



Citizens Against RESERVATION SHOPPING

Citizens Against Reservation Shopping
PO Box 66032
Vancouver, WA 98666

November 17, 2009

Representative Nick Rahall, Chairman
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth Office Building
Washington, DC 20515

Dear Chairman Rahall and Members of the Committee:

Citizens Against Reservation Shopping (CARS) appreciates the challenge Congress faces in clarifying how the U.S. Supreme Court's decision in *Carciere v. Salazar* applies to the Bureau of Indian Affairs' (BIA) trust land acquisition process and the frustration tribes across the nation are experiencing as they await stalled-out trust land decisions.

We wish to add our voice to the testimony of panelists at your Committee's November 4 hearing who requested Congress not enact the proposed quick fixes to *Carciere*, H.R. 3742 and H.R. 3697. Instead we ask that you take a careful look at the BIA trust acquisition process while keeping in mind that putting land into trust involves and affects both tribal *and* nontribal communities. This process should ensure fairness and equity to both.

Our specific request to you is to ensure that when the federal government's authority to secure trust lands for post-1934 tribes is reinstated, that the reform also protects the interests of local communities.

CARS Background and Perspective

CARS is a nonprofit group in Vancouver, Washington, that represents a broad coalition of business and community interests. Our organization was formed in 2005 to oppose the Cowlitz Tribe's off-reservation trust land acquisition request to build and operate a massive casino-resort complex near La Center, Washington.

CARS has experienced firsthand the inequities and deficiencies in BIA's trust land process, established by regulations in 25 C.F.R. Part 151. Although there is an abundance of land available to house a highly successful casino and reservation within the Tribe's historic, cultural and geographic homeland, 40-some miles north of the proposed site and adjacent to Interstate 5, the Cowlitz Tribe is seeking to have the proposed La Center parcel acquired in trust to capitalize on the lucrative Portland gaming market and maximize profits for the casino investors who own the land. The Tribe has insisted on this site, despite:

- Never having had a geographic, cultural or historic connection to that land.
- Overwhelming local opposition due to the extreme negative impact the casino would have on area communities and Clark County. (Resolutions of opposition have been passed by Clark County, the cities of Vancouver, La Center and Woodland, as well as Woodland's port and school districts. Several local chambers of commerce and citizens/environmental groups also have stated their opposition.)

The result has been a protracted, intense, costly and contentious controversy that is the direct result of the failings of BIA's Part 151 trust land acquisition process and standards.

Case Study: The Cowlitz Application

As a panelist at your November 4 hearing, Cowlitz Chairman William Iyall painted a compelling picture of a landless tribe blocked in its efforts to acquire land and a reservation. However, he left out some information that helps illustrate the need for reform.

Mr. Iyall stated in his written testimony that "Congress (and the Department of the Interior) must not let opponents of Indian gaming hijack the *Carcieri* issue to further their own political goals," but the fact is, the Cowlitz Tribe's application is primarily about gambling.

There is nothing to indicate the Tribe wants anything to do with the Clark County property *unless it is eligible for gambling*. The Tribe has minimal connection to the land it wants taken into trust—only 2.7 percent (95) of its members live in Clark County.¹

¹ Randy Russell, R, Cowlitz enrollment officer, *Letter to Mr. Stanley Speaks, Area Director of the BIA*, 11 August 2006, cited in ECONorthwest, *An Initial Review of the Cowlitz Final Environmental Impact Statement*, 17 April 2007.

Lewis County, Washington, two counties north of Clark County, is where the Tribe recently invested \$5 million renovating an elder housing facility and is building 30 single-family homes with federal grants and stimulus money.² It is also the site of its tribal meetings and cultural presentations, and its annual powwow.

