

LETTER 34 (LOG # 477)

Edward Lynch, CARS

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JUL 14 2006

BUREAU OF INDIAN AFFAIRS
NORTHWEST REGIONAL OFFICE
OFFICE OF THE REGIONAL DIRECTOR



**Citizens Against
RESERVATION SHOPPING**

Edward Lynch
P.O. Box 61801
Vancouver, WA 98666

July 13, 2006

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RESOURCE COMPLIANCE
Bureau of Indian Affairs - NWRO

By hand delivery

Mr. Stanley Speaks, Regional Director
Northwest Region
Bureau of Indian Affairs
911 NE 11th Ave.
Portland, OR 97232

Re: DEIS Comments, Cowlitz Casino-Resort Project

Dear Mr. Speaks:

As you know, Citizens Against Reservation Shopping (CARS) has been expressing its opposition to the proposed Cowlitz casino-resort for the past 13 months. We acknowledge the Cowlitz Tribe's right, as a federally recognized Indian tribe, to have a reservation and to have a casino. However, in this case we are concerned with the location that the casino developers have selected. A casino-resort located off Interstate 5 at either Exit 16 or Exit 14 would have devastating and permanent impacts on the economy and social climate of southwest Washington and potentially northwest Oregon as well.

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Our concern comes not from a "not-in-my-back-yard" mentality, rather from the fact that the two sites for this proposed development are outside the Cowlitz Tribe's aboriginal homeland, as determined by the Bureau of Indian Affairs and adjudicated by the Indian Claims Commission. Both sites are far from current concentrations of Cowlitz Tribe members.

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When tribes exert their right to develop gaming enterprises—particularly ones that will have the large-scale impacts this one would be certain to have—we contend that they

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should pursue these goals in a spirit of openness and true collaboration with local communities and that they seek to place them within their aboriginal areas. The Cowlitz Tribe has done neither.

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The Draft Environmental Impact Statement (DEIS) for the Cowlitz Tribe's trust acquisition and casino project was a long-awaited and, ultimately, disappointing document that was in trouble even before its release to the public. Based on the preliminary DEIS, attorney Peter Mohr wrote March 24 to Associate Deputy Secretary James Cason on behalf of CARS that the DEIS clearly violates the National Environmental Policy Act (NEPA) and guarantees maximum conflict and controversy by virtually preordaining selection of the tribe's preferred alternative, a casino at the Interstate 5-La Center interchange. (Attachment 1) These problems were not solved in the publicly released DEIS.

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Mohr wrote to Cason that the DEIS should not have been released for public comment for two fundamental reasons: 1) it fails to consider an adequate range of alternatives—especially egregious is that it does not consider existing alternatives in the tribe's federally adjudicated homeland, and 2) it neglects to consider how other casino proposals for the region could impact the viability of the proposed Cowlitz casino-resort and how, collectively, these proposed casinos could affect our region.

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Additionally, the letter describes our concern that David Barnett, as a tribal representative, project developer and investor in the La Center parcel, may have had an undue influence on the NEPA process.

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In reviewing the DEIS, we were especially concerned about the unrealistic assessment of transportation impacts. CARS hired Parametrix of Portland to review the transportation section of the DEIS, and Parametrix' report confirms and details some of the problems we observed. (Attachment 2)

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Parametrix' review of the DEIS' transportation analyses found faulty premises, deficient data and obvious omissions. The omission that we find most disturbing is that the DEIS fails to consider impacts to the interstate transportation system in this area. Although concerns about the traffic impacts on Interstate 5 and the Interstate 5 and Interstate 205 bridges over the Columbia River were identified in the Scoping Report, the DEIS makes, as Parametrix observes, "only a passing reference" to this important issue. Given the current status of the interstate bridges, which are regularly pushed beyond capacity, and the everyday bottlenecks experienced on Interstate 5 between Delta Park in Oregon and across the I-5 bridge into Washington, a development at the proposed sites would clearly have serious repercussions for these bridges, these roadways, and, consequently, to most north-south ground transportation along the West Coast. This is more than a matter of convenience; it would have serious economic impacts on the entire region.

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Additionally, the Traffic Impact Study (TIS), on which the transportation portions of the DEIS are based, is obviously deficient. For example, the trip generation model used in the study does not reflect the numerous uses that would be incorporated in alternatives A,

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B, C and E. Parametrix points out that Alternatives A and B include more than 165,000 square feet of retail, 95,225 square feet of dining and 85,000 square feet of convention space, but traffic related to those uses is not included in the TIS trip generation numbers.

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Moreover, the TIS does not take into account population projections indicating that the Vancouver-Portland population is expected to increase by 44 percent between 2005 and 2030. Parametrix points out that the DEIS does not make clear the capacities of the proposed commercial facilities or how the increasing market share would translate into trips and transportation impacts.

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The TIS neglects to clarify how events held at the proposed casino-resort development could impact traffic—another issue that was raised in the scoping report. Parametrix states that the TIS does not document the number of events or the days of the week that these events might occur—or how they would overlap with events held at the nearby Amphitheater or Clark County Fairgrounds and how this would effect traffic.

