



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



Ms. Betty Sue Morris
Mr. Marc Boldt
Mr. Steve Stuart
Board of Clark County Commissioners
1300 Franklin Street
P.O. Box 5000
Vancouver, Washington 98666-5000

Dear Commissioners:

Thank you for your letter of May 6, 2008, regarding the importance of an intergovernmental agreement, such as a Memorandum of Understanding (MOU) between a tribe and local jurisdictions, to the Cowlitz Tribe's request to have land in Clark County, Washington placed into trust status for gaming purposes.

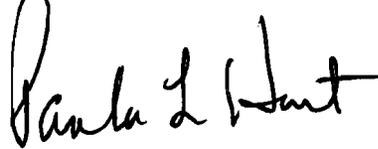
The presence or absence of an MOU is an important factor of our 25 CFR Part 151 review for land acquisitions, which includes National Environmental Policy Act (NEPA) compliance. 25 CFR § 151.11(b) requires that, as the distance between a tribe's reservation and the land to be acquired increases, the Secretary shall give:

- 1) greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and
- 2) greater weight to concerns raised by state and local governments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

On January 3, 2008, the Assistant Secretary – Indian Affairs issued guidance to the Bureau of Indian Affairs' Regional Directors and the Office of Indian Gaming interpreting Section 151.11(b). The guidance interprets some considerations that should be taken into account when giving "greater weight" to state and local concerns regarding jurisdictional issues, potential conflicts of land use, and the impact on real property taxes and special assessments. The guidance provides that failure of a tribe to reach an intergovernmental agreement with state and local governments should weigh heavily against approval of the application. This is because the farther from the reservation the proposed trust acquisition is, the more the transfer of Indian jurisdiction to that parcel is likely to disrupt established governmental patterns, and the more difficult it will be for the tribal government to efficiently project and exercise its governmental and regulatory powers.

There are many factors laid out in Part 151 that must be taken into account when the Secretary decides whether to take land into trust status. Jurisdictional and land use concerns that might be addressed in an MOU are just some of those factors. While failure to achieve an MOU will weigh more heavily against an application as the distance from the reservation, if any, increases, it alone may not be a determinative factor for denying an application. Similarly, the existence of an MOU may not, on its own, be a determinative factor for approving an application. All applicable factors in the Part 151 regulations will be assessed before a decision is made.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula L. Hart". The signature is written in a cursive style with a large initial "P".

Paula L. Hart

Acting Director, Office of Indian Gaming



proud past, promising future

CLARK COUNTY
WASHINGTON

May 6, 2008

Carl Artman
Assistant Secretary for Indian Affairs
Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Re: Cowlitz Tribe Fee to Trust Application

Dear Mr. Artman:

On March 2, 2004, Clark County entered into a Memorandum of Understanding (MOU) with the Cowlitz Tribe regarding land which is subject to the tribe's fee to trust application. As a result of court cases, the legal status of this MOU is in question.

In recent public hearings, the Clark County Commissioners were told that without a MOU, the fee to trust application would be denied. The group making such assertions relies on a taped interview with Mr. Skibine dated December 10, 2007, a copy of which is attached.

The Board of Clark County Commissioners has two questions:

1. If all other requirements of the tribe's fee to trust application are met, will the county's refusal to enter into a MOU with the tribe, on its own, result in denial of the tribe's application?
2. If all other requirements of the tribe's fee to trust application are met, will the existence of a MOU between the county and the tribe, on its own, result in approval of the tribe's application?

We would appreciate your reply within thirty days so that we might clearly understand the County's options in this matter. Thank you in advance for your assistance.

