

STAFF REPORT NO. 064-16

TO: Mayor and City Council
FROM: Eric Holmes, City Manager 

DATE: 5/16/2016

Subject: Resolution Rescinding 2007 Cowlitz Casino Resolution

Key Points: The resolution, if adopted, would:

- Rescind a 2007 Council resolution opposing the location of a Cowlitz Tribal casino located at La Center Junction.
- Direct the City Attorney to dismiss its appeal now before the D.C. Circuit Court of Appeals challenging the Department of Interior’s decision to take land into trust for the casino.
- Invite government-to-government dialogue between the City and Tribe.

Objective: Rescind 2007 Resolution, end City participation in the current litigation challenging the Cowlitz Tribal casino, and invite government-to-government dialogue between the City and Tribe.

Present Situation: The City has actively opposed the location of the Cowlitz Tribal casino in La Center for more than ten years. It voiced objections in the administrative process before the Department of Interior concerning impacts on housing, transportation, and socio-economic impacts. It has also pursued and participated in litigation challenging federal approvals of the casino site. The City is currently an appellant in an appeal to the United States Court of Appeals for the District of Columbia Circuit. That case had oral argument on March 18, 2016, with a decision expected by the end of the year.

Advantage(s): This resolution will promote better relations with the Tribe and avoid additional staff time and cost pursuing the case. The County will continue to be a party to the appeal and it can represent the interests of local government in the litigation.

Disadvantage(s): Some of the concerns the City has put forth remain unaddressed but those may be better dealt with through negotiations with the Tribe.

Budget Impact: Minimal cost savings in staff time and travel expenses.

Prior Council Review: May 7, 2007 – Resolution M-3612 adopted

Action Requested: If Council wishes to discontinue participation in the Cowlitz Casino litigation, adopt the attached resolution after public hearing on May 16, 2016.

Attachment(s): Resolution



To request other formats, please contact:
City Manager’s Office
(360) 487-8600 | WA Relay: 711
Amanda.Delapena@cityofvancouver.us

05/16/16

RESOLUTION NO. M-_____

A RESOLUTION rescinding Resolution M-3612 that opposed a proposed Cowlitz tribal casino in north Clark County, directing the City Attorney to dismiss the City's Appeal of such approval now pending before the District of Columbia Court of Appeals, and inviting dialogue with the Cowlitz Tribe.

WHEREAS, the City of Vancouver has participated in the federal administrative approval process for the proposed Cowlitz Tribal casino in north Clark County for more than ten years; and

WHEREAS, in that process, the City expressed concerns regarding the impacts the proposed casino may have on the local transportation system, low- and moderate-income housing availability for casino workers, cumulative impacts, and socio-economic impacts such as problem gambling; and

WHEREAS, on May 7, 2007, the City Council of the City of Vancouver concluded that those impacts were not being addressed and as a result adopted Resolution M-3612 that opposed the location of the casino in north Clark County; and

WHEREAS, Resolution M-3612 directed the City Attorney to "explore all legal options to enjoin the location of the casino in north Clark County"; and

WHEREAS, as a result of that direction, the City Attorney joined in litigation in the U.S. District Court for the District of Columbia challenging the U.S. Department of Interior's approval of the casino; and

WHEREAS, when that litigation was not successful before the U.S. District Court, the City of Vancouver joined with the other plaintiffs in an appeal to the District of Columbia Circuit Court of Appeals; and

WHEREAS, that case is now pending before the Circuit Court; and

WHEREAS, the City Council wishes to commence dialogue with the Cowlitz Indian Tribe to mitigate the impacts the casino may have on the City of Vancouver, and

WHEREAS, dialogue between the City government and the Tribal government may benefit the wider regional Southwest Washington community; and

WHEREAS, the City Council believes that the City's continued participation in the current appeal may be an impediment to such dialogue.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VANCOUVER:

Section 1. Resolution M-3612, attached hereto as Exhibit "A," is rescinded.

Section 2. Pursuant to Rule 42 of the Federal Rules of Appellate Procedure, the City Attorney is directed to voluntarily dismiss its appeal challenging the Cowlitz Tribal casino.

Section 3. The City Manager is encouraged to commence dialogue with the Cowlitz Tribe to mitigate the effects of the casino on the City and to join in other cooperative endeavors that may mutually benefit the City and Tribal governments.

ADOPTED at regular session of the Council of the City of Vancouver, this _____ day of _____, 2016.

Timothy D. Leavitt, Mayor

Attest:

R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

E. Bronson Potter, City Attorney

5-7-07

RESOLUTION NO. M-3612

A RESOLUTION of the City Council of the City of Vancouver, Washington to the Secretary of Interior, Bureau of Indian Affairs, and to the Chairman of the National Indian Gaming Commission opposing the Cowlitz Tribe Land-to-Trust application for gaming in Clark County, Washington.