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By neglecting to consider many very real factors and concerns, the transportation portion of the DEIS for the proposed Cowlitz casino-resort project does a disservice both to the Cowlitz Tribe and to the public.

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We appreciate the opportunity to comment on this Draft Environmental Impact Statement.

Sincerely,

Edward C. Lynch
Edward Lynch
Chairman, Citizens Against Reservation Shopping

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March 24, 2006

Via Federal Express

James Cason
Associate Deputy Secretary
Department of Interior
1849 C Street, NW
Room 6117
Washington, DC 20240

Re: BIA NEPA Review of Cowlitz Casino Proposal

Dear Mr. Cason:

On behalf of Citizens Against Reservation Shopping (CARS), located in Clark County, Washington, we are writing to follow up on your request for additional information regarding the problems presented by the Cowlitz proposal and to present one of the most troubling aspects of the Tribe's efforts to establish a casino in Clark County. This issue concerns the manner in which the Pacific Northwest Regional Office of the Bureau of Indian Affairs (BIA Regional Office) is fulfilling its federal trust land acquisition regulatory responsibilities and its duties under the National Environmental Policy Act (NEPA) on the proposed trust acquisition request. In particular, we seek your assistance in addressing the result-oriented and legally insufficient approach to the NEPA analysis being pursued by the BIA Regional Office, apparently at the behest of the Tribe. This presents a serious problem that requires resolution at the BIA headquarters level.

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For more than four years we have seen repeated efforts by the BIA Regional Office and the Tribe to shortchange public review and NEPA compliance associated with this trust acquisition request. The Tribe has repeatedly attempted to conceal its plans to develop a large-scale casino at the proposed trust site, which consists of 151.6 acres of land adjacent to I-5 near La Center, Washington (La Center parcel), and to minimize the amount of environmental review and public scrutiny necessary for such a large multi-stage development proposal. Much of the controversy, dispute, expense and delay associated with this proposal results from the Tribe's refusal to consider alternative development and locations that, while still providing for all legitimate tribal needs, would avoid the adverse economic and environmental impacts associated with the La Center parcel. Unfortunately, the BIA Regional Office has not only done nothing to address this ongoing problem, but by its inaction, has affirmatively enabled the Tribe to narrow the review effectively to a single location contrary to the directives under NEPA.

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The current version of the draft environmental impact statement (DEIS) illustrates this problem. The DEIS, which is currently under consideration by cooperating agencies,

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fails to meet NEPA requirements or serve the public interest because it does not consider this proposed action in a reasonable and objective manner. The DEIS is a biased and outcome-oriented document that reads like a prospectus for the casino at the La Center site, not a balanced review of the proposed action, its impacts, and alternatives. The City of Vancouver has issued strong negative comments on this document. CARS concurs in the City's comments. The DEIS not only violates NEPA but also guarantees maximum conflict and controversy by virtually preordaining the selection of the Tribe's preferred alternative and eliminating from consideration, or failing to consider altogether, reasonable alternatives to the La Center location.

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It is not the purpose of this letter to provide a detailed critique of the DEIS. We will submit our specific comments at the appropriate time. As a preliminary matter, however, there are two fundamental problems with the DEIS that must be addressed at the policy-level of the Department of Interior before the document is released for public review. These problems are: 1) the failure to consider an adequate range of alternatives; and 2) the need for a programmatic-type review in addition to the site specific EIS for gaming-related trust land acquisition.

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To date, the BIA Regional Office has continually refused to address these issues and has consistently failed to respond to public concerns about the Cowlitz proposal over a period of many years. By this letter, we are asking you to intervene in this matter now to prevent a seriously deficient DEIS from being circulated and to avoid initiating a decision-making process that will result in a highly contentious and prolonged conflict. Further discussion of these problem areas associated with the DEIS is provided below.

A. NEPA Requirement to Objectively Consider Reasonable Alternatives

1. Purpose of a Properly Prepared EIS

The purpose of an EIS "is to serve as an action-forcing device to insure that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions of the Federal Government." 40 C.F.R. § 1502.1. An EIS must consider and assess the environmental consequences of the proposed action and reasonable alternatives to the action. *Id.* § 1502.14. It is the consideration of alternatives that is "the heart of the environmental impact statement." *Id.* So critical is the consideration of alternatives to the NEPA process that "[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985).

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NEPA regulations require that the underlying purpose and need for a proposed action be stated in an EIS. *Id.* § 1502.13. As explained by the Ninth Circuit, "[t]he stated goal of a

project necessarily dictates the range of 'reasonable' alternatives and an agency cannot define its objectives in unreasonably narrow terms." *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir.1995) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir.1991)). "The rule of reason guides 'both the choice of alternatives as well as the extent to which the [EIS] must discuss each alternative.'" *Am. Rivers v. FERC*, 201 F.3d 1186, 1200 (9th Cir.1999) (quoting *City of Carmel-by-the-Sea*, 123 F.3d at 1155). "[F]or alternatives which were eliminated from detailed study, [an agency must] briefly discuss the reasons for their having been eliminated." *Id.* (quoting 40 C.F.R. § 1502.14(a)). NEPA prohibits agencies from preparing an EIS simply to "justify [] decisions already made." 40 C.F.R. § 1502.2(g). The DEIS fails to meet these tests by a significant margin.