Sincerely,

Betty Sue Morris, Chair

Marc Boldt, Commissioner

Steve Stuart, Commissioner

- c: George Skibine, Office of Indian Gaming Management
 James Cason, Associate Deputy Secretary for Indian Affairs
 Brian Baird, U.S. House of Representatives
 Patty Murray, U.S. Senate
 Maria Cantwell, U.S. Senate
 Craig A. Bill, Executive Director, Washington State Office of Indian Affairs

1 Attachment
- Transcript

1300 Franklin Street • P.O. Box 5000 • Vancouver, WA 98666-5000 • tel: [360] 397-2232 • fax: [360] 397-6058 • www.clark.wa.gov



**Transcription of conversation with George Skibine
December 10, 2007**

TH: *I have a dictating machine here. I'd like to turn on if you don't mind just so I can keep things straight.*

GS: *Okay. Sure.*

TH: *Well basically we're interested in the status of the Cowlitz Preliminary Final Environmental Impact Statement and where you guys are with that. Has that left the regional office?*

GS: *Well it tends to be ... it tends to be reviewed here and it's been sitting in the office of the solicitor (ph) for months now. I don't think they've gotten to it.*

TH: *I guess I need to know is there a ... what the hang up is.*

GS: *There is no hang up. It's just that there ... it took them forever to review these EISSs.*

TH: *So do you ...*

GS: *In this particular case, the tribe must not be pushing them so essentially, you know, some of these have sat for months and months. And that's just one of them.*

TH: *I see. But is it under active consideration? Are they reviewing it or is it just sitting, waiting ...*

GS: *Well I think it's in the ... it's in the line, you know. It's ... I think they have ... they have several and it's somewhere in the line of ... of ... it's ... technically they review on*

first come first ... first come, first in.
First in, first out. So Maria Wiseman is the
attorney up there who's supposed to review it.
And she has not done it yet as far as I know.

*TH: I see. Well, I ... I guess that answers that.
But when it is considered, then ... is the next
step a "Record of Decision"?*

*GS: It ... first of all, it ... we had ... we would
have to publish the final EIS.*

TH: Okay.

*GS: And then we would not be able to do a Record of
Decision until thirty days after the final EIS
is published. They ... I think part of the
problem the Solicitor's office has or the ...
the ... the reason they're not moving on it is
that since December of '05, Secretary Kempthorne
told ... essentially put any form of freeze on
approving anything related to Indian gaming. So
there are ... you know, maybe a dozen of these
Notice of Intent to do an EIS, Notice of
Availability of EIS, FONSI's[per SC's memory],
that has been held up in the secretary's office
and not released to the federal register or ...
or just not moved because he is opposed to off-
reservation gaming and as a result, he has not
authorized, you know, the release of any of the
documents. So because there are so many waiting
for signature and nothing is happening on them,
I think in the solicitor's office they feel that
they might as well do something more useful with
their time than review additional EISs where,
you know, administration has taken some sort of
decision not to move on anything.*

*TH: So I do infer from what you say then that the
... it's ... it's kind of like an ice block.*

It's all ... it's all ... nothing is happening to anything and so then when that is released, they will be released in queue. Is that ... is that right?

GS: I mean ... in queue, what do you mean?

TH: *Well that they'll be done one at a time with first in, first out?*

GS: Yes. But the ... there's a lot of them that are already done and that are waiting for signature. So tho ... all of those could be signed in one day and released in one day.

TH: *I see.*

GS: The ... the Cowlitz one is not one of those because I happen to know that [inaudible] is not a review date.

TH: *Is ... is the ... is the status of the MOU with the county having anything to do with that? That fact that that's still being litigated?*

GS: I'm not sure, you know. I'm not ... no, I don't think so. I ... frankly ... I'm not sure that it is, you know. I think it's just the question that they haven't gotten to it when ... when it comes to that, the fact that the if any MOU value is gonna be an issue for them, but since they haven't even begun to review it, I don't think they have considered it.

TH: *Umm. Okay. You're ... you're familiar with this MOU situation. It kind of divides on two tracks. One is the litigation with the county. The other is the ordinances and I wondered whether you had any opinion of whether or not those substitute ordinances will do the job and*

whether the NIGC should take those into the gaming ordinance?

GS: Well the ... we're going to meet with the NIGC this week, I think, to review ... I'm going to try to arrange it to see where they are on that. We ... obviously they don't ... they don't consult with us on whether to approve those gaming ordinances and the ... the ... this one is due on the 14th of January from what I understand. So we just want to have confirmation on meeting with them to see where they are and if they think they're going to approve it. But I ... you know, that's totally up to them.

