January 8, 2008

William Iyall
Tribal Council Chair
Cowlitz Indian Tribe
P.O. Box 2547
Longview, WA 98632-8594

Dear Chair Iyall:

This letter constitutes approval of Ordinance No. 07-03, adopted October 6, 2007, and submitted by the Cowlitz Indian Tribe ("the Tribe") to the National Indian Gaming Commission ("NIGC") on October 17, 2007. Ordinance No. 07-03 is an amendment that revises Section 22 of the Tribe's previously approved gaming ordinance, as follows:

> Section 22, Environment and Public Health and Safety.
>
> (A) Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.
>
> (B) The Tribe's gaming facility in Clark County, Washington, shall be governed by Tribal Council Ordinance No. 07-02 "Environmental, Public Health and Safety Protections for the Construction and Operation of the Cowlitz Indian Tribe Gaming Facility".

The Tribe's submission includes Tribal Council Ordinance No. 07-02 ("the EPHS ordinance"). The EPHS ordinance embodies the Tribe's public health and safety program for its proposed gaming facility and includes provisions for law enforcement; fire protection and emergency response; public health; traffic and transportation; sewer and water; compliance with County ordinances such as building/plumbing codes, fire codes, landscaping codes, and street standards; contributions to problem gambling programs; and the establishment of an education and arts fund.

The EPHS ordinance includes a waiver of the Tribe's sovereign immunity and the Tribe's consent to be sued by Clark County in state court to demand specific performance of the EPHS requirements therein. The EPHS ordinance deems this waiver of sovereign immunity to be irrevocable.

The EPHS ordinance also creates the position of Tribal Enforcement and Compliance Officer ("TECO") who is to enforce the EPHS ordinance at the tribal level. The TECO is authorized to accept complaints from any person or entity alleging violations of the EPHS ordinance and is further authorized to issue notices of violation and penalties or other appropriate sanctions against the gaming facility management.

Although the Indian Gaming Regulatory Act ("IGRA") and the NIGC's regulations contain no provisions for public comment regarding tribal gaming ordinances, I received opposition comments from the Confederated Tribes of the Grand Ronde Community of Oregon; the City of Vancouver, Washington; two companies operating card rooms near the Cowlitz Tribe's proposed trust acquisition; and several private individuals. Most of the opposition comments urge me to disapprove the Tribe's amendment because the commenters believe that the Cowlitz Tribe is attempting to circumvent public participation rights found in the Washington Growth Management Act and the National Environmental Policy Act ("NEPA"). Many commenters also believe that an approval would not serve the Tribe's stated purpose of ensuring that the EPHS ordinance measures will be enforced.

I am not persuaded by the opposition comments to disapprove the Cowlitz Tribe's amendment. My approval under IGRA does not implicate any other state or federal statute. Specifically, my decision does not affect the status of the Tribe-County memorandum of understanding under state law or the public's right to participate in the analyses being conducted by the federal government under NEPA. Furthermore, the issues concerning enforceability are not properly addressed here. The Tribe is providing more with regard to EPHS enforcement than is minimally required under IGRA. Even if there are legal or practical impediments regarding such extra measures, such impediments are not grounds for disapproval. Whether the Tribe's approved ordinance amendment also will serve a purpose under NEPA is a separate issue that should be addressed in the NEPA process.

Consistent with IGRA, 25 U.S.C. § 2710(b)(2), and the NIGC's regulations, 25 C.F.R. § 522.4, I approve tribal gaming ordinances and ordinance amendments if the submissions do not conflict with IGRA, the NIGC's regulations, or other federal law. In this case, nothing in the amendment conflicts with IGRA, the NIGC regulations, or other federal law. In fact, the Tribe's amendment is consistent with the EPHS provision in IGRA, 25 U.S.C. § 2710(b)(2)(E), and the EPHS goals of the NIGC's proposed facility licensing standards, 72 Fed. Reg. 59,044 (Oct. 18, 2007). Therefore, the amendment is hereby approved.

If you have any questions, Senior Attorney Jeffrey Nelson is assigned to this matter.

