

OFF-RESERVATION GAMING

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING FOR THE PROCESS FOR CONSIDERING GAMING
APPLICATIONS

FEBRUARY 1, 2006
WASHINGTON, DC

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OFF-RESERVATION GAMING

WEDNESDAY, FEBRUARY 1, 2006

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m. in room 106 Senate Dirksen Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, Cantwell, Smith, and Thomas.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. This morning, the committee is holding its sixth oversight hearing on the Indian Gaming Regulatory Act. Since IGRA was enacted in 1988, Indian gaming has grown from a few bingo halls on scattered reservations to a \$19-billion industry featuring Las Vegas-style casinos and entertainment offered by nearly 200 tribes.

The previous hearings in this committee demonstrated several areas of the law that are in critical need of improvement. Last fall, we introduced a bill containing a comprehensive set of amendments, S. 2078. However, certain controversial activities continue to concern me, my colleagues, and many communities around the country. Therefore, I have determined, working with Senator Dorgan, to continue to look at these activities and whether additional changes to IGRA are needed.

While the majority of tribes have built casinos on their reservations, a growing number have applied to use the exceptions in section 20 of IGRA to obtain casinos off their reservations in more economically viable locations. As might be expected, the success of off-reservation casinos leads others to seek similar success.

State officials have a role in land-into-trust decisions under the two-part determination. I am concerned, however, that the process of taking land into trust under the restored lands and initial reservation exceptions may not be adequate to be fair to all the people impacted by the arrival of a casino.

At the same time, we recognize that the restored lands and initial reservation exceptions were originally intended to provide a fair chance for newly recognized tribes to achieve an equal footing with their sister tribes. Having received a great deal of information about newly recognized tribes looking for the best place to place a casino, rather than a location that meets the cultural and social

needs of their members when looking for an initial or restored reservation, we must now try to fairly balance the interests of tribes seeking reservations and the communities affected by new casinos.

We will also hear from individuals who can testify to three locales' experiences with the land-into-trust process, as well as an Indian tribe that currently has its application for an initial reservation pending before the Bureau of Indian Affairs [BIA] and that has at the same time received an opinion from the National Indian Gaming Commission [NIGC] stating that if land is taken into trust, it should be considered restored lands. It is these two exceptions to IGRA's general ban on gaming on recently acquired land, the initial reservation and restored lands for restored tribes exceptions, that we are interested in today, along with many other aspects of IGRA.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Mr. Chairman, thank you very much.

I agree with what you have said in your opening statement. There is no question but that the application process for these exceptions is something that we should hold these hearings on to try to better understand.

Today's hearing will focus on two exceptions to the general ban against gaming on lands that were acquired after 1988: No. 1, those lands that are the initial reservations of tribes; and No. 2, those lands that are the restored lands of tribes. The exceptions, my understanding is, from the origin of IGRA, are intended for those tribes whose lands were illegally taken; whose governments were wrongfully terminated; or who are just establishing their government-to-government relationship with the United States.

The two exceptions we are discussing today are intended to correct some of the many injustices bestowed upon native people. It is true, Mr. Chairman, as you indicated, that location for these facilities is critical. It is also true that there are many who would want to find the best locations possible and the largest possible centers possible. We understand all of that.

As a result, we want to evaluate how these exceptions are working; how the applications for these exceptions are being considered; and understand the consequence of all of that. For that reason, I think these hearings are going to be very productive and very important as we move forward.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thomas.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Thank you, Mr. Chairman.

I appreciate your having this hearing. I think this is an issue of increasing concern and interest to all of us. I have no particular statement. I look forward to the testimony. I believe this is a very important issue and I am glad we are dealing with it.

The CHAIRMAN. I thank my colleagues. I would like to again state we will be having several more hearings on this entire issue of Indian gaming, and also the issue of political involvement and contributions. I intend to mark up legislation within 1 month or so that I hope can be passed by both Houses of Congress.

I want to emphasize, as I said in my opening statement, this went from a very small revenue and small enterprise business, to now approaching \$20 billion a year; 99 percent of the patrons of Indian gaming are not Indians, so we have an obligation not only to Native Americans to preserve their rights and their sovereignty, but also to protect the rights of those who patronize Indian gaming facilities as well.

So I am very aware that there is a great deal of controversy out there in Indian country about addressing this issue. It needs to be addressed. Every law that is passed over time needs to be updated and reauthorized. IGRA was passed in 1988 and it is time that law be reviewed and reauthorized in keeping with changing circumstances.

I thank my colleagues. I would like to ask the first panel, George Skibine, an old friend of the committee, who is the acting deputy assistant secretary for Policy and Economic Development for Indian Affairs of the Department of the Interior; and Penny Coleman who is the acting general counsel of the National Indian Gaming Commission, as our first witnesses.

Mr. Skibine, we will begin with you. Again, welcome back.

STATEMENT OF GEORGE SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY, POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SKIBINE. Thank you very much, Mr. Chairman, Mr. Vice Chairman, Senator Thomas. I am pleased to be here to represent the Department of the Interior at this hearing.

I submitted a statement for the record. In my testimony, I describe the process.

The CHAIRMAN. Without objection, both statements will be made part of the record. Please proceed.

Mr. SKIBINE. I describe the process that a tribe has to go through in submitting an application to take land into trust for gaming. I am not going to repeat what I said here; just outline it. Essentially, the way it works is that, first of all let me mention that before a tribe submits an application, there are often a lot of rumors going around, and articles in newspapers.

We are not really involved in that at all. That creates a lot of controversy and gives the impression that something is already pending, when in fact when we receive these calls, for many, many of these applications, the BIA is not yet involved.

The BIA's involvement is triggered when a request is submitted to the regional office under our regulations for taking land into trust, contained in 25 CFR part 151. That triggers the BIA to consider the application. What usually happens next is that the BIA will begin the environmental documentation processing under NEPA to decide whether an environmental assessment or an environmental impact statement is needed.

That usually takes 6 months to 1 year, we are involved with that process. The process includes public input. There are scoping sessions that are held in the field, and then eventually, a draft environmental statement is submitted for comment. We get most of our information on environmental consequences from that process.

The CHAIRMAN. What is the average length of that process?

Mr. SKIBINE. For NEPA, I would say it is at least a year, sometimes much longer than that.

As this is going on, the tribe will continue to submit its application and the local BIA will conduct consultation meetings if its off-reservation. We will do consultation with State and local communities that have jurisdiction over the land. We will examine the impact based on the comments that are received. Eventually, there will also be a determination that is going to be made in Washington, if the land is for gaming, on whether the land will qualify under one of these exceptions that you mentioned at the outset.

We look at the information that the tribe has submitted and we decide whether one of the exceptions applies. In some cases, we do not have to make a determination because the tribe will say, we are applying under the two-part determination, which is off-reservation. In that case, the process moves forward under that two-part determination test that you talked about earlier.

If not, then we will make a determination as to whether section 20(b)(1)(A), the two-part determination, applies or not. If it does not apply, it will be because it fits under one of these exceptions. Under these exceptions, we have approved since 1988 one under the restoration of land exception. We have approved three under the initial reservation exception, although we have not actually taken land into trust yet under the initial reservations exception because two of those cases are now in court. The third one was just approved a few days ago.

We have approved 12 applications since 1988 under the restored tribe exception. A restored tribe can be either restored by Congress or restored by judicial decision. We have about 10 applications under the two-part determination currently pending before us and we also have about 10 under the restored tribe exception that are currently pending in the Bureau of Indian Affairs.

As the process goes along, a determination will be made whether the tribe qualifies under the exceptions. Then the recommendation of the regional office will come to my office, where we will take a look anew at that application. We will decide whether to sign a finding of no significant impact under NEPA for an environmental assessment, or whether to sign a record of decision if an environmental impact statement is done.

We will look at whether to recommend to the Secretary who has delegated authority, actually the Assistant Secretary for Indian Affairs, to take land into trust. Since 1990, when Manuel Lujan was Secretary, there was a policy made that applications to take land into trust for gaming would be made at the central office. We have continued that policy since then.

Now, what I want to emphasize is that what we have sought to do here is to have a very transparent process from the beginning. We understand, and I have talked to many people out there who have sometimes had a problem with the regional office of the BIA

in getting sufficient information. I have talked to Congressmen representing Districts who have had that issue. We are trying to fix that because I think that the philosophy that we have and that essentially follows Secretary Norton's position on communication and consultation, is that we want the process to be very transparent.

We want to be able to do consultation and cooperation with local communities. At the central office, we often encourage the tribes to reach out to their local communities. We feel that agreements between local communities and tribes to reduce adverse impacts are extremely important. We emphasize that to the tribes and to the local communities when we go out there and talk about the process.

We understand that it is a somewhat confusing process. It is long and arduous. There are a lot of pieces there. It is sometimes difficult to explain that to the local communities, especially to the people who are not lawyers or involved in the process. We are developing a draft regulation to implement section 20 of the Indian Gaming Act. We had a draft regulation published in 2000 under the previous Administration that implemented section 20(b)(1)(A), the two-part determination process, but we never went final with that regulation in the new Administration.

Now we are reviving the process and broadening it to include dealing with the other parts of section 20. We are doing that in order to try to get clarity into the process so that a process can be followed and has to be followed in every case. The regulations have been developed.

We will hopefully in the next couple of weeks send a working document to tribes and do tribal consultation. We will make it available to the committee and to anyone else who wants it. Eventually, we hope to have regulations implemented before the end of this year.

With respect to the initial reservation, we have done that only a couple of times. I want to talk about that particular exception, finally, because our position is that to qualify under the initial reservation of a tribe recognized under the acknowledgment process, there has to be a reservation proclamation.

The reservation proclamation is published in the Federal Register pursuant to the Secretary's authority to proclaim reservations in section 7 of the Indian Reorganization Act. That act authorizes the Secretary to proclaim reservations on land that is held in trust. It is fairly broad.

We are also separately in the process of developing regulations that will implement section 7 of the IRA for reservation proclamations. Right now, there are no regulations. There are guidelines that were issued in the past that the BIA follows.

The CHAIRMAN. When do you expect those regulations to be completed?

Mr. SKIBINE. Hopefully we can do that in the next couple of months or so, in terms of producing a draft.

The CHAIRMAN. Senator Dorgan just made a comment: Seventeen years of IGRA without regulations?

Mr. SKIBINE. Without regulations on what?

The CHAIRMAN. On section 20.