TH: *The ... I'm sorry. Wh ... what was to happen the 14th of January?*

GS: I think the 90-day deadline to approve the ordinance falls on the 14th of January.

TH: *Okay.*

SC: *Can I?*

TH: *Sure, go ahead.*

SC: *Mr. Skibine?*

GS: Yes?

SC: *With the MOU issue, my understanding is that the checklist requires that tribes and local governments have agreements regarding jurisdictional land use.*

GS: Right.

SC: *So what happens if there is no MOU? Could those*

ordin ... ordinances potentially take the place of an MOU in that case or where are we on ...

GS: That's what the tribe wants. We have informed the tribe that as far as the Department is concerned, for the purposes of our review on the land acquisition regulations on 25 CFR 151 (ph)...

SC: *Okay.*

GS: ... we ... we have a problem with that.

SC: *I'm sorry. You have a problem with what part of it?*

GS: With the fact that there is no in ... there is no MOU with the county.

SC: *Oh.*

GS: Now that doesn't mean that the EIS cannot be published because the NIGC ... you know ... who signed the EI ... on the EIS or the appeal may decide that you can do an EIS without binding mitigation measures. And that may well be true. But that doesn't mean that we ... it's going to overcome the hurdle we have on our 151 regulation.

SC: *Ahh.*

GS: So ...

TH: *Could you talk about that a minute. The ... the problem that you have with it?*

GS: The problem we think that in ... in order for us to ... to consider favorably the application under our land acquisition regulation, 25 CFR

151 (ph) with respect to ... to additional conflicts and conflicts in land use that the absence of a MOU with the county is really a ... a ... it's substantial issue for us. So notwithstanding the fact that underneath the law it could have an EIS published, that doesn't mean that we are going to feel that it meets the requirement we want to see under our 151 regulation.

SC: *So that could really be a deal breaker?*

GS: That's a deal ... that could potentially be a deal breaker for them, yes.

SC: *And then this meeting with the NIGC later this week about the ordinance issue, that's sort of could determine whether that could take the place of an MOU?*

GS: No. No, no. We ... it is not going to take ... I don't think it's going to take the place of the MOU for ... for our land acquisition ... for out consideration of the application. We just want to know what the NIGC is doing here and how they see this ... this ... this ordinance.

TH: *So even if they ... even if they were willing to take it ... to ... to accept that and the county were ... was okay with the ordinance as providing the agreements they need that the MOU provides, you still are not okay with it, without an agreement with the county?*

GS: Right. We ... we do have a ... and then we see that a real problem with the ... the absence of a MOU.

TH: *Okay. Can we talk about the "Restored Lands" issue? How is Amanda Wilbur's work going?*

GS: No. Amanda Wilbur is no longer with us.

TH: *Oh, she's not?*

GS: No. For the ... the issue ... yes, she's no longer here. The ... the ... the solicitor's office would be the one looking at the Indian land opinion.

TH: *And are they doing that?*

GS: And I'm not sure who ... who is doing that. They are ... or if they're doing it. I ... I have the feeling they're not doing it.

TH: *Well I ... I guess we had understood that ... that ... that the Restored Lands opinion was under review.*

GS: Yeah, but it's not ... by Amanda Wilbur?

TH: *Well it was under review by BIA.*

GS: It ... it's not ... it isn't. It ... the Indian land issue is a legal issue. I think that some ... someone that wanted Amanda Wilbur, when she was here as a lawyer to take a look at it, but that's ... that ... that ... I think that has been abandoned by the [assistant-per SC's memory] secretary's office. That would be back with the solicitor's office now.

TH: *So do I understand then that the Restored Lands opinion that Penny ...*

SC: *Coleman?*

TH: *... Coleman and her people issued is ... now stands? Is that ...*

GS: Well no. I mean it ... it stands for them. But the review department of the [Interior-per SC's memory] has is to decide whether it's ... it agrees with that opinion.

TH: *Okay. Then I guess I'm a little rusty on this issue. Then what is ... what is the import of the Restored Lands opinion? Where does it come in to play?*

GS: Well we need to ... to make an Indian Lands opinion to become and ... that they are ... that the ... that the application is not subject to the prohibition for gaming on other required land. On land acquired in trust after October 17, 1988. If that exception doesn't ... that exception for restored land doesn't apply here, then they would have to do a two part determination under section 20(b)(1)(a), you know, of ... it will require the governor's concurrence.