Sincerely,

Philip N. Hogen
Chairman

cc: Rob Greene, Confederated Tribes of the Grand Ronde Community of Oregon
Steven G. Jones, Marten Law Group, Counsel for City of Vancouver
Jena MacLean, Perkins Coie LLP, Counsel for card room companies

Cowlitz Indian Tribe

Tribal Council
Ordinance No. 07- 03

Short Title: Gaming Ordinance Amendment

WHEREAS, the Cowlitz Indian Tribe is Acknowledged as a Sovereign Indian Nation by the United States Government; and

WHEREAS, the Tribal Council is the governing body of the Cowlitz Indian Tribe as authorized by the tribe's Constitution and By-laws; and

WHEREAS, at a duly-called meeting of the Tribal Council on August 22, 2005, the Tribal Council adopted Tribal Council Ordinance No. 05-2, entitled "Gaming Ordinance," and

WHEREAS, the Tribal Council wishes to further amend the Tribe's gaming ordinance to ensure that mitigation measures which the Tribe committed itself to in its March 2004 Memorandum of Understanding (MOU) with Clark County will be enforceable by Clark County regardless of any third party litigation challenging the MOU;

NOW THEREFORE BE IT ENACTED by the Tribal Council of the Cowlitz Indian Tribe, that Section 22 of the Tribal Gaming Ordinance is amended to read as follows:

"Section 22, Environment and Public Health and Safety.

(A) Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

(B) The Tribe's gaming facility in Clark County, Washington, shall be governed by Tribal Council Ordinance No. 07- 02 "Environmental, Public Health and Safety Protections for the Construction and Operation of the Cowlitz Indian Tribe Gaming Facility.""

--- CERTIFICATION ---

The foregoing ordinance was adopted October 6 2007, at a duly called meeting of the Cowlitz Tribal Council by a vote of 17 for, 0, against, and 0 abstaining.

William Iyall, Tribal Council Chair

Nancy Osborne, Tribal Council Secretary

P.O. Box 2547 · Longview, WA 98632-8594 · (360) 577-8140 · Fax (360) 577-7432 · EMAIL cowlitztribe@cowlitz.org

Cowlitz Indian Tribe

Tribal Council
Ordinance No. 07-02

OCT 17 2007

Short Title: Environment, Public Health and Safety Protections for the Construction and Operation of the Cowlitz Indian Tribe Gaming Facility

WHEREAS, the Cowlitz Indian Tribe is Acknowledged as a Sovereign Nation by the United States Government; and

WHEREAS, the Cowlitz Indian Tribe as a Sovereign Tribal Government has the ability to enter into agreements with other governments, including state and local governments, in furtherance of a government-to-government relationship; and

WHEREAS, the Tribal Council is the governing body of the Cowlitz Indian Tribe as authorized by the Tribe's Constitution and By-laws; and

WHEREAS, the Tribal Council wishes to ensure that the mitigation measures to which the Cowlitz Indian Tribe committed itself in its March 2, 2004 Memorandum of Understanding with Clark County, Washington (MOU) are implemented and fully enforceable by Clark County, regardless of whether the MOU is ultimately determined to be valid by a court of competent jurisdiction; and

WHEREAS, the provisions in the following Environment, Public Health and Safety Protection Ordinance are equivalent to the mitigation provisions contained in the MOU; and

WHEREAS, the following Environment, Public Health and Safety Protection Ordinance provides for enforcement of such provisions through a waiver of the Cowlitz Indian Tribe's sovereign immunity for the limited purpose of allowing Clark County to instigate a suit against the Tribe for specific performance which, by its own terms, is irrevocable for the life of the Tribe's proposed gaming development on the Tribe's trust land in Clark County, Washington;

NOW THEREFORE BE IT ENACTED by the Tribal Council of the Cowlitz Indian Tribe, the following Ordinance entitled "Environment, Public Health and Safety Protections for the Construction and Operation of the Cowlitz Indian Tribe Gaming Facility":

Section 1. **Applicability**

The requirements of this Ordinance apply specifically and only to the construction and operation of the Cowlitz Indian Tribe's gaming facility in Clark County, Washington.