Mr. SKIBINE. On section 20?

The CHAIRMAN. Yes.

Mr. SKIBINE. That is correct. We do not have regulations implementing section 20 of the Indian Gaming Regulatory Act. We tried to do that in the 1990's. Personally, I thought it would have been helpful. When we initially published our draft regulations for section 20, there were a lot of objections from tribes. I think the new Administration decided not to press the issue. I think that now the Administration feels that this is something that is going to be very worthwhile.

With that, this will conclude my brief comments. I am available for questions if you have any. Thank you very much.

[Prepared statement of Mr. Skibine appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Coleman.

**STATEMENT OF PENNY COLEMAN, ACTING GENERAL
COUNSEL, NATIONAL INDIAN GAMING COMMISSION**

Ms. COLEMAN. Thank you, Mr. Chairman, Mr. Vice Chairman, committee members.

My name is Penny Coleman. I am the acting general counsel of the National Indian Gaming Commission. I appreciate that you took the time to let me speak to you today. I understand that you are concerned about off-reservation gaming and that you are concerned about gaming where there are tribes that are landless, and they are looking to find a place where they can establish their home base and establish a place where they can have economic development, and that includes gaming.

Our office is somewhat involved in that, but not extensively. The Indian Gaming Regulatory Act defines Indian lands. It makes the NIGC the primary regulator for the Federal Government. Consequently, there are several times when we have to decide that they are Indian lands. In fact, all of the time we have to decide whether or not they are Indian lands. The primary one, of course, is that we only have jurisdiction over Indian lands. So we need to know whether we are supposed to be regulating, whether we are supposed to be making sure that a tribe follows the Indian Gaming Regulatory Act.

There are a couple of other times when we look specifically to Indian lands and make Indian land determinations. That is when we have a pending management contract and if we are going to approve it, we obviously cannot approve a contract for gaming that is off of Indian lands. And then on very rare occasions, we have site-specific tribal ordinances. Those are ordinances where the tribal ordinance will say the Indian lands are all of the Indian lands of the tribe, and they include this specific site and it will list that site.

We do not issue formal opinions that often. They take a lot of time. They are a lot of work. But as I mentioned to you the last time I spoke, we are working on an Indian lands database so that we will have all of the information necessary to make those determinations for all of the gaming facilities. That is a work in progress and we are moving along on it quite well.

When we do write Indian lands opinions, we make every attempt to get the consensus of the Department of the Interior. That is im-

portant because we both have responsibilities on Indian lands, and it is necessary for us to agree with whether or not those are Indian lands. We do that through a memorandum of understanding that calls for us to provide the Department's Office of the Solicitor with drafts. We notify them when we are going to write one of these opinions so that they will be able to give us any information that they might have. We try to work together on that.

We also notify the State Attorney General when we are going to do one of these because the State and its people may have information that might be helpful in our analysis, and the State sometimes has information or analysis that impacts how we approach these. So we send them a letter, and that is a process that started several years ago as a result of a request from the Conference of Western Attorneys General, and that seems to be working.

Regarding public notice and participation, we try to respond openly to any requests. We meet with anyone who wants to meet to give us their views. We accept all comments. We respond to all FOIA requests. We have a wonderful FOIA officer who provides information very quickly. But generally, we consider these to be legal opinions, so we have not really developed anything beyond that.

When we are doing these opinions, if in the rare instance that they are dealing with a trust acquisition, we do not make any recommendations on the merits of whether the land should be acquired into trust; whether or not there should be gaming there; whether there is an economic impact on the surrounding community; whether there is environmental impacts. That is not our call. That is something that the Department of the Interior does. So they are the ones that have the whole process for making those decisions.

Right now, we have four pending that deal with trust acquisitions. Those are pending because we have management contracts. With respect to the environmental and economic impacts, we are a cooperating agency, or a lead agency under NEPA. So our NEPA compliance officer is right there participating with the Bureau of Indian Affairs NEPA officers.

That concludes my statement. Thank you.

[Prepared statement of Ms. Coleman appears in appendix.]

The CHAIRMAN. Thank you.

With both witnesses, let's go back to basics. A tribe is operating and they want to acquire additional lands to be taken into trust. That would be all of your responsibility. Right, Mr. Skibine?

Mr. SKIBINE. That is correct, yes.

The CHAIRMAN. What if their application was to take land into trust for purposes of gaming? Whose responsibility is that?

Mr. SKIBINE. It is ours also.

The CHAIRMAN. What about if it is non-contiguous land? Does that have any affect on your decision, whether it is contiguous or not contiguous? I am talking about somebody that wants to buy land in downtown Denver and take it into trust.

Mr. SKIBINE. They would have to apply to the BIA to have the land taken into trust. It makes a big difference on what the final decision will be, but the responsibility to look at the application is with the Department of the Interior.

The CHAIRMAN. If a tribe just buys land and it is not taken into trust, are they allowed to conduct gaming operations?

Mr. SKIBINE. If it is off-reservation?

The CHAIRMAN. Yes; they just bought some land.

Mr. SKIBINE. No; not if it is off-reservation.

The CHAIRMAN. What if it is contiguous to a reservation? They buy additional land. It is not taken into trust. They just purchase it. Can they start a gaming operation?

Mr. SKIBINE. No; if it is contiguous to the reservation, the land has to be taken into trust also. It fits under the exception in section 20(a) of IGRA for gaming on land taken into trust.

The CHAIRMAN. Okay. How many times have you seen a situation where a tribe bought land for taking into trust purposes, and then later on began gaming operations?

Mr. SKIBINE. Began gaming operations later on?

The CHAIRMAN. After they had received permission to take land into trust.

Mr. SKIBINE. Okay, so the land is in trust and then they want to do gaming? I would have to double-check on the number of times that has happened.

The CHAIRMAN. In other words, when there is a change in use.

Mr. SKIBINE. Yes; it has happened in a few instances, and we would have to get back to you on that.

[Information follows:]

Lands Converted From Non-Gaming to Gaming Uses According to BIA Regional Offices⁹

1. Keweenaw Bay Indian Community: 22.38 acres in Marquette County, MI, were brought into trust on 9/24/90 for housing purposes. According to BIA the land was converted to gaming use in September 1994. The tribe eventually received the Secretary's approval and the Governor's concurrence to an off-reservation gaming application (two-part determination) on May 9, 2000.

2. Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians: 98 acres in Florence, OR, were brought into trust on 1/28/98 for future economic development. Converted to gaming in July 2003. According to NIGC officials, the tract was administratively determined to fall within the IGRA exception for restored lands.

3. Confederated Tribes of Siletz Indians of Oregon: 10.99 acres located in Lincoln City, OR, were brought into trust on 12/5/94. According to NIGC, the parcel was brought into trust under a legislative amendment that revised the Tribe's Restoration Act and allowed gaming under the IGRA exception for restored lands. Gaming commenced in May 1995.

4. Confederated Tribes of Grand Ronde, OR: 5.55 acres located in Willamina, OR brought into trust on 3/5/90 for administration and governmental uses. Land converted to gaming in October 1995. According to NIGC officials, the parcel is subject to the IGRA exception for restored lands.

5. Kalispel Tribe: 40.06 acres located in Airway Heights, WA, were brought into trust on 6/26/98 for future economic development. Land converted to gaming in 2000. According to NIGC officials, tribe received a two-part determination from the Department and the Governor.

6. Kickapoo Tribe: 769 acres in Lincoln County, OK, were brought into trust on 5/3/95 for housing and economic development BIA could not provide a date for when the land was converted to gaming. They did state that 3 acres were released for economic development on 6/1/02. They further stated that the business was named "Kickapoo Casino."

⁹This list was not independently confirmed by the OIG. Additional information on each parcel was supplied, as available, from the NIGC. In addition, since the BIA did not maintain a central list of lands taken into trust after 10/17/88 that were converted from gaming to non-gaming, it is not known whether this list is complete.

7. Mooretown: 34.59 acres in Butte County, CA were brought into trust for HUD tribal housing units and community uses on 7/26/94. Land converted to gaming on 6/11/96. NIGC officials were not aware of applicable IGRA exceptions or status.

8. Smith River Rancheria: 6.45 acres in Del Norte County, CA, were brought into trust on 4/13/89 for HUD Grant for tribal housing. Land converted to gaming use in August 1996. NIGC officials were not aware of applicable IGRA exceptions or status.

9. Wyandotte Tribe of Oklahoma. Unknown quantity of land (Shiner Tract) located in Kansas City, KS, was brought into trust for economic development, including gaming on July 15, 1996. On 7/12/96, prior to taking the parcel into trust, the State and four Indian tribes in Kansas sought to enjoin the Department from taking the land into trust for non-compliance to NEPA and other reasons. The tribe appealed to the Tenth Circuit on 7/15/96 and the injunction was vacated by the Court. On 8/28/03, the tribe commenced gaming on the land. On 9/22/03, the tribe notified NIGC it had commenced gaming. Most recently, the State appealed the District Court's ruling to the Tenth Circuit. On July 27, 2005, the Tenth Circuit ruled that the Department's determination, in taking the land into trust status, that only Federal judgment funds "were used to purchase the Shiner Tract was not supported by substantial evidence in the record." The Department must review the new evidence and report back to the Tenth Circuit within 60 days.

10. Porch Creek Band of Alabama. NIGC informed us that the tribe is conducting gaming on land brought into trust after 10/17/88 for a non-gaming purpose. No other details were available.

The CHAIRMAN. So where do you come in, Ms. Coleman? Where do you come into this equation? A tribe has acquired land, taken it into trust, and then they say they are going to start gaming operations, or want to start gaming operations. Is that where you come into it?

Ms. COLEMAN. That is exactly where we come in. As a general matter, if the land is already in trust, then the Department of the Interior does not have as much interest in the issue because they do not regulate gaming. They do not decide whether or not it can be gamed on once it is already into trust. So then we are the ones who assume the responsibility for looking at that.

The CHAIRMAN. Once it is has been established that they will begin gaming operations?

Ms. COLEMAN. Yes.

The CHAIRMAN. That is the only time you come into it?

Ms. COLEMAN. Yes.

The CHAIRMAN. What about November 2005, your organization reviewed a site-specific gaming ordinance and determined that lands sought to be taken into trust by the Cowlitz Tribe was "restored land" and could therefore be used for gaming. The NIGC issued this opinion at the same time the BIA was considering a land-into-trust application for Cowlitz as a "initial reservation."

