-foot gaming floor with 3,000 slot machines; 135 gaming tables and 20 poker tables; a 250 room hotel; 165,000 square feet of retail space; 10 restaurants, a convention center, an entertainment venue, 7,250 parking spaces, an RV park, and a wastewater treatment plant.

3. In approving the Cowlitz Tribe's proposed fee-to-trust request ("2004 FTT"), the Secretary of the DOI exceeded his authority under the Indian Reorganization Act ("IRA"), the scope of which the Supreme Court recently clarified in *Carcieri v. Salazar*, 555 U.S. __, 129 S. Ct. 1058 (2009). DOI ignored or discounted the jurisdictional and revenue impacts the land transfer and casino project would have on local governments and surrounding community. DOI erroneously determined that the Indian Gaming Regulatory Act's ("IGRA") limits on gaming do not apply to the 152-acre parcel, and relied on the National Indian Gaming Commission's ("NIGC") approval of a gaming ordinance that included elements far outside of NIGC's purview. Finally, DOI failed to take the "hard look" at impacts NEPA requires, and ignored reasonable alternatives available in the Tribe's historic territory. Defendants have violated all of these laws in the course of conducting a review process that does not meet basic Administrative Procedure Act ("APA") requirements, a process that they themselves have testified before Congress was anomalous and undesirable.

4. The environmental, social, economic, and quality-of-life impacts of the development will substantially injure Plaintiffs. Plaintiffs Clark County, Washington ("County"); City of Vancouver, Washington ("City"); Citizens Against Reservation Shopping ("CARS"); Al Alexanderson, Greg and Susan Gilbert ("Gilberts"); Dragonslayer Inc. and Michels Development, LLC (together, the "Card Rooms") therefore bring this action to rectify DOI's unlawful decision set forth in its December 17, 2010 Record of Decision ("ROD") to acquire land in trust on behalf of a tribe that Congress did not intend to benefit through the IRA, and Defendants' failure to comply with federal laws and regulations.

JURISDICTION

5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201-02, and 5 U.S.C. § 706.

6. Venue lies in this district under 28 U.S.C. § 1391(b) and (e)(2). A substantial portion of the events or omissions giving rise to the claims stated herein occurred in this district.

PARTIES

7. Plaintiff Clark County, Washington, a political subdivision of the State of Washington, is governed by its Board of County Commissioners. The County has jurisdiction over the proposed Casino Parcel. The County will be harmed if the land is acquired in trust because it will lose jurisdiction over the land, experience a reduction in revenues and be unable to collect taxes on the site as developed. Further, the citizens of the County will be harmed by the environmental, social and economic impacts of the casino project.

8. The City of Vancouver is a municipal corporation and a City of the First Class operating under a home rule charter as provided for under Article XI, Section 4 of the Constitution of the State of Washington. The City has a population of approximately 165,000 people and is the nearest large city to the Casino Parcel, which is approximately 10 miles away. The proposed casino will adversely impact the City's housing, transportation, and law enforcement resources.

9. Citizens Against Reservation Shopping ("CARS") is a non-profit organization formed in June 2005 to protect the Clark County community and environment from the Tribe's proposal to build a casino-resort at the La Center junction of I-5. Scores of business and community leaders, educators, and elected officials joined CARS because of a shared concern that the casino, and Defendants' faulty review process, would harm their environmental, economic, and social interests. CARS' members rely on and enjoy the economic, social and environmental resources of the area, all of which are highly likely to be harmed by the casino development. As a result of the procedural irregularities and final decision, CARS' interests have not been properly considered and their members are highly likely to experience a serious diminishment in their overall quality of life, aesthetic enjoyment, business development, and safety if the land is transferred into trust and used for casino development.

10. Plaintiff Al Alexanderson is an individual whose home is located on a five-acre parcel of rural land within sight of the proposed casino. Primary access from I-5 to Mr. Alexanderson's home runs through the proposed casino site, as does a tributary to the East Fork of the Lewis River where Mr. Alexanderson, an avid angler, often fishes. Mr. Alexanderson made a substantial investment when he acquired his home, relying heavily on the aesthetic and recreational values of living in rural Clark County. Mr. Alexanderson is concerned that the

casino will increase crime, noise, and light pollution, and will pollute the East Fork of the Lewis River, harming his ability to enjoy his property, decreasing his property values, and in general diminishing his quality of life.