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2. Fundamental Shortcomings of the DEIS

One of the most significant problems with the DEIS is the review of alternatives. The range of alternatives considered in a DEIS is based on the statement of purpose and need. In this case, the DEIS properly adopts a broad statement of purpose and need:

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The purpose and need for taking the property into Federal trust, issuing of a reservation proclamation, and approving the gaming development and management contract is to advance the BIA's "Self Determination" policy of promoting the Tribe's self-governance capacity.

Although this statement is sufficiently broad, the BIA Regional Office and the Tribe have limited the NEPA review in application.

The DEIS constrains the review of alternatives to: 1) no action; 2) a large-scale casino resort located at La Center; 3) a large-scale casino resort located to the south even closer to the Portland gaming market; or 4) an alternative for the La Center site that would involve non-gaming commercial development. There is no legitimate basis for such a narrow review. Drawing an imaginary line at La Center and refusing to look to the north closer to the traditional Cowlitz Tribal lands, is an example of directing the agency review process to achieve a specific end result. The current range of alternatives is purely arbitrary. It is designed to make the La Center parcel appear to be the only viable option, rather than addressing, as an EIS must, the purpose and need statement through the review of reasonable alternatives.

If BIA is to meet its legal obligations under NEPA, it must address all viable alternatives. Such alternatives must include multiple sites closer to the Tribe's historic lands, which lie northeast of the La Center site. Cowlitz and Lewis counties are the historical, cultural and geographic center of the Cowlitz Tribe. Furthermore, most of the tribal

membership today live to the north of Cowlitz County, in and around the metropolitan area of Olympia, Washington, with fewer than five percent (5%) of tribal members living in Clark County, south of the Tribe's historic lands.

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Clearly, the Tribe may choose one of several economically, logistically, and culturally viable sites within its historic lands. Land is available for acquisition, and studies show that these sites would be very profitable casino locations, more than adequate to meet the DEIS purpose and need statement. In fact, one such study of a viable alternative as yet to be considered by the BIA was presented to you during our group meeting on February 16th, and a copy of an updated version of that report is included for the record with this letter. Attachment 1. Finally, there are many uses for such lands other than casino development that will meet the legitimate needs of the Tribe.

Until the BIA Regional Office considers the full range of viable alternatives, the DEIS will violate NEPA and persist as a fraud upon the public. Given that this issue has been raised many times before, it is clear that the BIA Regional Office and the Tribe will comply with NEPA only if directed to do so by Department of the Interior policy officials or, ultimately, the courts.

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3. Financial Interests of Mr. David Barnett and Salishan-Mohegan LLC and the Integrity of the NEPA Review Process

CARS's concern over the NEPA review is also heightened by the connection between the La Center parcel and Mr. David Barnett (Mr. Barnett), son of Cowlitz Tribal Chairman, John Barnett. Mr. Barnett is the President of Salishan-Mohegan LLC, a development partnership between the Cowlitz Tribe and the Mohegan Tribe of Uncasville, Connecticut. The details of Mr. Barnett's relationship to the La Center parcel and its future use by the Tribe are not fully known and have not been completely disclosed. Based on the limited information uncovered to date, however, Mr. Barnett's financial interests in the properties that constitute the La Center parcel raise serious concerns regarding his participation in the NEPA review process.

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What is known is that, in 2001, Mr. Barnett entered a contract to purchase approximately one-half of the La Center parcel with the current owner, the Gregerson Living Trust. Gregerson—Barnett Real Estate Contract (as recorded with title insurance documentation). Attachment 2. This approximately 75-acre parcel sits to the north of 319th Street (which bifurcates the La Center parcel). At this same time, the Cowlitz Tribe filed its trust acquisition request with BIA.

Under this land purchase contract, Mr. Barnett, in his individual capacity, agreed to pay interest through March 2004, when a balloon payment would come due. The land had

not, of course, been acquired in trust by that time, due to the multiple deficiencies in the BIA review process and the Tribe's initial refusal to disclose its intent to develop a large-scale casino on the site. In fact, the comment period on the environmental assessment (EA) for the La Center parcel did not close until early June 2004. In the same month, the Tribe announced both its so-called "voluntary" decision to prepare an EIS and its partnership with the Mohegan Tribe through Mr. Barnett's company, Salishan-Mohegan LLC.

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The strong public opposition to the EA clearly demonstrated that an EIS was needed and that a decision could not be made on the existing record. It seems that Mr. Barnett then renegotiated the contract with the Gregerson Living Trust under terms that are not known, but apparently extended the deadline of the March 2004 balloon payment. According to a recent article in *The Columbian* (*Columbian* Article), final payments on this parcel have apparently been extended into March 2006 and will be paid by Salishan-Mohegan LLC. Cami Joner, "Tribes buying acreage for casino," *The Columbian* (February 21, 2006). Attachment 3.