We are told that communities, local governments and other tribes affected by the Cowlitz proposal seem to have been caught completely off-guard by your decision, Ms. Coleman. What is going on here?

Ms. COLEMAN. The Cowlitz ordinance decision is really an anomaly. It is the only time that we have been in a situation where it was trust acquisition that had not happened, and we had a site-specific ordinance. The ordinance was written in such a way that it said that if the lands are acquired into trust, then these lands would be Indian lands.

The Department of the Interior and the State attorney general's office was notified of this issue. They knew that this was happening. In fact, when the tribe came to us and told us they were going

to do it, we were not exactly thrilled with it because we knew that this was a very unusual situation. It is generally much better to let the processes go through. The Indian Gaming Regulatory Act requires that we make a decision on an ordinance in 90 days.

So when push came to shove, on November 25, the chairman of the National Indian Gaming Commission had to make a decision as to whether to approve or disapprove this ordinance. So he needed to know whether or not the ordinance was illegal. So we, the office of the general counsel, gave him an opinion on it.

The CHAIRMAN. What do you have to say, Mr. Skibine, about that situation? How can we avoid that in the future?

Mr. SKIBINE. How can we avoid that situation?

The CHAIRMAN. Yes.

Mr. SKIBINE. Yes; I think that the Department is working with the chairman of the National Indian Gaming Commission at this point to see if we can find a solution so that situations like this do not continue to occur. Hopefully, we can come to an understanding between the secretary and the chairman on how these can be processed in light of the chairman's obligation under IGRA.

The CHAIRMAN. If you do not know at the beginning of the process that land will be used for gaming, how can you engage in a NEPA that has any meaning?

Mr. SKIBINE. If we do not know that the land will be used for gaming, then the tribe's application under 25 CFR part 151 regulations, has to state what the purpose of the acquisition will be.

The CHAIRMAN. But we already know that there are some tribes that have taken land into trust initially, in fact a few that stated there would be no gaming conducted, and then changed their minds with due tribal governments, which they are entitled to do. Shouldn't they at least be required to go through another NEPA?

Mr. SKIBINE. If the land is off-reservation and is not Indian lands.

The CHAIRMAN. No; I am talking about land taken into trust.

Mr. SKIBINE. Yes; it could be. For instance, it could be land that is off-reservation that would still have to comply with the requirements of section 20. Potentially, the tribe would have to do a two-part determination to be able to game, if the land does not qualify under any of the other exceptions. In that case, NEPA will be required and the tribe cannot game unless it gets the determination.

If the tribe thinks the land does qualify under one of the exceptions, it can commence gaming at its peril because if the National Indian Gaming Commission decides that it does not qualify under the exceptions, then the gaming establishment can be closed down.

There is a potential issue if the tribe takes the land into trust, let's say for housing. It is off-reservation, but then it decides to change its mind and do gaming, and if the NIGC finds that the land qualifies under the exception for restored land, that would be the only one, I think, that would apply.

The CHAIRMAN. Thereby, you could avoid NEPA, that would take into the calculation that it is a gaming operation?

Mr. SKIBINE. That is correct. That is because as far as the Department is concerned, there would be no Federal action required. When we do take land into trust, we do not put title restrictions or encumbrances on the title, so that the tribe has the freedom

down the road to change the use of the land. It would still have to comply with the requirements of IGRA, but potentially they can satisfy that.

The CHAIRMAN. Finally, we will hear from the next panel, and we hear every hour of every day from local people who say that Indian gaming is established in their community, and they do not have sufficient input into the process. And that it has had significant effects on their communities, economically and in many other ways, and that they do not feel that they were involved in the process.

What is my response to those concerns that are raised all the time to this committee?

Mr. SKIBINE. I think with respect to the process of taking land into trust, there is a lot of involvement by the local community. The Department does consult with local communities. We are trying to be available to clarify the process. Right now, there are extensive consultations under NEPA.

We have a checklist that we have had since 1994, internal guidance, but under that checklist we have revised it to require local agreements to be included as part of the recommendation of the regional office, if they exist. We have pretty much decided that if a gaming establishment is off-reservation, and is going to be of a certain size, and if it is controversial, that we would require an environmental impact statement rather than an environmental assessment, which will include extensive public participation.

In addition, I know the Department is in the process of revising its trust regulations, including the land acquisition regulations in 25 CFR Part 151. I think the process for consultation and input of the local communities in off-reservation acquisitions will be enhanced as a result of that process.

So even now, I think there is extensive participation by the local community. For off-reservation, what I do when I go out to talk to tribes and to local communities about off-reservation acquisitions make a point of stressing that the Secretary is very interested in consultation, in cooperation with local governments, and that to us the public input and having the local communities support the application is an extremely important factor in our consideration for off-reservation acquisitions.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you.

Mr. Skibine, I thought I had understood this last evening when I was reading about it, until I have heard your testimony. Now, I realize there is much I do not yet know. Let me ask you a couple of questions.

You just described this consultation and the process, but I thought you also just prior to that described circumstances where that consultation would not exist. For example, land taken into trust perhaps after October 17, 1988, and taken into trust for the purpose of a housing tract, and then after it was taken into trust for the purpose of building a housing tract, they decide that they want to do gaming on that land.

I thought you answered to a question that Senator McCain asked, that you would not then have to go through the process, the

tribe would not have to go through the NEPA process and the consultation process. Is that correct?

Mr. SKIBINE. Yes; that is correct.

Senator DORGAN. And you said there was no Federal involvement there.

Mr. SKIBINE. Right; I was addressing the chairman's question, if the application is to take land into trust for gaming.

Senator DORGAN. All right. But there are circumstances where that is not the case.

Mr. SKIBINE. That is correct, and we discussed that possibility before. That is an issue.

Senator DORGAN. As I understand it, let me ask about this contiguous issue. The chairman asked the question about wanting to get a parcel of land in downtown Denver, off-reservation and so on. The question there deals with the four exceptions. You would have to judge whether there are any of these four exceptions that are met. You have to go through the whole process, right?

Then he asked the question about contiguous lands, lands that are contiguous to the reservation. Section 20 provides that if lands are acquired in trust after the date in 1988, the lands may not be used for gaming unless one of the following statutory exceptions applies. These are different than the four exemptions or four conditions in IGRA. One of them is the lands are located within or contiguous to the boundaries of the tribe's reservation as it existed in 1988.

So someone purchases a rather substantial piece of land that is contiguous to the reservation, and they want to provide gaming facilities there because that is closer to the population center. Do they then have to go through the process of taking that into trust?

Mr. SKIBINE. That is correct.

Senator DORGAN. And that process then triggers all of the rest of the things you have testified to this morning?

Mr. SKIBINE. That is correct.

Senator DORGAN. Now, you indicated that you are doing regulations. That makes a lot of sense to me, so that everybody can understand what is the template; what exactly do you confront when you deal with this. This law has been around about 17 years, and we have had different Administrations here and there. It makes sense at some point to have regulations.

The question I have is, what are you doing in the construct of these regulations to reach out and consult with tribes, with communities? As you create regulations, tell me about the consultation process because it has been a long, long time and you are now saying that you think this year you are going to have a set of regulations.

Mr. SKIBINE. Right. We are planning on doing consultation with tribes and we will make the draft document that we have available to anyone who wants it. And as we do the consultation, we have not at this point exactly figured out how we will proceed. It is a little premature. I think that internally we will get together and decide how we are going to conduct the consultation when that happens.

Right now, the first thing that will happen is there will be a letter to all tribal leaders throughout the country that will go out

with this draft document, advising them that we will produce this document for implementing section 20, and that we will consult, and together and that we will get together and make a decision. At this point, we have not come up with a plan yet, except that we will do it for sure.

Senator DORGAN. Senator McCain pointed out that Indian gaming is \$19 billion, perhaps \$20 billion, at this point and growing, growing rather rapidly; producing in many cases a stream of income to address the real crisis that exists in some areas; crisis in health care, housing, education, for people that have in many cases not had the resources to address these things.

In many areas, particularly on reservations, you have some people living in third world conditions; children not having any access to adequate health care; adults not having access to adequate housing. So there is much to be said about this income stream that can be beneficial to tribes to address these issues.

On the other hand, the purpose of this hearing is there are competing interests here, very significant competing interests, an interest of a tribe that has the opportunity to game to very much wish to game in the middle of the largest population center they can possibly find. I understand that. I understand if we were on tribal councils and we were going to have a gaming operation to produce a stream of income, that is exactly what we would want to do, is put it in the largest population center possible.

On the other hand, there are other competing interests, population centers and others who feel very strongly about that. So this is a controversial and difficult issue, and I think regulations are necessary; uniform interpretations are necessary. And we must understand that when Congress passed this legislation, we generally created prohibitions. The larger prohibition here is October 17, 1988, and then with that larger prohibition, created some exceptions that needed to be created just based on merit.

So the method by which this is administered is very, very important to this committee. It is also important in the context of what the chairman indicated, the need from time to time to update these laws. That is the purpose of these hearings.

I appreciate the testimony that both of you have given us. We are trying to better understand a very complicated area. Thank you for being here.

The CHAIRMAN. Senator Thomas.

Senator THOMAS. Thank you, Mr. Chairman.

I agree. It is very complicated. It seems to be.

What do you think, Mr. Skibine? Is the law clear? It sounds like you have to go through a great deal of determinations? Doesn't the law pretty well prescribe what the conditions are? Isn't that a rather simple decision to be made, as to whether these lands qualify or not?

Mr. SKIBINE. I am not sure it is that simple. I think that the opinions that have been issued by the NIGC General Counsel are often lengthy and complex decisions.

Senator THOMAS. So why is that?

Mr. SKIBINE. Because I think that to decide whether a tribe qualifies as a restored tribe and whether the land they are seeking

is restored land, the statute just says that it qualifies if it is restored land for a restored tribe.

Senator THOMAS. Well, isn't "restored land" defined?

Mr. SKIBINE. No; it is not. There has been litigation on this issue. I think there are at least three or more decisions on the books that interpret that exception. Those were difficult decisions. The National Indian Gaming Commission tried to, in making their opinions, follow those court decisions, but I am not sure it is all that simple.

I am not sure if my colleague wants to add something.

Senator THOMAS. Would you comment? It just seems like there ought to be a criteria for the acquisition of land, and it does not seem like it ought to be thrown up into the legal dispute each time that happens.