11. Plaintiffs Greg and Susan Gilbert are individuals who have lived for 20 years in a home located on 36 acres of land, overlooking the East Fork of the Lewis River, on the east side of I-5. A seasonal stream flows through the proposed casino site, under I-5, then through the Gilbert's property, through Paradise Point State Park, and eventually empties into the East Fork of the Lewis River. The Gilberts enjoy the deer, blue heron, bald eagles, and many other forms of wildlife that come to their property because of the habitat the stream provides. The Gilberts are deeply concerned that the proposed casino development will result in an irreversible change in the rural character of the area; the loss of enjoyment of the aesthetic and environmental qualities of the agricultural land surrounding the proposed casino site; increased traffic; increased light, noise, air, and storm water pollution; increased crime; and decreased property values. The Gilberts are most gravely concerned, however, about preserving the integrity of the stream and the East Fork of the Lewis River, which they believe will be substantially harmed by the proposed 500,000 daily gallons of treated sewage and an unknown amount of storm water runoff from the proposed casino site. The Gilberts have been injured by Defendants' procedural failures and are likely to be injured by the casino project, which will substantially impact their property and the environment they enjoy.

12. Plaintiff Dragonslayer Inc., a Washington state corporation, owns two clubs in downtown La Center, which employ approximately 352 people, with pay-roll and benefits well over $12,000,000 per year (with Michels Development, LLC, the "Card Rooms"). Dragonslayer generates approximately $1,400,000 in tax revenue for La Center, and together with Michels

Development LLC, the businesses account for approximately 75% of La Center's operations budget. An active participant in the La Center community, Dragonslayer started the North County Chamber of Commerce; serves as a member of several other chambers; funds the La Center Casino Charitable Fund, which donates $72,000 to worthy causes in and around La Center per year; and contributes time, money and man-power to a variety of other charities, little leagues, founding day celebrations and other community activities. It is likely that development of the proposed casino will result in the loss of approximately 60% of Dragonslayer's business, directly affecting La Center's revenues and the City's ability to provide services to its businesses and residents and undermine Dragonslayer's role in the community.

13. Plaintiff Michels Development LLC, a privately-held limited liability company, owns and operates two clubs in La Center, Washington – Chips Casino, which opened in October 1998 and the Palace Casino, which opened in June 1999. Michels Development, a leader in the community, participates extensively in charitable and community events and provides substantial support for various organizations that benefit Clark County businesses and the community. As with Dragonslayer, the Tribe's proposed casino will cause Michels Development to lose approximately 60% of its business. Not only will Michels Development's investment in the clubs be severely harmed, the substantial reduction in the clubs' revenues will directly affect La Center's revenues and the City's ability to provide services, as well as undermine Michels Development's ability to contribute to the community it has done much to benefit. Michels Development has a strong interest in maintaining and improving the quality and vitality of La Center, both to support its business and to ensure a safe and healthy environment for its employees.

14. Defendant United States Department of the Interior ("DOI") is an administrative agency of the United States.

15. Defendant Ken Salazar is the Secretary of the United States Department of the Interior ("Secretary"), and is sued in his official capacity.

16. Defendant Bureau of Indian Affairs ("BIA") is an administrative agency within the DOI and is charged with overseeing Indian Affairs.

17. Defendant Larry EchoHawk is Assistant Secretary of the United States Department of the Interior and administers the BIA, and is sued in his official capacity.

18. Defendant National Indian Gaming Commission ("NIGC") is an independent regulatory agency of the United States charged with overseeing gaming on Indian lands.

19. Defendant Tracie Stevens is the appointed Chairwoman of the NIGC, and is sued in her official capacity.

FACTS

20. On January 4, 2002, DOI published their Reconsidered Final Determination for Federal Acknowledgment of the Cowlitz Indian Tribe. That same day, the Tribe filed a fee-to-trust application to have the Casino Parcel acquired in trust on its behalf ("2002 FTT"), pursuant to 25 U.S.C. § 465 and 25 C.F.R. Part 151. Once land is acquired in trust, tribes, as sovereign entities, are exempt from taxes and state and local law.