TH: *Right.*

GS: If it don't qualify under any of the other exceptions and that's why we need ... Interior needs to make that finding. To agree with the [inaudible] or to disagree with it. One way or the other that has to be decided.

TH: *So you need to know from the solicitor's office ...*

GS: Right.

TH: *... how ... but you're ... but you don't believe anybody's looking at it?*

GS: I am not sure that anybody is. But I'm ... you

know, and I can't make them do it so I ...

TH: Yeah.

GS: ... but the thing with ... the thing with this, you know, as you can see the thing with this ... with the ter ... with the Interior here is there is fewer movement on anything on Indian gaming. I think that the solicitor's office is not ... that's not the thing ... that does not feel that he has to ... to move on anything at this point since it's not ... you know ... very little that is actually happening.

SC: *So you're saying there was never a review ... I mean there was no report written on that or anything before Amanda Wilbur left?*

GS: No, there wasn't.

SC: *Oh.*

TH: *So she just dropped it then. Does that mean ...*

GS: Well she ... she left the department.

TH: *... right. And nobody picked it up ... picked up on ...*

GS: No.

TH: *... on her work?*

GS: No.

SC: *Well now the Cowlitz tribe also put in an initial reservation application. Is that under consideration or is that just sort of sitting up there too or does it matter with the restored lands in place?*

GS: Well I guess that would be an issue, you know. If they don't qualify on restored land whether they would qualify under the initial reservation. But that's really ... that's two sides of the same coin.

SC: *Which is harder to get?*

GS: I think that ... in my view there ... either one is ... is about the same analysis in the sense that they have to establish if they're restored a connection to their land.

SC: *Okay.*

TH: *As ... as you know, the Coleman's people wrote something in that regard that was ... broke ... broke precedent as far as ... you know, having to qualify. I mean it really seemed kind of hollow on what you ... what you folks have normally decided on those things. I mean they had to ... the tribe had to have ceded the land or was living on it or ... I mean it was pretty ... pretty clear that there was a serious connection to the land and ...*

GS: Right.

TH: *... and here they just sort of said oh well, if you traveled along, around it or you ... you were out on the river or you hunted and fished there a while, that's okay.*

GS: That's right.

TH: *To us, that's pretty ... you know, that's ... that's pretty weak.*

GS: Right.

TH: *And I just wondered if ... whether anybody's ever going to take that up again.*

GS: *Yeah somebody will ... some ... well we will have to.*

TH: *Okay. Well I ... I hope it happens.*

GS: *Right. Well ... yeah. It could happen at some point.*

TH: *So they're gonna have to re-visit that whole opinion?*

GS: *That's correct.*

TH: *And ... and so that's got to get back in the queue somewhere?*

GS: *Yes.*

SC: *But it will be through the solicitor's office when they feel compelled?*

GS: *Right.*

SC: *Okay.*

TH: *Can you talk about the new rules and how they will impact the Cowlitz issue?*

EL: *Are they enacted yet?*

TH: *Or ... or are they enacted yet?*

GS: *No. And the ... the new rules have not been published yet and are seen in the department. They may go more review ... we ... I don't know. We ... we were sued Friday by the St. Croix Band*

of Chippewa over a decision that we made to require tribes that have pending two-part (ph) determination ...

SC: *Um-hum.*

GS: ... we decided that the discretionary decision to take that into trust would have to be made first. And they sued us over that. And I think that that may have a impact on what we have in our proposed regulations so that has to be visited ... this issue and at this point I ... you know, this ... these regulations have been hung up here in the secretary's office for so long that I really don't ... I'm not sure when they will be published.

EL: *Is that ... is that twenty-five mile deal from tribal headquarters still in there? Do you know?*

GS: That ... from what I ... the last version I saw it was still in there.

EL: *It isn't there?*

SC: *It is ...*

GS: No, no, no. Within a twenty-five mile radius ...