Ms. COLEMAN. When we are looking at restored lands, it is not really the acquisition of the lands. The acquisition is under section 151, and to make the decision as to actually acquire the land into trust. But what we look to is based on what the court cases have said. The court cases have said that you look to the factual circumstances; you look to the historical relationship of the tribe to the lands; you look to the modern relationship; you look to the actual location. In other words, if a tribe is in Wyoming and wants to move to Denver, well then that would suggest those were not restored lands. And you also look at the timing. When was the tribe recognized? If they were recognized in 1979, and in 2006 they come and say, "we have already acquired 2,000 acres of land into trust, but we want this piece because it is in a big population area." And 30 years later, we are going to say, your timing is off.

All of those criteria come from the court cases, who have looked at these issues. We have been guided by those.

Senator THOMAS. Does there need to be a more clearly defined role in terms of the law?

Ms. COLEMAN. I think that even to the extent that Mr. Skibine's regulations try to define it more clearly, it is playing off of those court cases. You can only go so far as far as establishing standards. There has to be some interpretation. I would expect that restored lands for a restored tribe is going to continue to be the most difficult analytically.

Senator THOMAS. I know. My question is, could it be described more clearly in the law?

Ms. COLEMAN. It could be described more clearly in the law, but it probably could not be described any more clearly than the case law has already described it.

Senator THOMAS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. Thank you for having this hearing.

Obviously, much has changed since the Indian Gaming Regulatory Act was passed. I think there are many issues here to address, not just in how the legislation has been implemented and how it has been impacted, but how we move forward on transparency of the process as well.

I wanted to ask you, Mr. Skibine, there have been three off-reservation land-into-trust transactions since the legislation was passed. One of those, I believe, was the Kalispel Tribe.

Mr. SKIBINE. That is correct.

Senator CANTWELL. Can you talk about the Kalispel Tribe process from the oversight perspective, because it was one of the things that fell into an exemption. Is that correct, in the sense that everybody agreed? And so the way the oversight agency looked at it, everybody was in agreement, so it moved forward? Is that correct?

Mr. SKIBINE. The Kalispel Tribe process goes back to something the chairman said earlier, in that the tribe acquired the land not for gaming, but for a tribal facility of another kind. It was operating as such for a few years. And then the tribe decided that it wanted to use the land for gaming.

Right at the outset, it was determined that the only exception that the tribe could qualify on was the two-part determination exception, which is the true off-reservation exception, because where the Secretary, after consultation with nearby tribes and appropriate State and local officials, makes a determination that the gaming establishment will be in the best interests of the tribe and its members, and will not be detrimental to the surrounding community.

Senator CANTWELL. How did you determine that?

Mr. SKIBINE. We tried to submit an application to the regional office, and the application would follow something we had in our checklist for gaming acquisitions and section 20 determinations, where we cite a number of issues that we look at in making those two determinations.

There also has to be compliance with the National Environmental Policy Act [NEPA], so in that case, an environmental assessment was done.

To make the best interests determination, the Department looks at the anticipated benefits to the tribe from the gaming establishment to its members. We look at income projections; at employment; at what it will do for benefits on the reservation. We try to get as much information as possible from the tribe as to why they think this is going to work for them. That would include projections to show that the gaming establishment will be actually making money for the tribe, rather than losing money. We look at all of that for best interests.

For not detrimental, we look at the environmental compliance, and we have to do consultation with nearby tribes and with the appropriate State and local officials. The way we do that is that in the Kalispel case, letters were sent to all communities around, it is actually in a suburb of a larger city whose name totally escapes me.

Senator CANTWELL. Spokane. Are you talking about in Spokane?

Mr. SKIBINE. Spokane, right. Thank you very much.

I think we consulted with the county where it is located, and with the city of Spokane, and with all the other suburbs that are within the surrounding community. In looking at those comments, we determined whether the local community supports the project, because the local community felt that there was no negative impacts on them.

Senator CANTWELL. What would be your criteria, though, for community input? Do you have a criteria for community input?

Mr. SKIBINE. Yes; In the consultation letter, we ask the community to tell us about any adverse impacts that they think they will have, and we look at whether it will be traffic, increased crime, impacts on wastewater treatment, on almost any impacts on the human environment, and also whether there are any socio-economic reasons why the local community is opposed to it.

Senator CANTWELL. What would have happened in the Kalispel case is you would have had a division within the community? What do you think would have happened?

Mr. SKIBINE. Well, we would have taken a very close look at that, to see exactly who was opposed, who was in favor, and for what reasons. It would have been essentially a decision based upon a very analysis of the facts.

For the record, in the three applications that we have approved since 1988, and that have been signed off by the Governor of the State, the local communities have always supported the applications. So we have never sent in a two-part determination to a Governor unless the local community was in support.

Senator CANTWELL. Is that where you think we are today, Mr. Skibine? Do you think there are a lot of applications where everybody is unified on the support?

Mr. SKIBINE. Do you mean of the ones that are pending?

Senator CANTWELL. Here is my question. I appreciate the chairman having this hearing, and the oversight, and his legislation because to me one issue is whether we really know what we are doing with the exemptions that were put into the original legislation, and whether the agency of oversight actually does know how they would interpret these various proposals, given that exemption language.

I am not sure how transparent that process is to everyone else. So I do not know if you have any recommendations that you are making as far as the transparency of the process, because again the exemptions of the bill. Now, we have had some playout of those exemptions in these three cases, but now we are getting to a much more complex phase. I am just curious as to whether you believe there is enough transparency in the process.

Mr. SKIBINE. I think there is enough transparency. As I mentioned in our proposed regulations that we have developed, we deal in great detail with what is required in the two-part determination process. I think the regulations will really help.

Senator CANTWELL. So you are not recommending anything else to clarify that process, as far as reform of legislation?

Mr. SKIBINE. The Department may do that in time. Right now, I am not authorized to do that on behalf of the Administration, not at this hearing, anyway.

Senator CANTWELL. Okay. I am not sure how much time we have, Mr. Chairman, but thank you.

The CHAIRMAN. Mr. Skibine, it has been 17 years since the passage of the law. As Senator Dorgan has pointed out, we need to have regulations. We are going to send you a letter today asking for the exact time in which we can expect regulations to be sent to the Federal Register and implemented. I am a little dispirited

when you sort of as an aside said, well, we have not begun a consultation with the Indian tribes over proposed regulations. That means that we have a long way to go.

I do not see how we can effectively regulate Indian gaming and certainly exercise congressional oversight unless there are regulations to implement the law we have passed. So I would like for you to take the message back to the Secretary that we expect the issuance of regulations implementing a law that was passed 17 years ago to be issued.

That has covered various Administrations, but it really is unacceptable 17 years later not to have regulations written to implement a law which now applies to a \$19 billion- or \$20 billion-a-year business. We should not be doing that. Okay?

Mr. SKIBINE. I agree, Senator. I want to point out that when I came on board as the Director of the Indian Gaming Office in 1995, I immediately began to look at regulatory implementation. We did develop regulations for the distribution of per capita revenues. We have regulations for that at 25 CFR part 290. We also developed regulations for secretarial procedures. We have that at 25 CFR part 291.

Those were developed shortly after I came on board under the Clinton administration, and they are 25 CFR part 292. With the change of Administrations, there was sort of a period of uncertainty, but now I think everybody is on board and agrees with that assessment.

The CHAIRMAN. Ms. Coleman, we will probably see you again in this series of hearings that we are having to try to again ensure you have sufficient oversight authority, sufficient funding, and sufficient ability to oversee this very large enterprise that we call Indian gaming.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, might I just observe I did not respond on the consultation issue, but consultation does not mean you seek permission from someone. Consultation is very important, however, when you construct these kinds of things because consultation develops a base of knowledge about what exists and how it exists from various perspectives.

When you said to me that apparently no consultation had existed, but it will exist at some point after you send out the drafts, I really encourage you to consult as much as you can with all the parties as you think through these things, not to seek permission. That is not my point, but to better understand the circumstances that exist for all parties. Consultation is very important.

Mr. SKIBINE. I totally agree. It is not permission. We are not going to be seeking permission from interested parties, but we are seeking their input.

The CHAIRMAN. Thank you very much.

Mr. SKIBINE. Thank you very much.

Ms. COLEMAN. Thank you.

The CHAIRMAN. Our next panel is Al Alexanderson, on behalf of the Citizens Against Reservation Shopping, Stand Up for Clark County, and American Land Rights Association; Philip Harju, councilman, Cowlitz Indian Tribe, Longview, WA; Duane Kromm, supervisor, Solano County Board of Supervisors, on behalf of the

California State Association of Counties, of Fairfield, County; and Liz Thomas, spokesperson, Tax Payers of Michigan Against Casinos, Union Pier, MI.

Mr. Alexanderson, we will begin with you. Welcome.

STATEMENT OF AL ALEXANDERSON, ON BEHALF OF CITIZENS AGAINST RESERVATION SHOPPING, STAND UP FOR CLARK COUNTY, AND AMERICAN LAND RIGHTS ASSOCIATION

Mr. ALEXANDERSON. Thank you, Mr. Chairman, Mr. Vice Chairman and members of the committee.

I am here for myself. I am not representing any institutional interests. I am a landowner within about 2,000 feet of the proposed Cowlitz casino. My trip was sponsored by three citizens organizations that have risen up and put up websites and attempted to intervene in this process over the last 4 years.

I am here to tell you about my experience. Their experiences are written in letters that I have submitted with my prepared testimony. I recommend them to you for the long recitation of attempts to participate in the process, and the strong sense of betrayal that they feel with respect to the issuance of this NIGC opinion, after 7 months of secrecy, including the fact that it was not mentioned that this was pending at the hearings here before your committee in July of this year, when the NIGC was present, and the Cowlitz Tribe was present, and Mr. Skibine was present and listed all of the other pending applications for exemptions under section 20, but not the Cowlitz.

For me, this started about 4 years ago. I got a notice, a neighborhood association notice that David Barnett, son of the tribal chairman would appear and talk about plans for the property that he and his wife had optioned, which was now a 150-acre dairy farm and had been for 80 years, right next to my property.

The land had been preserved as agricultural, because as you know, the local communities under State law go through a long and intensive land-use planning process to decide what kinds of uses go where. This land had been preserved as agricultural, with possible future use as a low-intensity industrial uses, but not the kind of intense traffic-creating commercial uses that, say, a large shopping center, a theater complex, or a casino would bring.