21. Although the Tribe's fee lands and tribal offices are located 24 miles north of the casino site within the Tribe's historic territory, *see Simon Plamondon, on Relation of the Cowlitz*

Indians v. United States, 21 Ind. Cl. Comm. (June 25, 1969), the son of the Tribe's Chairman at the time – real estate developer David Barnett – purchased or optioned the Casino Parcel, which is located west of Interstate 5 (I-5) at the NW 319th Street Interchange, during a two-year period before the Tribe was recognized. In contrast to the Tribe's fee land, the casino site is a short 16-mile drive from Portland, Oregon providing easy access to the Portland gaming market.

The First NEPA Review

22. The Tribe did not identify its intended use of the land in its 2002 FTT, although it was required to do so under the trust regulations. 25 C.F.R. § 151.10(c). The Tribe argued that because it had no plans to develop the Casino Parcel, environmental review of the 2002 FTT was unnecessary.

23. The County objected to the FTT on April 23, 2002, arguing that the trust acquisition would negatively impact the County's comprehensive plan, public facilities, and schools. The Card Rooms also objected, arguing that federal law required the Tribe to identify its intended use of the land, which the Card Rooms believed was gaming.

24. The central office of BIA directed the BIA Northwest Regional Office to require the Tribe to state a specific land use and to declare whether the land will be used for gaming. The Tribe withdrew its 2002 FTT during the summer of 2003.

The County's Efforts to Negotiate an MOU to Protect Its Interests

25. Soon after it filed its April 23, 2002 comments, the County initiated efforts to negotiate a Memorandum of Understanding ("MOU") with the Tribe to address impacts of the proposed trust acquisition. Although the County opposed the 2002 FTT, it negotiated the MOU

with the Tribe in good faith out of concern that DOI would acquire the land regardless of the impacts on the County and that DOI would not require sufficient mitigation.

26. On March 2, 2004, the County and the Tribe executed an MOU requiring the Tribe to compensate the County for property and sales taxes the County would otherwise lose if the land were acquired in trust. The MOU also required the Tribe to maintain consistency with the local development code. Clark County Resolution 2004-03-02. The MOU included a disclaimer stating that, "Nothing in this Memorandum of Understanding should be construed as evidencing County support for or endorsement of the Tribe's trust application."

The Tribe's 2004 FTT

27. The same day the County and Tribe executed the MOU, the Tribe filed its second fee-to-trust application for the same site.

28. DOI sent notice of the 2004 FTT to the County soon after. At the same time, DOI also sent notice to the County that the Tribe had filed a request asking the Secretary proclaim the casino site the Tribe's reservation, pursuant to 25 U.S.C. § 467.

29. A reservation proclamation is significant for newly-recognized tribes like the Cowlitz Tribe because the Indian Gaming Regulatory Act ("IGRA") prohibits gaming on lands acquired in trust after October 17, 1988, unless one of three exceptions applies: 1) land taken into trust as a part of a settlement of a land claim; 2) the initial reservation of an Indian tribe acknowledged; or 3) the restoration of lands for an Indian tribe that is restored to Federal recognition. 25 U.S.C. § 2719(b)(1)(B)(i-iii). If an exception does not apply, the only available route for gaming is through the "two-part determination," which requires a finding by the

Secretary that gaming will not be detrimental to the surrounding community and concurrence from the Governor, among other things. *Id.* § 2719(b)(1)(A).

30. The Tribe did not inform the County at any point during the negotiations for the MOU that it intended to seek a reservation proclamation or that it intended to conduct gaming on the site. The County, therefore, did not address gaming in the MOU, and believed that if gaming became an option, the two-part determination would apply.

The Second NEPA Review

31. During October 2003, the Tribe prepared an environmental assessment ("EA") under NEPA to support the 2004 FTT. The EA described a 41,800-square-foot casino, with 12,500 square-feet of gaming floor, plus a restaurant, a gift shop, and parking for 350 cars. The introduction of the EA stated that the impacts of a small casino were being evaluated only because "the Tribe did not wish to exclude any potentially lawful use of the subject lands."