EL: *Ah-hah.*

GS: ... for ... for consultation.

TH: *Well as it stands, are the Cowlitz grandfathered into those?*

GS: No, there's no grandfather provision in the regulations.

TH: *So when they are enacted, everybody is affected?*

GS: *Everybody subject to the ... right.*

TH: *Okay. During our couple of visits back there, you guys have always asked us how our local elected officials feel about the Cowlitz casino and I guess as you know, they've been ... local officials have been increasingly vocal ...*

GS: *Right. And we've got ... we have gotten these ... these town resolutions.*

TH: *Okay. Are those ... is there any way for those to be taken into account as the process goes forward?*

GS: *Of course. I mean they're crucial to the ... to the outcome.*

TH: *Good. Glad to hear it because, you know, these communities are ... are very serious and I suspect that it's just ... you know, that they don't feel like that the ... the tribal gaming process or ... or the people who are running the thing is take ... have really taken the community seriously. But that's just my conjecture that ... it's what the ... I guess what I want ... want to say is that the atmosphere for ... for gaming has ... has deteriorated since we started anyway.*

GS: *Uh-hum.*

TH: *So ... okay. I'm glad to know that. Do either of you guys have any questions?*

SC: *I just had one thing I wanted to clarify. You mentioned that the atmosphere for off*

reservation gaming has really cooled with the Secretary of Interior. Now the Cowlitz tribe, they are considered under the off reservation heading, is that correct?

GS: Yes.

SC: Okay. Thank you.

GS: But they're not subject at this point. This ... they're not subject to the two part determination.

SC: Right.

GS: Because they qualify on one of the exceptions. But they're still off reservation because they don't have a reservation.

SC: So ...

TH: *You know, I guess as I listen to you, it seems like the thing ... a decision is moving farther and farther down the road. Would that be accurate?*

GS: What you mean by that?

TH: *Well, before you go one way or another on taking the land into trust, for instance, I mean it seems like quite a ways away.*

GS: Yes.

TH: *I mean it sounds like even ... even years.*

GS: Potentially.

TH: *Okay. I have to ask this. As you know, one of the things that we feel strongly about is that*

they didn't take an alternative site into serious consideration as they did their ... their EIS ...

GS: Um-hum.

TH: *... their alternative site has a Catholic High School being built across the street from it. So we maintain that there are sites forty miles north that look very good, that are ... that can make the historic connection. Is anybody suggesting to the tribe that, you know, maybe you ought to save some money and go right to the ... that alternative site?*

GS: We have suggested that.

TH: *You have?*

GS: Yes.

TH: *And what do you hear back?*

GS: Well it doesn't look like they are ... I mean, I don't know. But it doesn't look like that's playing then.

TH: *That that's what?*

GS: That ... it doesn't look like it's making any impression.

TH: *Okay. Well, George, that's it from this end. So I very much appreciate your talking with us today.*

GS: Okay. Very good. I understand there is a ... we had a ... I had a visit late last week from the attorney at Perkins Coie and one of their gentlemen told me that there is a hearing this

week with ... on that MOU issue in the appeals court.

TH: *That's correct.*

SC: *Yes.*

TH: *Friday I think.*

GS: *Right. And the attorney is very confident that he was going to win that case. And that the judge may actually rule from the bench.*

TH: *Well he ... he likes the things to happen expeditiously. So I ...*

GS: *Right.*

TH: *... wouldn't be surprised.*

GS: *So that's ... would be one more hurdle done.*

TH: *Right. Right.*

GS: *Okay. Very good.*

TH: *Thank you, George, so much.*

GS: *Bye-bye.*

TH: *Bye.*

SC: *Bye.*

EL: *Merry Christmas.*

C E R T I F I C A T E

I, Evelyn M. Pierce, certify that the recorded interview between George Skibine, BIA, Tom Hunt, Ed Lynch and Sarah Coomber occurred at the time and place set forth and that at said time and place the interview was recorded on a micro-tape. That I subsequently transcribed the entire recorded interview to the best of my ability as accurately as possible.

Dated this 11th day of December, 2007.



Evelyn M. Pierce
Court Certified transcriptionist