At the meeting, Mr. Barnett told us that there were no plans for a casino, no plans to change the current agricultural use of the property. Later, or at the time, the tribe's application to the BIA said that there were no plans. As a result, the BIA issued internally, and not publicly, a categorical exclusion checklist, which had 9 or 12 questions that said, will there be any environmental consequences from this acquisition, and the answer was always checked no.

So they tried to run it through as a complete exclusion to NEPA. This took about the first year. Fortunately, that was stopped. The national BIA office said if you do not admit that you are gaming on the property, then if you do succeed with the acquisition, you will not be able to game.

I called the local BIA office to get the application. I was suspicious that this might not be the whole story. They said, well, you cannot have the application. I said, well, could I just come down

and read it. No, you cannot get in the building. Well, are there any procedural rules for me to participate in this process? No, you are not a participant. They said the two participants are the State and the county, because those are the jurisdictional entities that they have to consult with, and that is it. They will accept comments, but we were unable to have access to the materials submitted by the tribe.

Process is extremely important, and I think the committee knows that because people have their life savings tied up in homes and small businesses that are going to be displaced if the awesome Federal power of the Federal Government is used to effectively site a development like this. As we have gone through this process, the casino has grown faster than our fears.

It is now going to be eight stories high. It is going to create traffic jams, 40,000 car trips a day, and completely change the character of our neighborhood. It was sited where it was in part to cut off the existing traffic to the competing card rooms, so it was intended to destroy the existing economy, is my point.

What we are asking for is a thorough and open and fair process to determine the facts of the Cowlitz application. We want to see a stop to the backroom end-runs around the current law. We want our own government to put stuff out on the table where we can see what it is. If we have a factual dispute over what the project will do, or where the tribe was from, we want to have an opportunity to present those facts to an open-minded fact-finder.

And there should be no exemption for the Cowlitz project because the Cowlitz project itself is seeking an exemption from all the protections in section 20. That is the most important issue a community faces up front, is whether this will be an exempt casino or a non-exempt one. If it is an exempt casino, it eliminates the consultation process. It eliminates the Governor's veto. It eliminates the consultation with other tribes. And it permits the Secretary to avoid finding that the project will not be detrimental to the surrounding communities.

One major fact which has never come up in the discussions so far and was not considered by the NIGC is where is the tribe's other land. This tribe has 2,500 square miles, almost 1.5 million acres, of acknowledged aboriginal territory lying north along the I-5 corridor.

I have brought CD's with photographs of that are, aerial photographs, which I will leave for the committee and the staff. You can literally fly down and look at other undeveloped land in various quadrants of existing freeway interchanges, probably 10 of them; thousands and thousands of acres of undeveloped land in places where the casino would be closer to the tribe's population, its historical center.

When we turn these maps over on the wall, you will see the only official U.S. Government 19th century depiction of where the various tribes were in Washington State. It shows where the tribe's homeland was, far north of where this site is. The site was chosen for its proximity to Portland and Vancouver gaming opportunities.

The CHAIRMAN. You are going to have to summarize, Mr. Alexanderson.

Mr. ALEXANDERSON. Thank you. All right.

We appreciate your efforts to put procedures in place. The procedures have to have rights for people like myself and my community to substantively participate and present evidence, and most important, know what is going on and meet the evidence being put forward by the tribe.

Thank you for looking into this.

[Prepared statement of Mr. Alexanderson appears in appendix.]

The CHAIRMAN. Thank you, sir.

Councilman Harju.

**STATEMENT OF PHILIP HARJU, COUNCILMAN, COWLITZ
INDIAN TRIBE**

Mr. HARJU. Chairman McCain, Vice Chairman Dorgan, and members of the committee, I want to thank the committee for this opportunity to testify. My name is Philip Harju. I am an elected member of the Cowlitz Tribal Council. Our chairman, John Barnett, recently suffered the loss of one of his sons, and I know you will understand why he cannot be here today. He has testified, as you know, numerous times here. He is a great leader and a great spokesman for our tribe.

Again, I feel it is both an honor and a privilege to testify in front of this committee. It is also an honor and a privilege to represent the Cowlitz people here.

Just a little background on myself. I was born and raised in Clark County, WA. I currently reside in Olympia, WA, where I am a deputy prosecuting attorney. I am a lawyer and I have been representing the people of the State of Washington, prosecuting criminals, for the last 27 years. I donate my time as a tribal council member to my tribe, the Cowlitz people.

I want to thank the first panel for their explanation. As a lawyer, I have some understanding of this. It is a complicated area. I do want to briefly respond to Senator Cantwell's question about the Kalispel Tribe, just for the record. That two-part determination, that was not stressed, also required the concurrence of the Governor of the State of Washington, which was done.

So there was input on the *Kalispel* decision by the people of the State of Washington through the elected Governor of the State of Washington. That would not have happened without the Governor's concurrence. That was the two-part exception to Indian gaming on off-reservation land.

I want to stress that, Mr. Alexanderson said that this started 4 years ago for him. This started for the Cowlitz people probably in 1792 when Captain Gray came over the bar of the Columbia River; in 1805, when Lewis and Clark reached the mouth of the Columbia River; in the 1820's and the 1830's when many of the tribes on the Columbia River were decimated and destroyed, and the Cowlitz people were nearly wiped out by the fevers and the diseases that were brought from the Europeans to this area; and also in 1855, when the tribes in Southwest Washington did not sign treaties with then-territorial Governor Stevens.

The Cowlitz controlled their land at that time, and negotiating with the Federal Government, and received no land or no reservation or no treaty. Then in 1863, as the Indian Claims Commission has documented, when President Lincoln opened the then-Wash-

ington Territory to settlers, the Cowlitz lost over 1 million acres of their territory and land without compensation.

So it has been a long time for the Cowlitz people in this history. The Cowlitz throughout this time have attempted to obtain a land-base in their historic area of Southwest Washington, which includes all of Clark County, I would submit to you. The records, if you read the reports from the Indian Claims Commission, they found that the Cowlitz has sole and exclusive occupancy to all of this land, all of the way down to the Kalama River, which is about 14 miles north of the present site.

They also acknowledged that this area south of the Kalama River down to the Columbia River, that they could not find that the Cowlitz had sole and exclusive use and occupancy of this area, but they found that the Cowlitz occupied this area since the first contact with Europeans in this area.

Just to remind the committee, the first contacts with Europeans in this area was with the British. They controlled Fort Vancouver and the north side of the Columbia River, and most of the documentation of the Cowlitz Tribe are because of the Hudson Bay Company, and the documentation from the British at that time. This did not become American territory until 1846, when we signed a treaty with Great Britain and they ceded this land to the United States.

So the Cowlitz have always been there. They have always sought their land base. They have always negotiated and been with the Federal Government. Their history is bleak. They got nothing from the Federal Government until 1969, when the Indian Claims Commission did grant compensation to them, but then never awarded them the money.

In 1975, the Cowlitz asked for a land-base and asked that the money that they were granted be applied to acquire land. The Interior Department refused at that time. It took 35 years and an Act of Congress signed by President Bush 2 years ago to get that compensation that was awarded in 1969 for the Indian Claims Commission.

The tribe in 1975 petitioned the BIA for acknowledgment or re-recognition. That process took 25 years and then 2 years of appeal. So in 2002, when the Cowlitz Tribe applied for a fee-to-trust application for this property, we are now four years from that time. I would submit to you, and I give this history just to show that it has gone longer for the Cowlitz Tribe and the Federal Government and the agencies involved.

The Cowlitz have been up front and have followed the rules from the very beginning. Our fee-to-trust application followed the current BIA guidelines back in 2002, which required us to submit the fee-to-trust application to the Portland Regional Office, and we did not have to designate other than economic benefit of the tribe.

The BIA's rules changed and they required us then, if we were going to use the property for gaming, we had to resubmit an application to the central office and we did tell them that we were proposing gaming on this. We have been up front and we have followed the rules. It has been a long time for justice for the Cowlitz Tribe. These exceptions to the Indian Gaming Regulatory Act are

very important to the Cowlitz because this 151 acres is clearly restored lands for the Cowlitz Tribe.

The opinion that was sought from the Commission is an excellent opinion. It is well-documented. It is factual and followed adjudicated facts, and gives guidance to everyone in this area. The important thing is, if the Cowlitz Tribe goes forward and it is not our restored lands, we are spending close to \$2 million for a full environmental impact statement to take this land into trust.

There is more open process over this land than anything else I think in Western Washington at this time. We will complete a full environmental impact statement. In fact, the draft has been delayed because many of the local communities have put comments in as participating agencies, and so we are hoping next month to have that draft. There will be the full environmental impact statement. There will be public hearings, and there will be a time to appeal if the Department then takes the land into trust.

So I submit to you that in the two exceptions that we are dealing with, restored lands or initial reservation, the Cowlitz have done nothing but follow the rules. They only ask that the Congress and the local agencies and the Federal Government provide the Cowlitz with the means to, as Senator Dorgan had earlier said, illegal actions and land that was taken from the Cowlitz needs to be restored.

The Cowlitz have to buy this 152 acres, then we have to petition the government to take it into trust. Nothing has been given to the Cowlitz Tribe. We are a landless tribe with no economic base. We have over 3,500 members. I submit to you, what the Cowlitz want and what the Cowlitz need are adequate funds to provide housing, jobs, health care, education and to help restore our cultural artifacts and our history in this area. I would urge this committee, and I commend Chairman McCain, the BIA does need to have regulations in place so that these procedures are open and transparent.

I would submit to you the Cowlitz, using the *Cowlitz* case here, is a classic example of why the restored lands exception or the initial reservation exception is important. There are not many of those pending with the BIA, but those exceptions are important for tribes such as the Cowlitz, who are fighting for their very existence in Southwest Washington.

Thank you.

[Prepared statement of Mr. Harju appears in appendix.]

The CHAIRMAN. Thank you.

Mr. Kromm.

STATEMENT OF DUANE KROMM, SUPERVISOR, SOLANO COUNTY BOARD OF SUPERVISORS, ON BEHALF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES

Mr. KROMM. Thank you.

On behalf of the California State Association of Counties, I would like to thank Chairman McCain, Vice Chairman Dorgan, and the other distinguished members of the Committee on Indian Affairs for giving us the opportunity to submit testimony as part of this oversight hearing.

I am Duane Kromm, a member of the Solano County Board of Supervisors, a member of the CSAC Indian Gaming Working

Group, and a member of the Northern California Counties Tribal Matters Consortium.