32. DOI released the EA for public comment in March 2004, soon after the Tribe filed its 2004 FTT. The Card Rooms and other parties argued that the EA did not reflect the Tribe's true plans because economic studies demonstrated that the market would support a far larger casino than the Tribe described in the EA.

33. Several months later, David Barnett announced a partnership with the Mohegan Tribe of Connecticut to develop a far larger casino than described in the EA. DOI published a notice of intent to prepare an environmental impact statement ("EIS"), describing the significant increase in the size of the new project. The new project increased the amount of gaming floor space from 12,500 to 160,000 square feet and parking from 350 to 6,500 places. The revised

project would also include a 210,000 square feet of restaurant and retail facilities, 150,000 square feet of convention and entertainment facilities, and an approximately 250 room hotel.

The Restored Tribe/Restored Lands Request

34. On March 15, 2005, the Tribe submitted a gaming ordinance to the National Indian Gaming Commission ("NIGC") for approval under IGRA, 25 U.S.C. 2701 *et seq.* NIGC is responsible for overseeing gaming on Indian lands. *Id.* at § 2702. The purpose of a gaming ordinance is to set forth procedures to issue tribal licenses, copies of all tribal gaming regulations; dispute resolution procedures, how revenues will be used – in short, matters relating directly to the management of gaming operations. *See* 25 C.F.R. Part 522 *generally.*

35. The Tribe specifically identified the Casino Parcel in its proposed tribal ordinance submitted to the NIGC. NIGC regulations do not require or address site specific ordinances. 25 C.F.R. § 522.4. Because the Tribe stated that the gaming would take place on the Casino Parcel, however, NIGC concluded that it had to determine whether gaming would be permissible on the Casino Parcel under one of the three exceptions to the gaming prohibition on post-1988 lands. NIGC also concluded it had only 90 days to make the determination under 25 C.F.R. §522.4.

36. The Tribe therefore submitted a Request for a Restored Lands Finding with its gaming ordinance to satisfy one of the three exceptions to the prohibition on gaming. Although, a restored lands analysis usually takes well over a year and often longer to properly analyze, NIGC interpreted its regulations as requiring final decision within 90 days. NIGC sought one 90-day extension from the Tribe.

37. NIGC did not provide any public notice of its pending consideration of the Tribe's gaming ordinance or the Restored Lands Request. In fact, in documents it submitted to the Senate Committee on Indian Affairs on July 27, 2005, DOI omitted the Tribe's pending restored lands request from a list of requests pending before DOI and NIGC.

38. Plaintiffs only learned of the pending Restored Lands Request in October of 2005, after speaking with the NIGC. NIGC stated it would accept comments only until November 15, 2005, shortly after which it would issue its finding.

39. NIGC issued its Restored Lands Opinion on November 23, 2005, eight days after comments from outside parties were received, concluding that the La Center site met the restored lands exception of section 20. 25 U.S.C. § 2719(b)(1)(B)(iii). The Restored Lands Opinion concluded that the Tribe qualified as a restored tribe and that the Casino Parcel qualified as restored lands, despite the Tribe's tenuous historic connection to the land.

40. The Senate Committee on Indian Affairs investigated the circumstances of NIGC's Restored Lands Finding. NIGC and DOI testified before the Committee that the "Cowlitz ordinance opinion is really an anomaly" and "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. It is generally much better to let the processes go through," and that "the Department is working with the Chairman of the National Indian Gaming Commission at this point to see if we can find a solution so that situations like this do not continue to occur."

41. At the time NIGC issued its Restored Lands Opinion, there was substantial disagreement between NIGC and DOI regarding which agency was responsible for making such determinations when lands were not yet in trust.

42. Although DOI agreed to reconsider NIGC's restored lands opinion, after receiving multiple requests for it to do so, DOI never conducted an independent review of the NIGC decision.

43. In 2009, DOI promulgated regulations implementing 25 U.S.C. § 2719, which require DOI, not NIGC, to make restored lands determinations when land is not yet in trust. 25 C.F.R. § 292.3(b).