The proposed Clark County trust land is owned by Salishan-Mohegan, a partnership of Cowlitz Tribe member-developer David Barnett, the Mohegan Tribe of Connecticut and Paskenta Band of Nomlaki Indians of California, who have agreements to receive fees equal to 3 percent of total project costs and, via a seven-year management agreement, split a 24 percent share of casino revenues.³

Because the Indian Gaming Regulatory Act (IGRA) prohibits gaming on lands acquired after 1988, the Tribe sought a restored lands opinion on the property, which would make the parcel eligible for gambling. The National Indian Gaming Commission (NIGC) accepted the parcel as the Tribe's restored lands in November 2005, but this was a) an aberration from earlier findings, and b) a finding made under duress.

The aberration: The Indian Claims Commission in 1969 and DOI's Office of Federal Recognition in 1997 very specifically stated that the Cowlitz Tribe had no claim to the Lewis River area—of which the La Center parcel is part—because the Tribe has repeatedly attempted to claim the Indians historically living there were Cowlitz. In 2005, NIGC let this claim slip through.

The duress came when NIGC agreed to allow the Cowlitz Tribe to apply for a gambling ordinance specific to the La Center parcel—which had neither been taken into trust nor been designated as Indian lands. Because a tribal gambling ordinance cannot be issued for non-Indian land, NIGC also had to make a determination on whether the parcel qualified as Indian lands. This decision needed to be made within 90 days, the timeframe in which NIGC is required to make ordinance decisions.

In testimony February 1, 2006, before the U.S. Senate Committee on Indian Affairs, NIGC General Counsel Penny Coleman explained that usually NIGC does not issue land opinions, because “they take a lot of time.” She called the Cowlitz case “an anomaly”—the only time they had been asked to work on a site-specific ordinance for a parcel that had not been taken into trust.

Tying the restored lands application to the time-sensitive ordinance had the effect of rushing the lands determination. As Coleman testified, “when push came to shove” and the NIGC chairman had to make a decision on the ordinance, her office gave him an opinion.⁴

² Greg Garrison, “Cowlitz tribe wrapping up one housing project, preparing to launch another,” *The (Longview, Washington) Daily News*, 10 April 2009.

³ Mohegan Tribal Gaming Authority, “Annual Report 2008,” *Mohegan Tribal Gaming Authority*, 2008, <http://mtga.com/mtga/annual_report/mtga_annual_08.pdf> (30 June 2009), 101.

⁴ Oversight Hearing Before the Senate Committee on Indian Affairs, *Off-Reservation Gaming: The Process for Considering Gaming Applications*, 1 February 2006.

Essentially, NIGC kicked the lands determination out the door—depending almost exclusively on the Tribe's claims—to meet an ordinance deadline. Ironically, these applications were rushed through the system with next to no opportunity for public input so the Tribe could get a gaming ordinance that now, four years later, has yet to be used and will not be needed for years into the future, if ever.

Now we have a Tribe—or at least its developer and his colleagues—pursuing a grand plan for a mega-casino and resort *that is not at all wanted by neighboring communities or the County*. And the nontribal communities have little opportunity to be at the table because trust land applications are primarily a negotiation between tribes and BIA/DOI.

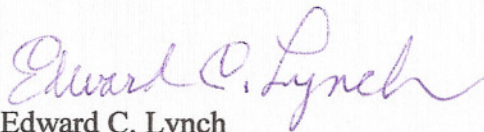
We sympathize with the rank and file members of the Cowlitz Tribe who sincerely wish to establish a reservation and, we believe, would meet little resistance if they established it in their aboriginal homeland to the north. It is clear that their dream is being held hostage to that of their ambitious fellow Tribe member, who purchased and took options on the La Center parcel even before the Tribe received federal acknowledgement in 2002.

In Conclusion

The testimony of Chairman Iyall provides an example of the very basic problem that a useful *Carciari* fix would address: There is more than one side to every story, and it is important to have both tribal and nontribal communities at the table.

A land acquisition process that focuses almost solely on the submissions, interpretations and interests of tribes fails to account for the concerns, plans and interests of nontribal communities—to the detriment of everyone involved.

Sincerely,



Edward C. Lynch
Chairman, Citizens Against Reservation Shopping