Every Californian, including every tribal member, depends upon county government for a broad range of critical services, from public safety and transportation to waste management and disaster relief. Most of these services are provided to residents both outside and inside city limits. Because counties are so intricately involved with services to all residents, we strongly believe the counties must be significantly involved in the process of approving tribal gaming proposals.

California is at the epicenter of the reservation-shopping phenomenon. For example, there have been vigorous efforts by three tribes with no nexus to the land to engage in Indian gaming in Contra Costa County, a highly urbanized Bay Area county. Counties are now experiencing tribes with established casinos trying to leapfrog over other tribal gaming operations to get closer to a population center.

In California, the reservation-shopping problem has been driven in large part by the restoration exception contained in section 20 of IGRA. This exception allows tribes that are restored to Federal recognition to avoid the two-part test under IGRA. The restoration exception is by far the most frequently used exception under IGRA and serves to avoid the two-part test. Since 1988, the Secretary has approved 26 Indian trust acquisitions that were determined to meet one of the five section 20 gaming exceptions. Of these exceptions, 12 were under the provision for restored land to a restored tribe. Of these 12, one-quarter were in California.

Of the 10 or 11 pending gaming applications before the BIA claiming an exception under section 20, nine of them are in California, all of which are claiming an exemption from the two-part test under the restored land exception.

The experience in California, driven in part by the restoration of the legally terminated rancherias, is that the restored land exception is being misused. CSAC therefore supports continuation of the two-part test for the acquisition of new lands, along with an increased level of local government participation in the decision of whether land should be taken into trust for gaming purposes.

Chairman McCain has recently introduced legislation to increase Federal oversight of Indian gaming operations and to alter the lands-into-trust process. CSAC sincerely appreciates the efforts of Chairman McCain and the members of the committee for investigating the problems with the oversight of and current legal framework for determining the eligibility of Indian lands for gaming.

Today, we are primarily interested in Chairman McCain's S. 2078, which contains language to limit the two-part test to petitions already being considered for fee-to-trust in 2005. The bill also amends the restored lands exception to require the finding that a tribe has a temporal, cultural and geographic nexus to the piece of land in question before granting permission for the tribe to take it into trust.

While CSAC supports increased oversight of section 20 proposals and supports the existing two-part test, we must add that any amendments to the process must include the early direct participa-

tion of both State and local governments, particularly counties, before a land-into-trust application is granted.

Furthermore, under the current system, States and affected communities are not even notified by the National Indian Gaming Commission when a tribe files a request for determination of whether tribal lands are Indian lands, and thus eligible for gaming. CSAC believes that Congress must specifically require the NIGC and the Department of the Interior to provide for the timely notice, comment and the submission of evidence from affected parties in all proceedings.

We also question the BIA's practice of beginning the environmental review process under NEPA before lands are determined to be Indian lands. Counties and other affected parties are required to expend considerable time and money in evaluating the environmental documents, when it might be entirely unnecessary if the land is ultimately not eligible for gaming. S. 2078 also includes amendments to increase the regulation of class II gaming.

With relative ease, a tribe can now establish a large gaming facility, install class II devices, and trigger virtually the same impacts on local government as those that result from a class III facility, without any of the safeguards afforded by IGRA. This, in fact, has happened already in Contra Costa County in I think a casino you are well familiar with, the Lytton Band of the Pomos in San Pablo.

Many tribes have expressed concern for such participation by local government, equating it with relinquishment of sovereignty and a land-acquisition veto. This is simply untrue. There are many examples of California counties working cooperatively with tribes on a government-to-government basis. Madera, Placer and Yolo Counties have reached comprehensive agreements with the tribes operating casinos in their communities. These comprehensive agreements provide differing approaches to the mitigation of off-reservation impacts of Indian casinos, but each is effective in addressing unique community concerns.

CSAC supports the committee's efforts to craft amendments to IGRA that preserve its original goals of supporting tribal economic development, while minimizing the impacts of reservation shopping of local communities. We believe that the single most important provision you can enact would be the formal participation of affected State and local governments, particularly counties, in the process of granting trust lands to tribes who wish to operate gaming casinos.

CSAC has submitted written testimony to assist the chairman and committee members in their efforts to amend IGRA. In California, there is an urgent need for counties to have a greater voice in matters that create impacts that the county will ultimately be called upon by its constituents to address. Enactment of amendments that strengthen IGRA by limiting its exceptions and allowing a greater role for local government would further the original goals of IGRA, while helping to minimize abuses that have created a backlash against Indian gaming and the opportunities it affords.

As such, CSAC offers its assistance to Chairman McCain and the Committee on Indian Affairs in any manner that you determine to be helpful as you tackle this complex issue.

Thank you.

[Prepared statement of Mr. Kromm appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Thomas. Welcome.

**STATEMENT OF LIZ THOMAS, SPOKESPERSON, TAX PAYERS
OF MICHIGAN AGAINST CASINOS**

Ms. THOMAS. Thank you. Thank you very much for allowing me to testify in front of this committee. I am a representative of a community of grassroots organizations called Tax Payers of Michigan Against Casinos. We have worked to prevent a tribal casino from opening in our area in New Buffalo, MI for almost 10 years.

New Buffalo is right along Lake Michigan. It is about 2,500 residents, and it is about 1.5 hours from Chicago. We and other members of our group feel that a large, generally unregulated casino will fundamentally change the character of our community forever.

Throughout the past 10 years, those of us who oppose the casino in New Buffalo have found our voices and fought in many different ways to prevent the casino. The fight has been constant, costly and often demoralizing, none more so than last Friday when we received word that the government had taken the land into trust and the tribe announced that they would begin construction soon.

Our opponents are funded by powerful gaming companies that have always had more resources than we do. I have come to believe that over the last 10 years, the only way to ensure that people in small communities like ours will have a genuine say in whether an unwanted casino comes to its town is with changes to the IGRA legislation, which must come from the U.S. Congress.

After hearing the news reports over the weekend, so many of our supporters called and pleaded with me to come today and tell you our recommendations and how we think the process might be improved. So here I am. I would like to give you a little history first.

In September 1994, the Pokagons received status as a federally recognized tribe, with the help of cosponsors, U.S. Representative Fred Upton and U.S. Representative Tim Roemer. Both Congressmen claimed that the tribe promised that gaming was not in their interest, but by November the Pokagons were negotiating with Leisure Time and Harrah's entertainment companies about opening a casino. Congressman Upton told us later that he felt that he had been double-crossed by the tribe.

For the next year, the Pokagons held informational meetings along the I-94 corridor from Kalamazoo into Indiana, in at least 30 communities, looking for the right spot to open a casino. By the spring of 1996, the tribe had narrowed it down to three locations: New Buffalo and Bridgeman in Michigan, and North Liberty in Indiana.

On May 3, 1996, the tribe announced that New Buffalo was their choice. A few days later, our group of casino-fighters met in the basement of the local Methodist Church and took the name Tax Payers of Michigan Against Casinos.

We first fought at the local level. In 1996, we worked hard to support candidates for local offices who opposed the casino. We were even successful in electing a slate of anti-casino candidates, only to see them fall under the spell of promised revenue from the

casino. This very same group that had run on an anti-casino platform, turned around and signed a local revenue-sharing agreement with the tribe.

We have fought the casino at State level. The Pokagon Tribe was trying to pass a compact with the State of Michigan in 1998, and several of us from TOMAC were there in Lansing when the compact passed in December, on the last day of the legislative session, at 1 o'clock in the morning.

The compact was passed not as a bill, but as a resolution so that it would not require a majority of members of the legislature, just a majority of the people that were there on the floor voting. It was going to be a very close vote, and we watched as many legislators walked out of the chamber so that they would not have to make a public vote, a public stance on this very controversial project, so that it could be the majority of people who were on the floor at the time.

We have fought this casino in Michigan court, arguing that the compact was invalid because it was passed as a resolution instead of a full law. We won in the circuit court. We lost in the appellate court, and then lost again in the Michigan Supreme Court, though a piece of this case still remains alive and to be determined in the Michigan Appeals Court.

We filed suit in Federal courts, too. We sued the BIA, asking that the tribe be forced to conduct an environmental impact study because it seemed plain and simple enough to us that a massive casino designed to attract over 4.5 million people a year into a community of 2,500 people, would have a significant impact. The court initially agreed with us, and rejected the BIA's conclusion that the casino would be insignificant. But the court later deferred to the BIA, and then it reached the same conclusion after further study. The appellate court agreed.

Overcoming agency deference is a big hurdle, even when any citizen on the street will tell you that a casino will obviously have a transforming and significant impact on a community. The tribes should not be allowed to have it both ways. They should not be allowed to have it both ways. They should not be allowed to garner support from local governments with the promise of thousands of jobs, millions of visitors and even more millions of dollars, and then turn around and ask the BIA to declare that the casino will have no significant impact.

The BIA made its initial decision that this casino would be insignificant on the last moments on the last day of the Clinton administration, January 19, 2001. The person who signed the papers was Michael Anderson from the BIA. He went to work for tribal interests shortly thereafter. This kind of blatant duplicity does not inspire public confidence in the fairness of government operations, now that the Jack Abramoff scandal shows that the level of public corruption and the money involved in Indian gaming matters has gotten completely out of control.

There are other communities in Michigan that are struggling with the threat of a proposed casino. We are thankful and grateful for their generous support that we have received over the years, and share their concerns about what may be happening in their own communities, people from CETAC in Battle Creek, MI; Gam-

bling Opposition and 23 Is Enough in Grand Rapids, MI; Positively Muskegon in Muskegon, MI. We have also had the pleasure of working closely with Tom Grey from the National Coalition Against Gambling.

Casino gambling is spreading throughout the country, and it is time for Congress to get its arms around the problems before it is too late. I would like to offer what TOMAC thinks would be improvements to this process, based on our experience.

First and foremost, what we have asked for all along is a chance for the people of the community to have a vote on this. When the casino project was announced, we the community residents were told it was a done deal and that there was nothing that we can do about it, and there certainly was nothing we could do to stop it.

But we the people never had a chance to register our formal vote. I believe there should be a local public referendum on every tribal casino project to ensure that the majority of the community actually wants it. If a community wants a casino, God bless them. But if a community does not want a casino, then that community deserves the right to self-determination.

Another more serious problem is this reservation shopping. Newly minted tribes and existing tribes work with their casino sponsors to find the best possible site for commercial gambling, and then they ask the Government to put it into trust for them.