44. DOI relied on NIGC's Restored Lands Opinion in the ROD to support its determination that the casino site qualifies for the initial reservation exception to section 20 of the IGRA.

The Draft EIS Process

45. The City and the County participated as cooperating agencies in the preparation of the EIS. DOI issued the draft EIS on April 14, 2006. Prior to its release, both the City and the County objected to the draft EIS, citing the poor quality of the analysis and its failure to meet "reasonable standards as an objective and thorough analysis of the socioeconomic and transportation impacts." The City warned DOI that "[i]f the quality of analysis in these sections is not significantly improved from this draft, it is likely that the City will challenge the adequacy of the EIS." Neither the City's nor the County's comments were addressed in the draft EIS.

46. On June 6, in the midst of the comment period on the draft EIS, the Tribe filed a revised 2004 FTT. After originally closing the comment period on the draft EIS on July 14, DOI announced that it would "extend" the comment period until August 25, 2006, to allow time for comments on the Tribe's revised 2004 FTT. Yet again, in the middle of the extended comment

period, the Tribe filed another new document with DOI, this time a revised application for its initial reservation designation.

47. In addition to objecting to the Tribe's submission of new documents in the midst of the comment period, commentors, including Plaintiffs, objected to: 1) DOI's exclusion of reasonable alternative sites, including one located in the Tribe's historic territory; 2) DOI's reliance on the MOU to support the conclusion that impacts would be mitigated; 3) DOI's inadequate analyses of economic, traffic, water, pollution and other impacts; and, 4) DOI's failure to adequately assess impacts on local governments and the surrounding community.

Substitution of the MOU with the Environment, Health and Safety Ordinance

48. The draft EIS relies heavily on the 2004 MOU between the Tribe and the County to support the conclusion that the impacts of the 2004 FTT and casino project would be mitigated.

49. Although DOI was informed that the Western Washington Growth Management Hearing Board determined that the MOU violated the State's Growth Management Act (Chapter 36.70 RCW) and was void *ab initio* in 2007, DOI did not revise the draft EIS to reflect the fact some impacts were no longer mitigated.

50. Instead, on October 6, 2007, the Tribe unilaterally adopted an amended gaming ordinance which appended two additional ordinances called the Environment and Public Health and Safety ordinance ("EPHS") and the Tribal Enforcement and Compliance Officer ("TECO"). The EPHS included provisions addressing fire protection, public health, sewer, landscaping,

street standards, and other requirements, mirroring the obligations the Tribe committed to in the invalidated MOU.

51. NIGC regulations relating to ordinances do not provide for the review, approval or enforcement of the EPHS or TECO. 25 C.F.R. Part 522. NIGC regulations permit a tribe to revoke or amend a tribal ordinance at any time. 25 C.F.R. §§ 522.3, 522.12.

52. DOI relied on the EPHS and TECO ordinances to substitute for the invalidated MOU in the final EIS and in the ROD as evidence of mitigation.

The Final EIS Review

53. On March 2007, the Regional BIA released the preliminary final EIS to cooperating agencies, which included two new reports submitted by the Tribe after the close of the draft EIS comment period—the Tribe's Business Plan and Unmet Needs Report.

54. The Unmet Needs Report asserts, among other things, that the Tribe requires $113.6 million annually to meet the Tribe's currently "unmet needs." On the basis of the Unmet Needs Report, the final EIS and ROD conclude that DOI did not need to consider in detail an alternative located in the Tribe's historic territory, because it would not satisfy the purpose and need for the proposed trust acquisition. The draft EIS did not consider a northern alternative in detail, despite the lack of the Unmet Needs Report, which DOI used to justify its exclusion.

55. Further, the final EIS does not cure the problems commentors identified in the draft EIS relating to, among other things, water, traffic, pollution, social and economic impacts, insufficient mitigation, exclusion of reasonable alternatives, and other issues.

56. The City of La Center, the City of Woodland, the Port of Woodland, and the Woodland School District objected to the proposed land transfer and casino project, as did other prominent community organizations, including the Greater Vancouver Chamber of Commerce; the La Center North Clark County Chamber of Commerce; the Woodland Chamber of Commerce; the Battle Ground Chamber of Commerce; the American Land Rights Association; Identity Clark County; Friends of Clark County; Enterprise/Paradise Point Neighborhood Association; Fish First; the Chinook Indian Tribe and Stand Up for Clark County Citizens.

