

**Before the United States Senate Committee on Indian Affairs
Re: Off-Reservation Tribal Casinos**

Testimony of Alvin Alexanderson-Homeowner near the proposed Cowlitz Casino

**Sponsored by:
Citizens Against Reservation Shopping
Stand Up For Clark County
American Land Rights.
February 1, 2006**

Mr. Chairman, Mr. Vice Chairman, members of the Committee. The United States government is proposing to site an eight story tribal casino on a dairy farm a few hundred feet from my door near La Center, Washington. I am here for my family and the three groups sponsoring my visit.

The community does not want it there. No local government or business group supports a casino at that site. The County says the land is unsuitable for large-scale commercial development and was not envisioned for such use in the future. Clark County signed a services agreement with the Tribe; but this was before **any** casino was described. The County was later surprised and troubled that the Tribe was seeking an exemption from Section 20 protections.¹

The Tribe is not from the area. The Tribe's homeland is consistently described in 19th century government maps, an 1855 draft treaty and historical accounts. One example is the John Wesley Powell map on the easel. The Cowlitz ruled a large area many miles north of the site. An unrelated Tribe held the project area. Cowlitz at most were only occasional visitors, and were never sovereign there. There is no evidence of **any** Cowlitz link to the project site for over 150 years. The only connection now is the proposed project.

The Tribe has 2,500 square miles of adjudicated land along I-5 to the North. It holds the Tribe's offices and medical building, all of its current fee land, and it has always been the Tribe's population center. It is where the Catholic Church Cowlitz Mission was established in 1838. The Tribe's Housing Authority is there and it is where the Tribe spends Federal Reservation Road Funds and state transportation subsidies. Several vacant freeway interchanges lie along this corridor. Local economies are weak and could benefit from the project.

The disputed site was picked for its commercial attributes. David Barnett and his wife optioned the site because it is next to I-5 and close to Portland/Vancouver. At the time, Mr. Barnett said it was a speculative investment and there were no plans for a casino or to change the agricultural use. Mr. Barnett now has a partnership with the Mohegan Gaming Authority. The site was only available to him because state and local land use regulations had preserved it as agricultural land. The Tribe does not own it.

¹ If a Section 20 exemption applies, the casino is allowed to "be detrimental to the surrounding community." No local and nearby tribal government consultation is required, and the state governor has no veto.

Four years of deception. It has taken too long to get the facts. First we were told there were no plans for a casino. Then it was a small casino. Now, it has outgrown our worst fears. It would be Las Vegas sized, the fifth largest in America, towering over rural homes and farms in all directions, spreading light, traffic and noise 24/7 throughout the neighborhood.

The project would destroy the existing economy and tax base. At this site the project will do maximum damage to existing businesses by intercepting traffic to the only competition, small card rooms in La Center.

We need a “yellow flag.” Several tribes are racing to build the first casino in the Portland/Vancouver market. But the process is so flawed that it needs to pause and hold the racers in line for a while. Our groups seek a **three year moratorium** in order to put sensible, fair, transparent procedures in place. There should be enough time to enact procedural rules and to consider substantive reforms now in draft legislation. The moratorium should temporarily stop all funding and processing of off-reservation gaming acquisitions.

Please-no grandfathering or exemptions from reforms. Exemptions would reward the most aggressive, most contentious, least meritorious projects. It would not be fair to the public or to competing tribes. Tribes frequenting Congress know they cannot get their casinos approved in a fair process with full disclosure. Please do not let them bypass the current protections in Section 20 or new reforms.

The idea that the Cowlitz should advance because they secretly sought an exemption from Section 20 is perverse. If anything, projects that **are** based on consultation with local government and nearby tribes, ones that do mitigate harms and can obtain the state governor’s consent, are superior.

Major effects on neighbors and local communities. I expected to find procedural rights proportionate to the interests at stake. Siting of a new tribal casino, particularly a large Las Vegas-style commercial complex, is likely the most important land use decision ever faced by the surrounding communities and landowners.

A trust acquisition nullifies all state and local regulations and allows the Tribe to set up Tribal courts, pass laws, run a Tribal police force, etc. Because of its immunity, the Tribe is not accountable for the effects of its operation, even those that happen off the site. Gaming reservations expand easily and can entirely replace the existing economy.