Mr. Barnett has similar ownership interests in the approximately 75-acre parcel of land that composes the southern portion of the La Center parcel, located to the south of 319th Street. On January 3, 2006, the previous owner of this land, Mr. Earl Bates, transferred his interest in the property to Salishan-Mohegan LLC. The sale price for this land was \$8,887,359, with an additional \$5,000,000 to be paid by Salishan-Mohegan LLC to Mr. Bates for the remaining acreage in the southeast corner of the proposed casino development site. Bates—Salishan-Mohegan LLC Statutory Warranty Deed, Attachment 4; *see also Columbian* Article. This is in addition to the approximately two-acre parcel in the northeastern corner of the La Center parcel that Mr. Barnett and the Salishan-Mohegan LLC have owned for several years. *See Columbian* Article.

We do not yet know all of the facts associated with these real estate transactions or their exact relationship to the proposed trust acquisition request. However, what is clear is that Mr. Barnett possesses a significant personal financial interest in this particular casino site and in assuring that the casino proposal for the La Center parcel is ultimately approved. CARS is concerned that Mr. Barnett's property interests and his role in the NEPA process through the participation of the Tribe as a cooperating agency has the potential to impact the consideration of alternatives in the DEIS.

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Our concerns over the role that Mr. Barnett is playing in influencing the NEPA review have been exacerbated by Mr. Barnett's public comments regarding the process. In an article concerning recent meetings convened by the BIA and the NIGC to discuss the process related to the Cowlitz casino proposal, Mr. Barnett is quoted as explaining that the public will not be allowed to treat this as a question and answer period. He stated that "[c]asino opponents somehow think these meetings are going to give them an opportunity to express

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their opinions about the project. When in fact these meetings are only to explain the process and the timelines. If the public doesn't like what they hear, that's their problem." Mike Andersen, "Meetings on casino scheduled," *Longview Daily News* (Jan. 20, 2006). Attachment 5. Similarly, in an article published in *The Oregonian* on January 22, Mr. Barnett is quoted as saying: "[The BIA review process] will continue frustrating those [parties concerned about the casino] until the land is put in trust . . . [A]t that time, they will be joining us in the line at the buffet when the casino opens." Allan Brettman, "David Barnett - Cowlitz developer not afraid to butt heads with critics in defending efforts to complete project," *The Oregonian* (January 22, 2006). Attachment 6. In the same article, Mr. Barnett admits that the Cowlitz Tribe is preventing public access to documents about its plans because other parties would be in a position to use such information to raise criticisms or concerns. As he is quoted: "I'm not going to hand somebody a knife and have them stab me in the back." *Id.*

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Clearly, Mr. Barnett's comments do not reflect the underlying goals of NEPA. The Tribe's status as cooperating agency, and Mr. Barnett's ability to participate in that process through the Tribe's cooperating agency status, raise obvious concerns. We bring this issue to your attention because the BIA Regional Office appears to be developing its review of the proposal in a manner that fails to consider all economically viable alternatives, thereby violating federal law. The DEIS instead focuses only on the La Center site - the parcels in which Mr. Barnett or Mr. Barnett's company, Salishan-Mohegan LLC, have a financial interest. If this approach by the BIA Regional Office is an acceptable method for these (and therefore future) proceedings governing trust acquisition by the United States government, we would request full public disclosure of the legal basis and policy rationale for doing so.

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B. The Need for a Regional Programmatic Review in Addition to a Site-Specific EIS

The Cowlitz proposed casino would be located 16 miles north of Portland, and it would include a \$510 million resort with an 877,000 square-foot casino, convention space, hotel resort with 3,000 slot machines and 155 gambling tables. At the same time, the Warm Springs Tribe is proposing its own massive gaming resort, consisting of a 603,000 square-foot casino with 2,000 slot machines and 70 gaming tables, only 43 miles to the east of Portland at Cascade Locks in the Columbia River Gorge. Recently, the Yakama Tribe has indicated it too will seek to open a casino in Battleground, 25 miles to the north of Portland and only 12 miles from the Cowlitz site.

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All of these casino proposals are driven by the same goal: to get as close as possible to the Portland market. According to a recent report in *The Oregonian*, the Cowlitz and Warm Springs Tribes expect their casinos to "reap a combined \$665 million a year, surpassing the gambling at all nine of Oregon's tribal casinos." Allan Brettman, "It's no

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bluff, Portland, Tribes see a jackpot here: The Warm Springs and Cowlitz are pushing for mega-casinos," *The Oregonian* (January 22, 2006). Attachment 7. Indeed, a regional gaming expert has determined that the Portland market "[is] not anywhere close to saturation." *Id.*

These tribal proposals, when considered together, demonstrate the clear need for a regionally-based NEPA review, not just the segmented site-specific EIS analysis now being considered for each site in isolation. The case law under NEPA is crystal clear on this point. For example, the Ninth Circuit faced a similar situation in *City of Tenakee Springs v. Clough*, 915 F.2d 1308 (1990), involving a decision by the Forest Service authorizing the harvesting of old growth timber in the Tongass National Forest, a forest which covers about 17 million acres, by private timber companies. The court stated:

Where there are large-scale plans for regional development, NEPA requires both a programmatic and site-specific EIS. *See City of Tenakee Springs v. Block*, 778 F.2d 1402, 1407 (9th Cir. 1985)(citations omitted). This court has held that where several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS. *See LaFlamme v. Federal Energy Regulatory Commission*, 852 F.2d 389, 401-02 (9th Cir. 1988). There, emphasizing the likelihood of future development, the court remanded to the agency for further consideration of cumulative impact because the agency had examined single projects in isolation without considering the net impact that all the projects in the area might have on the environment. *See LaFlamme*, 852 F.2d at 401-403.