DOI's Lack of Oversight Over EIS Process

57. The Council on Environmental Quality's Regulations implementing NEPA, 40 C.F.R. Part 1500, require the action agency to oversee the NEPA process and to assume responsibility for the document. 40 C.F.R. § 1506.5. For an EIS, an agency often hires third party contractor, and charges the applicant for the cost. The contractor must be selected by the federal action agency after the consideration of candidates and must assert that it has no interest in the outcome of the project and is objective. DOI selected Analytical Environmental Services ("AES") at the recommendation of the Tribe.

58. DOI entered into an MOU on October 29, 2004 with the AES, and the Tribe. Consistent with NEPA regulations, the MOU requires BIA to "direct and control all of the work of AES. The BIA will provide AES direction, technical review and quality control for the preparation of the Scoping Report, EIS, technical studies, and other NEPA-related documents. AES agrees to act as the project manager on behalf of and at the direction of the BIA."

59. Documents obtained by the Card Rooms through Freedom of Information Act litigation against DOI (*Dragonslayer, Inc., et al. v. U.S. Dep't of the Interior, et al.*, No. 3:09-cv-

00135 (D.C. Ore., terminated May 17, 2010)) demonstrate that BIA did not direct and control all of the work of AES.

60. DOI agreed during an April 19, 2010, meeting with the Card Rooms to review the FOIA documents and determine whether BIA met its NEPA obligations. DOI did not address the materials submitted by the Card Rooms in the ROD.

Review of the Tribe's Status under Carcieri

61. The Indian Reorganization Act ("IRA") authorizes the Secretary to acquire land and hold it in trust "for the purpose of providing land for Indians." Ch. 576, §5, 48 Stat. 985, 25 U.S.C. § 465. The IRA defines the term "Indian" to "include all persons of Indian descent who are members of *any recognized Indian tribe now under Federal jurisdiction.*" 25 U.S.C. § 479 (emphasis added).

62. In 2009, the Supreme Court held that "now," as used in 25 U.S.C. § 479, unambiguously refers to the year when the IRA was first enacted – 1934. *Carcieri v. Salazar*, 555 U.S. ___, 129 S. Ct. 1058, 1061 (2009). The *Carcieri* decision thus clarifies that the Secretary's authority is limited to acquiring land in trust only for recognized tribes that were under federal jurisdiction in 1934.

63. In 2005, NIGC issued a determination finding that "the historical evidence establishes that the United States did not recognize the Cowlitz Tribe as a governmental entity from at least the early 1900s until 2002." NIGC cited as support for this finding, among other things, a statement made in 1933 by John Collier, Commissioner of BIA and architect of the IRA, explaining that "the Cowlitz tribe . . . is no longer in existence as a communal entity" and

that "they live scattered about from place to place, and have no reservation under Governmental control."

64. The available evidence, including NIGC's 2005 finding, demonstrates that the Cowlitz tribe was not under federal jurisdiction in 1934.

65. DOI also concluded that the Casino Parcel qualified for a reservation proclamation pursuant to 25 U.S.C. § 467 and as the Tribe's initial reservation under IGRA, 25 U.S.C. § 2719(b)(1)(B)(ii), which requires a finding that the tribe has "significant historical connections" to the land, 25 C.F.R. § 292.6, relying in part on NIGC's Restored Lands Opinion.

66. On January 4, 2011, DOI published notice in the Federal Register of its December 17, 2010 ROD, which authorized acquisition of the Casino Parcel in trust on behalf of the Tribe and proclaimed that the Casino Parcel is the Tribe's "initial reservation" for purposes of the IGRA. 76 Fed. Reg. 377-01 (Jan. 4 2011). This decision is a final agency action pursuant to 25 C.F.R. § 2.6 and 5 U.S.C. § 704.