If denied, the Tribe can move its plans to a better site. It is not so easy for the rest of us. Life savings have been invested in homes and small businesses. Some will be ruined.

The informal process now used to make siting decisions was never designed for something this important. It is not working. And it is being abused by those who run it.

What happened at La Center - my experience:

1. **No written rules for participation.** The process is ad hoc. There are no parties, no notice when materials are submitted, and no formal fact-finding. Department of Interior (DOI) says the process is “informal” administrative decisionmaking.²
2. **Local BIA officials did not allow us to see the Tribe’s submittals.** They said only the County and the State had to be consulted. It was not their job to return phone calls to the public or provide information. I was told the public has no invitation to the BIA building, so cannot pass the guards. There is no public reading room or web site. Freedom of Information Requests (FOIAs) are the only way.
3. **FOIAs do not work because they are routinely ignored, delayed, or answered by a demand for open-ended fees.** One of my requests was answered several months later by saying there was nothing to disclose because the Tribe had withdrawn its application. This was a few days before the Tribe submitted new materials, the only moment when there were no Tribal materials to divulge.
4. **The local BIA openly favors the Tribal claims.** There is no rule or custom of impartiality. Tribal representatives have access to materials filed by the public. The public may never find out what the Tribe submits. There is concealment and misdirection that thwarts public participation.
5. **The lack of clear standards and rules is being used by the Tribe to coerce service agreements from local governments in exchange for a small part of the protections they are entitled to receive under IGRA.**
6. **The Tribe’s initial fee-to-trust application stated that there were no plans for a casino or to change the agricultural use.** The local BIA wrote up a National Environmental Policy Act “categorical exclusion checklist” not made public. This found there were no environmental impacts from the proposed acquisition and sought to bypass all environmental review.
7. **The Tribe requested a restored lands opinion in March 2005. Until October, this was concealed by the Tribe, the BIA and National Indian Gaming Commission (NIGC), even when all three appeared here last July.** A restored lands finding eliminates statutory protections for the community. It is an end-run that permits gaming even if it is proved harmful.³ It lets DOI skip the state governor’s ok and the consultation process with other tribes and local governments. While the NIGC was processing the request, citizens asked the local BIA about restored lands and were told “this office has received no such requests.” Asked directly in May, a NIGC

² DOI Backgrounder January 6, 1998.

³ See footnote 1 on page 1.

attorney would not say. Mr. Skibine's July exhibit listed the other pending restored lands requests but **left out the Cowlitz**.

8. **The same July day the local BIA office wrote that "indigenous occupation...is completely irrelevant" to the decision.** This is false unless there is no restored lands request. The effect, if not the intent, was to steer citizens away from the issues being considered at that very moment.
9. **Once the NIGC process was discovered, the Tribe refused to release its request, saying there was no such requirement and doing so would "arm" its opposition.** A Tribal leader offered the materials in exchange for support.
10. **NIGC did not follow its prior opinions on restored lands.** It did not explain the departure, and relied on untested, even speculative assertions. If sustained, the opinion will open the door for exempt reservation shopping in vast new areas. Tribes can be made sovereign where they never were so before, just because of occasional travel nearby. The opinion gave no consideration to the 2,500 square miles available to the Cowlitz, where their ancestors actually lived and ruled.
11. **Historical fact errors were made by counsel to the NIGC.** NIGC knows about gaming. The BIA Bureau of Acknowledgment and Recognition knows about history. It has qualified historians with decades of experience on tribal culture and history including the Cowlitz because of their recent acknowledgement proceeding.

There have been exceptions. Some individuals have been very helpful and have treated the public as customers of the process. But they do not write it down or want their names used. They know who they are. We thank them.

REQUESTS/RECOMMENDATIONS

1. There should be a three year moratorium on new off-reservation casinos.
2. There should be no exception for the Cowlitz project.
3. DOI should enact procedural and interpretive rules to guide the whole process.
4. Facts and procedural matters should be resolved by a neutral person.
5. Agency experts on historical facts should participate.
6. No site should be "restored" to a tribe that was not the historical sovereign.

Thank you.