Under the facts of the situation presented by the development of large-scale Indian gaming in the greater Portland area, it is clear that an additional programmatic EIS is required. Indeed, the facts in this situation are far more compelling than in the *Tenakee Springs* case. In that case, the area at issue covered virtually the entire southeast Alaska panhandle. Here, two if not three major casinos are under consideration on a closely circumscribed area around the City of Portland, focusing on the same gaming market, invoking the same BIA trust land acquisition authority, and occurring under the same time frame.

In closing, we note that the Cowlitz Tribe characterizes this trust acquisition and reservation designation as a necessary action for a "landless tribe" seeking a homeland. If that is indeed the case, then it follows that there are multiple locations and land uses that should be reviewed. In fact, it would appear that the Cowlitz Tribe's interests are not being well-served by the singular focus on the La Center parcel. Less controversial and more environmentally-acceptable, yet still highly profitable, locations for a Cowlitz casino and

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reservation exist within its traditional land base. Had the Tribe pursued those locations four years ago on the basis of tribal interest, instead of the simple goal to maximize casino profits through the site that apparently is subject to the Barnett/Salishan-Mohegan LLC real estate interests, it is entirely possible that this dispute could have been avoided with the Tribe already benefiting from a designated reservation with economic development in place achieved through an uncontroversial, consensus-based process.

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Based upon these concerns, we believe BIA has an obligation to expand the scope of this review under both NEPA and the trust land acquisition legal authorities. With so many tribes competing for the Portland market, and with the existence of other Tribal and non-Indian casinos in the surrounding area, BIA has a clear legal obligation to consider the regional effects under NEPA, and indeed, to look for regional solutions that are fair to all parties, without giving the Cowlitz or Warm Springs Tribes an unfair advantage. In addition, BIA must evaluate alternative sites that would fulfill the needs of the Cowlitz Tribe without the conflicts and adverse impacts of the proposed location. The same principle would appear to apply to the Warm Springs Tribe.

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C. Conclusion

BIA's current segmented, result-oriented approach in this matter is preventing a negotiated regional solution from emerging. Instead, the approach being followed is forcing the trust acquisition process into years of conflict and controversy without serving the best interests of the Cowlitz Tribe or the other numerous parties, public and private, who will be harmed by developing the proposed casino on the La Center parcel. These issues require serious review from the Department's policy level to prevent the issuance of a DEIS that undermines the process and to ensure that a consensus solution is reached. Thank you for your careful consideration of this matter.

Sincerely,

Peter D. Mohr

cc: The Honorable Brian Baird
George Skibine
Stanley Speaks
The Honorable Maria Cantwell
The Honorable Christine Gregoire

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The Honorable Ted Kulongoski
The Honorable Robert McKenna
The Honorable Patty Murray
The Honorable Gordon Smith
The Honorable Greg Walden
The Honorable David Wu
The Honorable Ron Wyden
The Honorable Royce Pollard
Mr. Marc Boldt

**Traffic Review of Cowlitz Indian Tribe
Casino Project Draft Environmental
Impact Statement**

Prepared for

CARS
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A review of the Draft Environmental Impact Statement (DEIS) traffic impact study for the proposed Cowlitz Indian Tribe Casino Project (Casino) was conducted. This document identifies three areas of concern with the DEIS document.

- Deficiencies in the DEIS traffic impact study (TIS)
- Issues identified in the DEIS scoping report dated February 2005 not sufficiently addressed in the DEIS
- Indirect and cumulative impacts not sufficiently addressed in the DEIS

Traffic Impact Study

Deficiencies

In the discussion of the alternatives in section 2.0 of the DEIS, a variety of uses for the site are outlined. The uses outlined in this section are not adequately reflected in the trip generation of the TIS. Alternatives A and B in table 2-1 of the DEIS indicate over 165,000 SF of retail, 95,225 SF dining and 85,000 SF convention uses that are not included in the trip generation of the TIS. The trip generation accounts for only 196,650 SF of the total 1,095,655 SF of the site uses listed in Table 2-1 of the DEIS. This discrepancy is also found with Alternative C and E. The trip generation rate used in the study is based on gaming floor area. The use of gaming floor area as the primary variable may not be appropriate and the TIS does not provide justification for this approach. The source information and count data was not provided in the study as validation. It is unclear whether other sites include similar ratios of gaming floor area to other uses, as proposed for the Casino project. Since some of the alternatives contain a significant amount of retail and dining this raises the question as to whether they are truly ancillary to the casino. The possibility of stand-alone restaurants, retail, and office space would attract trips independent of the casino. This would have significant impacts on the basic assumption for the TIS.

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The Casino project is proposed to operate 24 hours a day, however the TIS does not estimate volumes for 24 hour operations. The peak periods of the facility are unknown and therefore one cannot determine how the hourly traffic variations correspond to the peak periods on the impacted roadway system. The peak traffic demand times for the site may not be limited to one hour but may extend over a period of several hours and therefore peak hour analysis would not be sufficient to evaluate its impacts. Since the interstate system traffic peak extends over

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several hours it is likely that the impacts of the use will also spillover for several hours.