The CHAIRMAN. Ms. Thomas, you are going to have to summarize.

Ms. THOMAS. Okay. Fine. I am sorry.

Last, there is the issue of the EIS, which is required under the IGRA land-to-trust process. We believe there should be an independent agency that would conduct analysis of the environmental, economic, and social impacts, with an honest picture.

We also support the legislation being proposed by Mike Rogers that basically would offer a moratorium of 2 years on tribal land and casino processes.

We thank you very much for allowing us to testify today.

[Prepared statement of Ms. Thomas appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Thomas.

A pretty simple question. You know, we like to deal with citizens, but we also place great credence on the testimony and views of the local elected officials, on the theory that Government closest to the people is probably the most aware of the views of the community they represent. If the local government supports the casino, shouldn't those elected representatives be deemed to express the will of the community, Ms. Thomas?

Ms. THOMAS. I think that in order to know what the will of the community is, they need to have a vote taken. You have been in Government for a very long time. You know very well that people can say one thing to get their job, and do the other thing when they have their job. And that is what has happened in our community.

The CHAIRMAN. I have never seen a case of that. [Laughter.]

Ms. THOMAS. Maybe you just have not been paying close attention. [Laughter.]

The CHAIRMAN. Thank you.

Mr. Kromm, would you respond to that question?

Mr. KROMM. I understand that concept real well. We wrestle all the time at the local level with representative government versus the initiative process. I do not have an absolute opinion on it. I am a person that personally has participated in urban growth boundary campaigns because I think local government officials often get blinded to where the interests of the community are when they start talking with big dollars. I think that goes to what Ms. Thomas' experience is with in her community.

So I tend to favor the initiative process on very major land-use issues. I find it intriguing that Congressman Pombo's draft legislation talks about the thought of having some kind of local initiative process before a casino would be sited. At CSAC we have not taken a formal position on that yet because it is not a full-blown bill.

In general, I think that appeals to many of us. These are exceptional types of development. It is not the typical, do you put in condos, or do you put in houses, or do you put in a shopping mall. This is something that can fundamentally change the character of a community.

The CHAIRMAN. In your county, if there was a referendum on the construction of towers to allow cell phones to operate, would it ever pass?

Mr. KROMM. I do not think so.

The CHAIRMAN. You see, it is a bit of a dilemma here.

Mr. KROMM. Yes.

The CHAIRMAN. I am asking the questions. I am not reaching any conclusions. It is a very difficult issue here as to the degree of public and grassroots organizations, versus the elected representatives. I think Ms. Thomas also described part of the problem.

Mr. KROMM. If I may, one of the experiences that many of us in California have had is that a tribe will start the reservation-shopping process, and they will fairly quietly approach a local government. That is what happened in our county. It was a tribe that was looking at an agricultural area that was in my supervisorial district outside of a local city. In our case, it is an area that has heavy land-use protections to keep it in ag. They wanted to know if they could start government-to-government discussions without having a public discussion.

It only took me about a nano-second to realize that what was going to happen was massive dollars were going to be put on the table as an incentive for us to negotiate, and that we would start down that path before it became very public. That just fundamentally I was opposed to, to have that discussion before the public process.

Once we started the public process, it took all of one public hearing. The only person who showed up in favor of the casino, citing the proposed site, was the broker who was brokering the land. The community in toto came out in opposition. I thought it was pretty interesting.

This exact same tribe has been marching around the Bay Area. They are into their third site now in the Richmond, California area, further into the bay. When they first arose in the Bay Area, it was in the city of Antioch, which is south and a little bit east of us. The local city council there was very much in favor, until they had their first public hearing. They had to move it out of the council cham-

bers into the high school gymnasium because 500-plus people showed up. That city council rapidly decided that, hmmm, we think we have heard from our community in a very meaningful way.

So whether it is a vote or whether it is a process that pretty much mandates a very early public participation, it has to be day lighted very, very early, and not start down the path of how many millions of dollars will come to your community if you start down the approval process. Dollars, well, you know what dollars do.

The CHAIRMAN. Mr. Alexanderson.

Mr. ALEXANDERSON. Senator, one problem with relying on local officials is the question which ones. We have the State involved. We have two counties. In our situation, we have at least four cities and that is not counting going across the river toward Portland, where the effects will be great.

I think a vote is a good idea, but I worry the opposite about the vote. Not that they will always be voted down, rather that the farther away you are from the casino, the more likely you are to think of it as a good idea.

The CHAIRMAN. Councilman Harju.

Mr. HARJU. Yes, Senator; Before I answer that question, I would like to send greetings to Senator Cantwell from her Cowlitz constituents from the great State of Washington. I do want to put that in the record.

To answer your question, yes, there should be consultation with the local officials.

The CHAIRMAN. I was talking about a vote.

Mr. HARJU. A vote, as you pointed out, what group would we have vote on our casino? Would we have the State of Oregon? Which county? Which city? What we have done is, as you know, we have done a full environmental impact study, which allows all of the agencies to participate in that. So we have plenty of public process.

I think to answer your question, and I think Mr. Kromm touched on it a bit, the thing I think that gets lost in here is tribal sovereignty. The federally recognized tribes are sovereign nations that are afforded a government-to-government relationship. Part of the problem that the Cowlitz Tribe has had in Clark County and in Southwest Washington is that they have never had an Indian reservation in their area. They have never had a government-to-government relationship with a federally recognized Indian tribe.

I know in the State of Arizona, your tribes have longstanding reservations and the governments have worked there.

The CHAIRMAN. By the way, we have a compact between the State and the Indian tribes which was ratified by a ballot referendum throughout the entire State.

Mr. HARJU. And our State has a compacting procedure. We have a State Gaming Commission. We have the Governor involved in that. As Senator Cantwell knows, the established tribes that have reservations and that have had government-to-government relations with local communities, that has been established over years because they have been there.

The Cowlitz problem in Clark County is that they have not had a federally recognized tribe to deal with. So the answer I think is

to stress the government-to-government relationship with the communities.

The CHAIRMAN. I have been and remain a strong advocate of tribal sovereignty and the government-to-government relationship which has been decided by our courts and by our American citizenry. But when you have an operation where 99.94 percent of the patrons are non-Indians, then this puts a different cast on the entire issue.

If this were an Indian agricultural project which only Native Americans were involved in, and received the benefits of, or many other things to do with Native Americans. But when it is non-Indians that are the primary source of the revenue, then I have an obligation to look out for the non-Indians as well as preserving the government-to-government relationship, with full respect to tribal sovereignty. I would be glad to hear your response to that.

Mr. HARJU. I do not disagree with that characterization, but again if you look at an example. We are talking about the two Section 20 exceptions to the Indian Gaming Regulatory Act, which prohibits gaming on any lands after October 17, 1988. There are tribes such as the Cowlitz. There are not many. As you know, the Federal recognition process is difficult, long, and there are not many. But tribes like the Cowlitz that are landless, we have no land-base.

If you follow your reasoning, there will be no area where the Cowlitz would be able to pick a reservation to do gaming. We are not involved in reservation-shopping.

The CHAIRMAN. I do not know how my reasoning moves in that direction, but go ahead.

Mr. HARJU. I mean, the reasoning that is here, that the Cowlitz will never find any land that will satisfy everyone. So we are going to follow the rules of IGRA which allow these exceptions, and we have done that. We have followed the law. We have had an open process. I would submit to you, I think that there were some, I just want to correct the record here, there is some insinuation that the Cowlitz have all this other land that they could use. There is no other land that the Cowlitz can do a gaming facility on.

We own some property that is not in trust on the Cowlitz River. It could never be, under the shoreline management rules and NEPA, it could never be turned into a gaming facility on the side of the river. We own a small parcel of land in the city of Longview, where we have our tribal office.

There is no room for a gaming facility there. The parcel of land that we have at St. Mary's, interestingly enough, was donated to the church by the Cowlitz Indian Tribe so they could put a mission there to help the Cowlitz Tribe. The Cowlitz Tribe has purchased that property back for tribal housing in that area. It is not in trust either, and there is not enough land there to build a casino.

The CHAIRMAN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

I thank the residents of Washington for being here today. As much as the microscope is on this particular project and as painful or as enlightening as that may be, it is a timely example of the challenges I think we face, Mr. Chairman, on the current statute and what changes we need to make to it.

I wanted to ask Mr. Alexanderson, in your statement on page 4 there is a list of recommendations. Sixth on that list, you have "no site should be restored to the tribe that was not part of the historical sovereign." Would you elaborate on that?

Mr. ALEXANDERSON. Yes; Thank you, Senator.

This I believe, I call it a Federal-tribal casino siting process because the issue is where to put them. In order to put them someplace under the law, the land on which they are placed has to be handed over to the sovereignty of the requesting tribe. So it becomes land that is taken away from the sovereignty of the State and the tribe governs it. All State and local regulations are nullified.

So what I am saying here is that the concept of restoring land to a tribe, as I see what Congress was thinking about, is where did they once have sovereignty and govern the land; where did they have their villages and homeland and where were the missions established; and particularly where did all that occur pre-European contact, because after European contact a lot of stuff got mixed up and a lot of things changed. But where is the historical base of the tribe; where can we look and say, this is where they ruled.

When you have a landless tribe, but you can look at their history and see where they ruled, it seems to me you can only restore that situation within that area. It makes no sense to me to restore the Cowlitz Tribe to sovereignty on a parcel that was the original land of the Chinook.

Senator CANTWELL. To restore them to sovereignty?

Mr. ALEXANDERSON. Yes.

Senator CANTWELL. At all?

Mr. ALEXANDERSON. No; to restore them to sovereignty on this parcel. The decision to restore them to sovereignty, well, actually it has not been made, I guess, yet, because they are not sovereign over any land yet. They do not own this land, the proposed land, and the other tribal land has not been taken into trust. I believe technically it is the taking into trust that restores the sovereignty, because it then allows the tribe to govern.

Senator CANTWELL. You are not questioning their sovereignty in general.

Mr. ALEXANDERSON. No; absolutely not. That has been decided.

Senator CANTWELL. Okay.

Mr. Harju, do you want to comment on this?

Mr. HARJU. Well, I guess if we follow his analogy, the Federal Government will give the million acres back that were taken from the Cowlitz without compensation in 1863, but that is not realistic. Most of that land is now in the Gifford Pinchot National Forest, the Mount St. Helen's National Monument, Mount Rainier National Park, the Fort Vancouver Monument.