FIRST CLAIM

DOI's Violation of the Indian Reorganization Act of 1934 and the APA

67. The paragraphs set forth above are realleged and incorporated herein by reference.

68. Under the IRA, DOI has power to take land into trust and proclaim reservations only for Indian tribes that were federally recognized and under federal jurisdiction in June 1934, when the IRA was enacted. 25 U.S.C. §§ 465, 467, and 479.

69. The Cowlitz Tribe was neither federally recognized nor under federal jurisdiction in June 1934. The Secretary therefore has no authority under 25 U.S.C. § 465 to acquire land in

trust on behalf of the Tribe. Because the Secretary has no authority to acquire land in trust for the Tribe under the IRA, he has no authority to proclaim such land the Tribe's reservation.

70. Accordingly, DOI's decision to acquire land in trust and declare it the Tribe's reservation is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

SECOND CLAIM

DOI's Violations of the Indian Reorganization Act of 1934, the Part 151 Regulations and the APA

71. The paragraphs set forth above are realleged and incorporated herein by reference.

72. Under the regulations implementing 25 U.S.C. § 465, the Secretary must consider, among other things, the impacts of the proposed acquisition the State and its political subdivisions resulting from the removal of the land from the tax rolls and the jurisdictional problems and potential conflicts of land use which may arise. 25 C.F.R. §151.10(e),(f). In addition, the Secretary is required to give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition and give greater weight to the concerns raised by the State and local governments. 25 C.F.R. §151.11.

73. DOI failed to adequately consider the impacts of the trust acquisition and casino project on the County and did not properly account for the jurisdictional problems and potential conflicts of land use which may arise, because it improperly relies on NIGC's approval of a tribal ordinance that is outside of NIGC's authority.

74. DOI failed to address the concerns of local government in the ROD and failed to scrutinize properly the Tribe's anticipated benefits, which were set forth in the Tribe's Business Plan and inflated Unmet Needs Report.

75. Accordingly, DOI's decision to acquire land in trust failed to adhere to the procedural and substantive requirements set forth in 25 C.F.R. Part 151 and is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

THIRD CLAIM

DOI's Violations of the Indian Gaming Regulatory Act and the APA

76. The paragraphs set forth above are realleged and incorporated herein by reference.

77. Section 20 of IGRA creates a broad prohibition against gambling on land taken into trust after October 17, 1988, 25 U.S.C. § 2719(a), unless one of three exceptions apply. An initial reservation is one of the three exceptions to the gaming prohibition. *Id.* at § 2719(b)(1)(B)(ii).

78. To meet the initial reservation exception, the tribe must demonstrate, among other things, that "the land is located within . . . an area where the tribe has significant historical connections . . ." 25 C.F.R. § 292.6.

79. DOI erroneously determined that the Tribe has a significant historical connection to the Casino Parcel required for the initial reservation exception and inappropriately relied on

the NIGC's 2005 Restored Lands Opinion, which misapplied the law in concluding that the Casino Parcel would qualify as restored lands.

80. Accordingly, DOI's decision is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

FOURTH CLAIM

NIGC's Violations of IGRA and the APA

81. The paragraphs set forth above are realleged and incorporated herein by reference.

82. IGRA requires the approval of a gaming ordinance before gaming can be conducted on Indian lands. The regulations provide that a gaming ordinance shall meet certain requirements for approval, including: that the tribe shall have sole proprietary interest in the gaming operation, how revenues shall be used; that the tribe shall have gaming operations audited annually; that certain contracts shall be included within the audit; that background investigation shall be conducted; that the tribe shall issue separate licenses to each facility operating class II gaming; and that the tribe shall construct, maintain and operate a gaming facility in a safe manner. 25 U.S.C. § 2710; 25 C.F.R. §§ 522.4, 522.6. In other words, an ordinance must comply with requirements related to ensuring the integrity of the gaming operation.

83. NIGC's approval of the Tribe's 2005 gaming ordinance based on its conclusion that the Casino Parcel qualified as restored lands for the Tribe was legally and factually erroneous. Further, the EPHS attached to the Tribe's 2007 amended ordinance falls outside

NIGC's authority. NIGC lacks authority to review, approve, or enforce the provisions in the EPHS.