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The TIS assumes 2010 for build-out. Consistent with regionally adopted comprehensive plans, the region's growth forecasts indicate that population, employment, and commercial trade will continue to grow, increasing regional travel demand. Between 2005 and 2030, the population of the four-county Vancouver/Portland region is projected to increase by 44 percent, from 1.96 million to 2.82 million. (CRC 2006) As population in the market area increases it follows that additional patrons would be served. It is unclear how market share or demand translates into trips or what the maximum capacity of the facility is. If during the Saturday peak hour there are 6.90 trips per 1000 square feet, it reasons that the weekday trip rate could increase to this rate to serve the increased market base. Or if there is capacity built to handle event demand, then that capacity could be used to meet increased market demand at non-event times as well. It is unclear if the alternatives proposed represent an average condition or the full capacity of the facility.

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Since the basic assumption for trip generation and distribution are in question it follows that the level service analysis (LOS) does not fully represent the impacts of the proposed development and should be revised. The LOS analysis looks only at intersection operation and does not provide information about roadway operations. Intersection LOS may maintain or be mitigated to an acceptable level, however, the vehicle delay along a corridor could increase substantially due to increased congestion and the frequency of controlled intersections. The TIS site plan and mitigation indicates several new intersections and revisions to traffic control that could increase delay in the area. The intersection LOS analysis should be combined with a review of roadway travel speed or travel time delay.

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Travel speed and travel time delay evaluations should also be conducted for impacts to the interstate system as well. According to the TIS, 91% of the trips generated by the casino site will come from the Portland-Vancouver area, 87% south of the site. The majority of these trips will use the interstate system to arrive and depart from the site. The 2005 Congestion Management Monitoring Report (RTC 2006) indicates that several sections of I-5 and I-205 show periods of existing congestion and decreased travel speeds.

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Indirect and Cumulative Impacts

Information and analysis of the event center impacts are incomplete. The TIS assumes 85 percentile attendance events for the study. However it does not document the number of proposed events or the day of the week events may occur. The potential impacts due to overlap of events occurring at either the Amphitheater and Clark County Fairgrounds should be analyzed. It is likely that the market area for these venues will overlap with the proposed event center but no information is provided in the DEIS. Even if arrivals are spread out over several hours, post-event departures are not, and should be analyzed for congestion on the local road system as well as the interstate system. State, County, and City resources may be required for traffic management of the transportation system off trust land to respond to traffic. The issue of concurrent events and overlap was raised in the DEIS scoping report in section 3.2.6 but was not adequately addressed in the DEIS.

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Both the Clark County Comprehensive Growth Management Plan and the Metropolitan Transportation Plan (MTP) administered by the Regional Transportation Council, contain goals and policies which encourage multimodal transportation systems and linkages between land use and transportation. Providing for new capacity and improved access to Park-and-Rides, as well as design provisions for bicycle and pedestrian facilities, is all consistent with local and regional planning policies. Accommodations for transit and alternative modes were not sufficiently addressed in the DEIS. These elements along with other traffic demand strategies should be integrated into the site development and operations as mitigation for the traffic impacts of employees and patrons. The Casino should commit to participate in a commute trip reduction program with Clark County. The Commute Trip Reduction (CTR) law affects employers in Clark County with over 100 employees. CTR ordinances set criteria to establish commute trip reduction programs. Monitoring of the success of these programs is carried out to ensure that the goals are being met or are being actively worked toward. Washington law established goals for achieving work trip reduction after program implementation.(RTC 2005)

477-34

Section 3.9 of the DEIS states that once the site becomes trust land it would no longer be subject to municipal land use regulations; instead it would be regulated by the Tribal Council. Therefore unless land use is explicitly documented in agreements with local agencies the uses on the proposed sites could change both in type and intensity. These potential changes directly impact trip generation and trip distributions. The full traffic impacts of the proposed Cowlitz Casino project cannot be evaluated if there is no mechanism in place that commits or limits the development to specific land uses and intensities.

477-35

Unaddressed Regional Transportation Impacts

Interstate Highways and Bridge Crossings

The DEIS Scoping Report, section 3.2.6, identifies concerns raised regarding the traffic impact of the proposed development on I-5 and Columbia River bridge crossings. I-5 is the only continuous north/south interstate highway on the West Coast, providing a critical commerce link for the United States, Canada, and Mexico. In the Vancouver/Portland metropolitan region, I-5 is one of two major highways that connect the two states and the regional economy. The second major river crossing, 6 miles upstream to the east of the I-5 Bridge, is the I-205 Glenn Jackson Bridge. Both of these crossings have already or soon will reach their carrying capacity with no other crossing options in the metropolitan area.