WHEREAS, the City of Vancouver, Washington, is a City of approximately 160,000 within Clark County and is the nearest large City to a Las Vegas-style mega-casino proposed by the Cowlitz Indian Tribe on land proposed to be taken into trust; and

WHEREAS, the City of Vancouver will suffer many of the negative effects that will result from the location of the casino in Clark County; and

WHEREAS, Section 20 of Indian Gaming Regulatory Act (IGRA) generally prohibits gaming on reservation land acquired after October 17, 1988 unless the Secretary of the Interior, after consultation with State and local officials, determines that a gaming establishment would not be detrimental to surrounding communities; and

WHEREAS, in 1969 Congress enacted the National Environmental Policy Act (NEPA) in part to require consultation with the public as well as public agencies; and

WHEREAS, the mega-casino proponents have not sought local consultation as required by IGRA and NEPA; and

WHEREAS, the City of Vancouver has identified significant, unmitigated environmental effects including adverse impacts on the local transportation system, low and moderate income housing availability, cumulative impacts, and socio-economic impacts that will be caused by the

proposed mega-casino and will be detrimental to Vancouver and other surrounding communities;
and

WHEREAS, because of these impacts, the Secretary of Interior cannot reasonably find that the proposed mega-casino will not be detrimental to surrounding communities as required by Section 20 of IGRA; and

WHEREAS, the mega-casino proponents used a process, without public input, in which the National Indian Gaming Commission (NIGC) was asked to determine that the proposed mega-casino site was on "restored" Cowlitz land and not subject to Section 20 of IGRA; and

WHEREAS, the NIGC erroneously found that the lands were restored lands even though the Cowlitz Tribe had not yet acquired the land or ever had reservation land and such lands cannot therefore be considered "restored" under any reasonable interpretation of the "restored lands" exception to Section 20 review; and

WHEREAS, the NIGC made the restored lands determination without consultation or notice to the public or local governments; and

WHEREAS, the mega-casino proponents have applied to the Secretary for approval of the Clark County site as an initial reservation also to avoid consultation with local governments and consideration of the mega-casino's detrimental effects under Section 20; and

WHEREAS, there is evidence in the record that indicates that the Clark County proposed mega-casino site is outside of Cowlitz ancestral territory which is located approximately 50 miles to the north of the proposed site; and

WHEREAS, there is evidence in the record that the Clark County proposed mega-casino site is well to the south of the Cowlitz population center; and

WHEREAS, the Secretary should not accept the NIGC's strained interpretation of IGRA to avoid consultation with local agencies as required under Section 20; and

WHEREAS, consideration of feasible alternatives is a key purpose of NEPA and a required element of environmental impact statements (EIS); and

WHEREAS, the draft EIS only considers northwest Clark County sites and no other feasible but less profitable sites closer to the ancestral Cowlitz tribal area and the center of Cowlitz population because of a grossly exaggerated needs assessment that unreasonably suggests that the approximately 2,500 Cowlitz tribal members need \$113,000,000.00 or more per year primarily for health care needs without providing any evidence of Cowlitz tribal members lacking adequate health care; and

WHEREAS, the needs assessment was prepared without any opportunity for public review and was not released until March of 2007, well after the Cowlitz announced their interest in the north Clark County site; and

WHEREAS, since the mega-casino proponents rely on the needs assessment to avoid consideration of alternatives closer to the Cowlitz ancestral home, it is necessary and appropriate for the City of Vancouver, the public, and other agencies to question the assessment; and

WHEREAS, the Secretary of Interior has an obligation to assess the reasonable needs of the Cowlitz which will result in a determination that the Tribe does not require a Las Vegas-style casino and that a smaller casino outside of Clark County in an area closer to the center of the tribal population and more associated with the Cowlitz ancestral home can meet the Tribe's needs; and

WHEREAS, the City of Vancouver has identified gambling addiction- which results in crime, bankruptcy, and domestic violence and which strains law enforcement and social services- as a significant negative effect the mega-casino will have on City residents and businesses; and

WHEREAS, the only mitigation proposed to address the effects of gambling addiction is the employment of one counselor who, according to the draft EIS, will only treat three percent of the persons who become gambling addicts as a result of locating a mega-casino in this community; and

WHEREAS, the casino proponents propose no mitigation for the strain on law enforcement and social services the mega-casino will cause; and

WHEREAS, the mega-casino proponents offer no mitigation of the transportation impacts on the heavily-congested Interstate 5 corridor caused by the development and operation of the mega-casino; and

WHEREAS, the mega-casino proponents offer no mitigation of the impacts on low and moderate income housing in the City of Vancouver resulting from the influx of casino workers to Clark County.

NOW, THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VANCOUVER

THAT:

Section 1. The City requests that Secretary of Interior reject the land-to-trust application of the Cowlitz Tribe for land in north Clark County so long as the Tribe proposes to use Clark County land for a casino.

Section 2. The City requests that Secretary of Interior reject the draft Environmental Impact Statement and direct that a supplemental Environmental Impact Statement be prepared

with a consideration of land-to-trust sites outside of Clark County and ordering re-circulation of such EIS to other agencies and the public.

Section 3. The City encourages other agencies, members of the public, and federal, state, and local elected officials to join the City in opposing the location of a casino in north Clark County.

Section 4. That the City Council directs the Vancouver City Attorney to explore all legal options to enjoin the location of the casino in north Clark County.


Section 5. That the City Council declares that approval of the land-to-trust application based on the record as it exists as of the date of this resolution would be an abuse of discretion, not supported by the evidence, and made without following required procedures.

Section 6. The City Council declares that if the land-to-trust application and the casino proposal is approved based on the record and procedures followed as of the date of this Resolution, the City Attorney is directed to prosecute all appropriate administrative appeals and/or commence litigation in U.S. District Court, or join in litigation commenced by others, to set aside the approval at the time the Secretary issues a final decision.


ADOPTED at regular session of the Council of the City of Vancouver, this 7th day of May, 2007.


Royce E. Pollard, Mayor

Attest:


R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:


Ted H. Gathe, City Attorney