84. Accordingly, NIGC's decision is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

FIFTH CLAIM

DOI's Violations of the National Environmental Policy Act and the APA

85. The paragraphs set forth above are realleged and incorporated herein by reference.

86. DOI's actions in approving the FTT and certifying the EIS constitute violations of NEPA, 42 U.S.C. § 4321 et seq., and its implementing regulations, 40 C.F.R. 1500 *et seq.* Without limitation, DOI's actions violate NEPA and are therefore unlawful in the respects alleged below.

87. The EIS fails to adequately assess the impacts the FTT will have on the County, the City, local communities, the Card Rooms and nearby residents, as required by 40 C.F.R. § 1502.16(c), 25 C.F.R. § 151.10(e) and NEPA.

88. BIA's failure to oversee the NEPA review, as required by 40 C.F.R. § 1506.5, has compromised the process and final EIS, in violation of NEPA. The Tribe's extensive involvement in the preparation of the EIS, as evidenced in correspondence between AES and the Tribe, presented a conflict of interest and violated NEPA regulations, as well as the MOU between BIA, AES and the Tribe.

89. DOI improperly accepted the Tribe's statement of need, financial data, and revenue projections without critical consideration, in violation of 40 C.F.R. §1502.13 and the APA, and as a consequence, eliminated from detailed analysis feasible alternatives, in violation of 40 C.F.R. §1502.14 and the APA.

90. DOI has unlawfully relied on NIGC's ultra vires approval of the Tribe's revocable Environment and Public Health and Safety ordinance as evidence of mitigation in the FTT, in violation of the APA.

91. DOI's assessment of indirect and growth-inducing effects and cumulative effects is inadequate, in violation of 40 C.F.R. § 1502.16 and the APA.

92. DOI failed to take a "hard look" at the environmental impacts of proposed major actions raised by Plaintiffs required by 40 C.F.R. § 1502. This includes and is not limited to the following areas:

- DOI failed to adequately assess and consider the social, economic, employment, and housing impacts of the proposed casino on the communities within Clark County including La Center, Woodland, Ridgefield, Battleground, Vancouver and Camas, as well as the effects on social services;
- DOI's traffic analysis is inadequate, either omitting necessary data or relying on out-of-date information. The impacts in regard to transportation and level of service are not adequately analyzed including potential road improvements and the replacement of the Interstate 5 bridge coinciding with the development and opening of a casino/resort;
- DOI's air emissions analysis is inadequate;
- DOI's assessment of impacts on water resources, the sole source aquifer, streams, and wetlands from runoff, turbidity, sewage, and other effects is inadequate.

93. DOI violated NEPA by issuing an EIS that makes conclusions about the FTT without obtaining, considering and evaluating sufficient data.

94. Accordingly, DOI's decision to acquire land and proclaim it the Tribe's reservation available for gaming on the basis of the EIS is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, beyond the scope of the Secretary's authority under the IRA, and issued in a manner not in accordance with law. 5 U.S.C. §706 (2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. That the Court declare that the Secretary's decision to acquire the Casino Parcel in trust on behalf of the Cowlitz Tribe violates the IRA and implementing regulations, and ordering the Secretary to set aside his decision approving the trust acquisition;

B. That the Court declare that the Casino Parcel does not qualify as an initial reservation for the Tribe pursuant to 25 U.S.C. § 2719(b)(1)(B)(ii) and enjoining the Secretary from allowing the land to be used for gaming purposes;

C. That the Court declare that NIGC's approval of the Tribe's ordinance under 25 C.F.R. Part 522 was ultra vires, arbitrary and capricious and otherwise not in accordance with law;

D. That the Court declare that DOI acted in an arbitrary and capricious manner by certifying the EIS for the casino project and approving the 2004 FTT because the final EIS is legally inadequate under NEPA and the APA and require the Secretary to comply with NEPA by preparing a new or supplemental EIS consistent with NEPA's requirements;

E. That the Court issue a Temporary Restraining Order and a Preliminary Injunction ordering that no official of the United States take the Casino Parcel into trust until final judgment has been entered and all appeals exhausted; and

F. That the Court award such other relief as it deems proper to effectuate the purposes of this action.

Respectfully Submitted,

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