477-36

The geographic scope of the DEIS Cumulative Impacts includes all of Clark County, however there is only a passing reference to these bridge connections of regional and interstate importance. The DEIS response to these concerns is limited to data presented in Table 56 of the TIS and one paragraph that notes studies are being conducted for both bridge locations. The table indicates that the proposed Casino could increase northbound traffic during the pm peak hour at the Columbia bridge crossings between 3-4% each in 2010. This means that in the pm peak hour 4 of every 100 vehicles crossing the I-5 Bridge are bound for the Casino and 3 out of every 100 at the I-205 Bridge. This is a significant impact that warrants further analysis. Furthermore the table reflects that no trip increase is anticipated to the Casino from 2010 to 2030.

The I-5/Columbia River bridge at Portland-Vancouver is a critical link in the Pacific Northwest's regional highway network. Congestion at the I-5/Columbia River highway crossing and the parallel I-205 crossing affects travelers throughout the region, but especially within the I-5 corridor.

477-37

The I-5 bridge carries more than 125,000 automobiles, buses, and freight vehicles on an average weekday, serving regional and local traffic as well as through traffic traveling the west corridor. (CRC 2006) In 1998, the Washington and Oregon Departments of Transportation formed a bi-state partnership to study transportation problems and possible solutions for the I-5 corridor from the Portland metropolitan area through Clark County. While this study included the Columbia River Crossing (CRC) project area, it also encompassed a much broader stretch of the I-5 corridor. The bi-state committee, the Portland-Vancouver I-5 Transportation and Trade Partnership, concluded a study in 2002 with key policy recommendations for cross-

Columbia river travel in the I-5 corridor. The Columbia River Crossing project is now underway having evolved from the previous I-5 Partnership to further review and implement the recommendations. The CRC is aimed at addressing existing and future congestion issues for users of the I-5 corridor from State Route 500 in Vancouver to approximately Columbia Boulevard in Portland. The CRC process will include examination of bridge capacity and analysis of a range of modal options.

477-37
Cont.

The Columbia River Crossing Project "Draft Components Step A Screening Staff Report" issued in March 2006, indicates that current traffic demand on the I-5 bridge exceeds capacity during peak periods. As a result, stop-and-go traffic conditions last 2 to 5 hours in the mornings and afternoons. These conditions are aggravated by vehicle merges, traffic accidents, and vehicle breakdowns. Due to excess travel demand, many travelers take longer, alternative routes such as I-205, or circulate on local streets to less direct I-5 interchanges. (CRC 2006) In addition, traffic from I-5 will "back up" onto local arterial and collector roadways or use these roadways as alternatives to avoid freeway congestion resulting in increased local congestion. The diversion of traffic and local congestion has been noted in the 2005 Congestion Monitoring Report. (RTC 2006) Additional traffic will increase the duration of congestion from 4 hours to 9-10 hours in 2020. (CRC 2006) The Casino TIS indicates that the project will be adding 3-4% new traffic northbound in the PM peak hour to a facility that already exceeds capacity from 2 PM to 7 PM. It is likely that the peak hours of the Casino will coincide with the future hours of congestion as well, contributing to a worsening condition.

Current congestion in the Bridge area has an adverse impact on transit travel speed and service reliability. Local buses crossing the I-5 bridge in the southbound direction currently take more than three times longer during parts of the morning peak period compared to off-peak periods. On average, local bus travel times are between 10 percent and 60 percent longer when traveling in the peak period direction. (CRC 2006) Commuter buses also experience congestion and incident-related delays. Commuter buses traveling southbound during the morning peak period have travel times between 45 percent and 115 percent longer than commuter buses traveling during off-peak periods. Commuter buses traveling northbound during the afternoon peak period have the advantage of using the northbound high occupancy vehicle (HOV) lane, however, these buses still experience travel times between 35 percent and 60 percent longer than commuter buses traveling during the off-peak periods. (CRC 2006)

477-38

With increasing congestion will come more accidents and breakdowns, adding further delays and making travel times less predictable. More than 300 reported crashes occur annually in the bridge area, with many involving large tractor-trailer trucks. Crashes have resulted in substantial property damage and injury; some have resulted in fatalities. The causes are exacerbated by congestion. (ODOT 2003)

477-39

Air quality conformity has a direct relationship to the transportation system and its performance because mobile source emissions are a large contributor to air pollution. Although the proposed sites are located in air-quality attainment/unclassified area the use will increase traffic in non-attainment areas and should be evaluated.

477-40

Consistency with Existing Plans

The current Regional Transportation Council Metropolitan Transportation Plan and the Metro Regional Transportation Plan recognize the need for additional capacity to improve the flow of people and freight in the bridge area. Both plans include the I-5 Transportation and Trade Partnership Strategic Plan and CRC recommendations. The CRC Project is working towards solutions to increase mobility and accessibility. The improvement options being explored are based on existing land use and transportation plans of the regional entities. These plans do not include the impacts of the proposed Casino development. Furthermore, the construction of a new bridge and associated improvements will likely not be operational until 2015.

477-41

The Washington State Growth Management Act (GMA) required counties to adopted comprehensive land use plans and development regulations. Clark County's Comprehensive Plan establishes urban growth boundaries and land uses in order to prevent sprawl and conserve rural lands, environmentally sensitive lands, and natural resources; focus development in urban areas where public facilities can be provided efficiently and cost-effectively; and preserve opportunities for farming and forestry.(CC 2004)

477-42

Furthermore, the GMA requires consistency among these three documents

- *Highway System Plan (HSP)*, which identifies long-range transportation improvements on the state highway system to accommodate growth, provide for economic development, improve high-accident locations, or preserve and protect the environment;

- *Metropolitan Transportation Plan (MTP)*, administered by the RTC, which identifies improvement needs on the regional transportation system within Clark County; and
- *Clark County Comprehensive Growth Management Plan*, which comprehensively plans transportation improvements

477-42
Cont.