So most of that land is not available for the Cowlitz to regain sovereignty to, or to purchase and ask to be placed into trust. There is not that much land that is just out there for the taking.

As I pointed out, we are only asking for 152 acres that is in our historic area to be taken into trust to help the economic benefit of our tribe, a landless tribe. We are not reservation-shopping. We are attempting to obtain land in our historical area. The restored lands opinion, which is a legal opinion, it is just one part of this process.

It is a determination by the Federal agency that has the jurisdiction in this area, that this was restored lands under the Indian Gaming Regulatory Act for the Cowlitz Tribe. But that is just one piece of it.

Senator CANTWELL. You are saying that it is in a historical area.

Mr. HARJU. Oh, it is.

Senator CANTWELL. You are saying it has been determined already that it is an historic area.

Mr. HARJU. Well, the restored lands opinion that was authored by Ms. Coleman clearly demonstrates that, and that is their administrative finding that this is in the historic cultural area of the tribe. I would point out, the Cowlitz Tribe from time immemorial occupied all areas in Southwest Washington. It shared some of those lands on the Columbia River.

As you know, Senator Cantwell, the Columbia River divides Oregon and Washington. Pre-European contact, the Columbia River was the interstate highway for the tribes in that area. They used the river to navigate and for transportation. So on the river, there were different bands of different Chinookan tribes on the river many times.

As I have pointed out, in the 1820's and 1830's, many of those bands were wiped out by the fever and the cholera and the epidemics. But the Cowlitz have always been in that area, and as the opinion points out, this is our historic land.

So I do take offense to people saying, well, you should just go build your casino where you had land. We do not have any land in trust at this time. We are going through the complicated process to take this land into trust, as Mr. Skibine has pointed out. This land, we are going through the fee-to-trust process. We are going through the full environmental impact statement.

Before the BIA takes it into trust for the Cowlitz Tribe, we will have to fulfill all of those requirements. Once that happens, we have the opinion from the Indian Gaming Regulatory Act that it is our restored lands, and it is clear to everyone that then on that land we could either build a casino, and as we have pointed out, we also want to put tribal housing, a cultural center, and a governmental office there on that land. It is only 152 acres.

Senator CANTWELL. But I think, Mr. Harju, you could also could see from my colleague's perspective, too, on the process that we are trying to make sure is established since the implementation of this act and transparency, that when people are discussing these issues of the historical lands, you are right. There are many other examples of these trade offs that we deal with every day in our office as it relates to tribal sovereignty and the non-further use of tribal land that the Federal Government has taken and the implications of that, particularly as it relates to fish and to water and to power resources.

So are you suggesting that we do not need to make any changes to the Indian gaming law as it relates to transparency?

Mr. HARJU. My suggestion is in regards to the two exceptions that we are discussing today, either the restored lands exception or the initial reservation exception, I agree with Senator McCain that I think what direction the committee and the Congress should take would be to direct the BIA to implement regulations so that every-

one knows exactly what the BIA does, and what is expected of all the parties, the tribes, the public, and they have their input. So in regards to those two, the two exemptions that we are talking about, I think regulations are what we need right now, not amendments to IGRA.

Now, the two-part determination is what gets into reservation-shopping. I am not discussing that. The tribe has not asked for a two-part designation from the BIA or the State of Washington at this time. We are asking that the land be taken into trust and we will be applying one of the other exceptions, then. We have asked for an initial reservation proclamation and we have also asked for the restored lands opinion.

I might add that there is some indication that we have done this secretly. If you read the restored lands opinion, you will see that a State Representative responded. Several of the groups opposing the casino responded to them. They got input from another Indian tribe. A whole bunch of individuals opposing the tribe did have input on this opinion. It states that in the opinion. So it can hardly be said this was a secret process.

Senator CANTWELL. Mr. Alexanderson.

Mr. ALEXANDERSON. It was secret from March to October, and was discovered because Mr. Skibine advised one of the people that he visited with that the process was underway. Indeed, it was nearly over and at the very last minute that was some opportunity to put input in, but it did not apply to everybody, and it was inadequate.

If I may just clarify my position on one thing. Historically, you could find an area that everyone agrees was the exclusive area of tribe A. And you could find another area that was the exclusive area of tribe B. And you might find an area in between that you cannot tell, or was shared. Maybe there were resource sites that were shared and so on.

I am saying that when you are restoring a tribe to sovereignty over land, they should have had to make a showing that they once had sovereignty, exclusivity over that land. In that middle-land where more than one tribe has a claim, it is not right to restore it to the exclusive governance of one of the tribes and exclude the other. That is my position.

Senator CANTWELL. And what if that is not clear?

Mr. ALEXANDERSON. I am sorry?

Senator CANTWELL. I am not sure that is always so clear. I see Mr. Kromm smiling. I do not know in your experience in California if that is always so clear. I mean, how do you determine dominance on a particular parcel? I think if you were talking about a broad geographic area, east or west of the Cascades or north or south of the Columbia River, you know, it is easier.

But when you start getting into smaller territories, my guess is they were fighting over this for a long time about who was dominant. So I am just saying, it gets complicated.

Mr. ALEXANDERSON. That is absolutely true. In this case, that very issue was fought out twice before in the case of the Cowlitz, and the Indian Claims Commission, after a long trial that lasted years, I believe, made a determination as to where their exclusive area was, and where it was not. The determination they made as

to where it was not was the mouth of the Lewis River area, the area we are talking about.

So that has been found, and it was found again when the Bureau of Acknowledgment and Recognition spent years with expert historians looking into the Cowlitz history. Again, the Cowlitz representatives claimed that they had a band of the Cowlitz that lived in that area. The BAR found they did not.

So it has been ruled twice before already. It is a very difficult process, very fact-intensive. It involves reading the journals and evidence and maps of the time to see what the answer is. But once you get the answer, we should live with it.

Senator CANTWELL. Thank you.

Mr. Chairman, I am sure the case study of the Cowlitz could go on all day, and so could my questioning, but I will continue to work with you on the larger reform issues and appreciate my constituents being here.

I am not sure we like to be in the limelight on this issue, but I do think it is a case study of the challenges of the Act that we have now had for so long, and so many changes that have come along that require us to look at revisions. So I think the chairman for this hearing.

The CHAIRMAN. Thank you very much.

Ms. Thomas, we will allow you to make a closing comment if you would like.

Whoops, Senator Dorgan is back. Okay.

Senator DORGAN. Mr. Chairman, sorry. I had to be at another committee hearing to introduce a witness, so I apologize.

The CHAIRMAN. Ms. Thomas.

Ms. THOMAS. I would just like to say that I know that this committee worked, or the committee that you were a part of that worked so hard on the IGRA, did their level best to make sure that they had anticipated all the problems that might happen, and make provisions for those. And we do know that a lot of things have changed in the last 17 years. I just wanted to let you know how grateful communities like mine are that this is actually happening, because it is something that in our fight for the last 10 years, we have wanted to see happen, and we really appreciate it.

The CHAIRMAN. Thank you very much.

Mr. Kromm.

Mr. KROMM. Thank you.

Maybe a brief point I could make is that the California State Association of Counties has probably been the most active of the local government groups in the country of working on this issue. I want to thank Mr. Skibine. I came out here a couple of years ago when an issue first arose in our county, and just was kind of alone, a very inexperienced supervisor. He made time to meet with me. I have heard this from numerous other county supervisors in California, that the door has been open back here.

I think the challenge is, as you hear across the country, is that most folks do not quite know where to go and do not know how to address the problem, and it is difficult. We have been working with the National Association of Counties. CSAC has very much taken the lead. We are putting on workshops for the Western Regional

group of counties as part of NACO later this year. Mr. Skibine is going to be meeting with the League of Cities representatives.

I think an education process is part of what is needed. Part of it, I think, then goes back to your transparency questions earlier, about how do we make the process more open, more transparent. Good regs would help. It gives people something that they can put their hands on.

At the local government level, to kind of have an understanding that you do have a seat at the table; you need to have an appropriate recognition of the sovereignty of the tribes that are involved; and the difference between when land that is well-recognized is in trust versus when the reservation-shopping process comes about.

So I think a giant educational process nationwide is very necessary. We have been active in that. We would be glad to continue to help. I think reforms to IGRA could help that process also. Thank you.

The CHAIRMAN. Thank you very much, sir. I hope you work as quickly as possible to return Arizona's water from California. Thank you. [Laughter.]

Mr. KROMM. I am from California. Wine is for drinking and water is for fighting, right? [Laughter.]

The CHAIRMAN. Mr. Alexanderson.

Mr. ALEXANDERSON. Thank you.

Mr. Chairman, I think I have been clear about what I want from the process in terms of open access to information and opportunity to meet and present evidence, and a neutral, open-minded person to run the process and to make the decisions.

Substantively, I do not understand in this day and age why there should be exceptions to section 20. Those exceptions basically say that this giant Federal machine siting giant tribal casinos does not have to consult with anyone in the area and does not have to get the Governor's okay, and it can be proved that it will be damaging to the community. That is not okay with me. So urge substantive reform, as well as procedural reform.

Thank you.

The CHAIRMAN. Thank you.

Councilman Harju.

Mr. HARJU. Again, thanks to the committee for this opportunity. I do have a written statement and I would ask that that be submitted for the record.

The CHAIRMAN. Without objection.

Mr. HARJU. I guess, just to followup on that, there is need for regulation. Oversight is always important, but again I think there was a reason for these two exceptions that we have talked about today. It only affects a very few tribes, as you know, and any changes to those could have devastating results for tribes like the Cowlitz, and there is now the Snoqualmie Tribe in the State of Washington that has just recently obtained Federal recognition.

It is important to allow those tribes to have the same economic benefits of the tribes that had reservations and have gaming facilities or other economic benefits to help their tribal members. All the Cowlitz want are to be able to take care of the Cowlitz people.

Thank you.

The CHAIRMAN. Thank you, sir.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much.

As I said, I had a Commerce Committee hearing I had to rush off to, so I missed part of this, but I have read the statements offered today and I think they are very constructive and very helpful to this committee.

Again, Mr. Chairman, thank you for continuing on, and I thank all of you for traveling here today to be a part of this hearing.

The CHAIRMAN. Thank you very much.

This hearing is adjourned.

[Whereupon, at 11:31 a.m., the committee was adjourned, to reconvene at the call of the Chair.]