The full impacts of the proposed Casino if not determined and mitigated appropriately, will cause inconsistencies in the three documents above. As a result it will be necessary to expend significant agency resources to revise these plans for compliance.

Economic Impacts

The economic impacts of traffic congestion in the region has been documented and discussed in two reports "The Cost of Congestion to the Economy of the Portland Region" and "Regional Economic Effects of the I-5/Columbia River Crossing Transportation Choke Point". The region's economy is built on transportation-intensive industries. Agriculture, construction, transportation equipment and utilities, wholesale and retail trade, and manufacturing make up 54 percent of the Oregon-Washington economy, but only 49 percent of the national economy. As a consequence, the Oregon-Washington economy is more dependent on transportation and spends more proportionally on transportation than the nation as a whole. The Oregon-Washington economy spends 3.35 percent of its gross regional product on freight transportation, 6.7 percent more than the national average of 3.14 percent. (ODOT 2003) Oregon and Washington export \$45 billion of products each year. As a percentage of the region's economy, this is about twice the national average. Much of this freight traffic also funnels through the Portland-Vancouver crossings. The studies found that congestion at the I-5/Columbia River crossings was affecting business and industry across the region by increasing shipping and production costs, shrinking labor markets, and reducing the competitiveness of these industries in regional, national, and global markets.

477-43

The I-5 Bridge crossing is of particular concern as a congestion point by several agencies and businesses including the freight industry. I-5 is the primary supply-chain for goods moving into and out of the Vancouver/Portland region and the Pacific Northwest. Access to nationally and regionally significant industrial and commercial districts, including the Ports of Vancouver and Portland and connections to marine, rail, and air freight facilities, are adversely affected by congestion in the bridge area. Regional truck freight is projected to increase by about 130 percent over

the next 25 years; however, increasing delays between I-5 and freight centers will adversely affect freight distribution and access to ports and terminals, thereby shrinking market areas served by the Vancouver/Portland region.

477-43
Cont.

Interviews conducted for *Cost of Congestion* report documents the effects of congestion challenging businesses in the Portland-Vancouver area. Congestion is already a problem for businesses and most have been forced to make accommodations to address peak afternoon traffic conditions. However, there is a growing concern that the relatively uncongested windows of time in which transportation and logistics functions are currently operating may shrink to a level that will make future accommodation costly and difficult to achieve. As congestion becomes a day-long condition, businesses can adjust by changing their deployment of staff, inventory management and delivery areas. However, such changes affect costs and revenues for both local-serving and trade-oriented businesses. Local-serving businesses either absorb added costs and reduce their profits or pass these costs on to people in the region. Trade-oriented businesses, though, can and do move their operations to locations outside the region. Economic concerns related to increased traffic congestion were noted in the Casino scoping report however do not appear to be addressed in the DEIS.

477-44

Summary of DEIS deficiencies

Based on these findings the DEIS is deficient in the following areas

- Uses unsupported assumptions as the basis for direct traffic impacts and presents incomplete analysis of direct impacts
- Does not address issues that were identified during the scoping process or provide sufficient discussion to dismiss the issues as non-significant per § 1501.7
- Does not use available and relevant data that indicates existing or foreseeable significant adverse impacts that require evaluation under indirect effects (§ 1508.8(b)) and cumulative impact (§ 1508.7)

477-45

Therefore the DEIS should be revised to address and evaluate the following points:

1. Base trip generation on potential land uses given the reasonable and foreseeable situation of unregulated land use on trust land or maximum land use density on the site.

447-46

2. Demonstrate justification and data validation of trip generation variable choice. 477-46
Cont.
3. Discuss and offer evidence of trip generation for average condition and maximum capacity.
4. Evaluate impact of retail uses as stand-alone versus ancillary. 477-47
5. Estimate 24 hour trip generation volumes.
6. Analyze capacity, travel speed and travel delay for peak periods of Casino site on local roadways, I-5 and intersections.
7. Justify the 2010 analysis horizon date in light of fact that future land use of trust land will be unregulated. 447-48
8. Justify no increase in trip generation past 2010 despite forecasted increases in population or market base. 447-49
9. Provide overlap of average daily, maximum capacity and event scenario traffic with Clark County Amphitheater and Clark County Fairground events/operation. 447-50
10. Discuss the frequency, day of week, time of day for operations of event and convention center. 447-51
11. Discuss provisions to support alternative transportation modes and transit. 447-52
12. Discuss participation and compliance with Commute Trip Reduction laws. 447-53
13. Discuss consistency with regional plans. 447-54
14. Analyze casino traffic impacts on I-5 and I-205 freeways and on Columbia River bridge crossings on:
 - Traffic Congestion
 - Transit
 - Safety
 - Regional Economy
 - Interstate Trade
 - Air Quality447-55

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