Section 2. **Limited Waiver of Sovereign Immunity/Choice of Law; Term of Effectiveness and Irrevocability of Ordinance**

(A) Limited Waiver of Sovereign Immunity/Choice of Law: The Cowlitz Indian Tribe (the Tribe) hereby consents to suit against it by Clark County, State of Washington (Clark County or the County), for the limited purpose of allowing Clark County to instigate an action pursuant to Washington state law for the specific performance of the environment, health and safety mitigation obligations to which the Cowlitz Indian Tribe has committed itself in this Ordinance. The County may bring such an action only after the County has exhausted its administrative remedies to obtain such specific performance pursuant to Section 4 of this Ordinance. This limited waiver of sovereign immunity is limited to actions brought by Clark County in the state court system of the State of Washington, and shall not be construed as extending to any other individuals, governmental entities or third parties.

(B) Term of Effectiveness and Irrevocability: The Tribe shall not revoke or modify the waiver of sovereign immunity provision in subsection (A) of this Section, or the environment, health and safety mitigation provisions in Section 3 of this Ordinance throughout the entire life of the Tribe's proposed gaming development on the Tribe's trust land in Clark County, Washington. The Tribe acknowledges that any effort to revoke or modify the waiver of sovereign immunity described above in subsection (A) by future tribal administrations during this time period may itself be subject to an action by the County for specific performance.

Section 3. **Environment, Health and Safety Mitigation Provisions**

(A) Law Enforcement:

(1) The Cowlitz Indian Tribe shall enter into a comprehensive agreement with Clark County governing law enforcement on the Tribe's trust land in Clark County. Such agreement shall include at least the following provisions:

(a) The Tribe shall enter into an agreement to reimburse the Clark County Sheriff's Office for all reasonable direct and indirect costs incurred in conjunction with the furnishing of law enforcement on the Tribe's trust land in Clark County, to the extent that such costs are not otherwise covered by payments made by the Tribe pursuant to any Class III tribal-state gaming compact entered into between the Tribe and the State pursuant to the federal Indian Gaming Regulatory Act (IGRA), including payments required by Impact Mitigation Fund provisions.

(b) The Tribe shall make the reimbursement agreed upon by the Tribe and the Clark County Sheriff's Office as described in Subsection (A)(1)(a), and shall make annual adjustments thereto as agreed by the Tribe and the Sheriff's Office based upon:
(i) actual costs of the prior year's calls for service or estimates for the first year's service;
(ii) a future work load analysis based on historic calls for service related directly or indirectly from the use of the Tribe's trust land;
(iii) indirect calls stemming from the use of the Tribe's trust land;

(iv) development and expansion of a casino security force and its impact on the level of law enforcement required to be provided by the Sheriff; and
(v) any proposed changes or expansion of use of the Tribe's trust land contemplated for the upcoming year.

(c) The Tribe consents to the entry of Clark County Sherriff's officers onto the Tribe's trust land and into any structures thereon for the purposes of providing law enforcement services.

(d) If the Tribe creates a tribal security force, the Tribe will invite Clark County to assist the Tribe with the cross training required to provide a smooth and effective working relationship. The Tribe will invite the Sheriff's Office to review written policies and guidelines for Tribal security personnel as well as expectations for Tribal security offices to interface effectively and smoothly with the Sheriff's Office.

(2) If the Tribe and the County or the Sheriff's Office are unable to reach agreement regarding the provision of law enforcement services for the Tribe's trust lands, as described above in Subsection (A)(1), the Tribe will establish its own Tribal law enforcement services, which will provide law enforcement services for the Tribe's trust land consistent with the levels of service anticipated to be provided by the Clark County Sheriff's Office.

(B) Prosecution of Criminal Violations, Court and Jail Services:

(1) The Cowlitz Indian Tribe shall allow the Clark County Prosecuting Attorney's Office to conduct all prosecutions in state court of individuals for violations of the law on the Tribe's trust land for which the State or County has jurisdiction, without regard to whether the charges are filed against Indians (including Tribal members), or non-Indians, until and unless the Tribe establishes a tribal court system. The Tribe recognizes that prosecutorial discretion and strategy shall be exclusively within the discretion of the Clark County Prosecuting Attorney's Office. If and when the Tribe establishes a tribal court system, the Cowlitz tribal courts shall exercise jurisdiction over Indians for violations of law on the Tribe's trust lands, in accordance with federal or tribal law.

(2) The Tribe shall enter into an agreement with the Clark County Prosecuting Attorney's Office regarding payment for prosecution of misdemeanor crimes committed on the Tribe's trust land, to the extent that such costs are not otherwise covered by payments made by the Tribe pursuant to any Class III tribal-state gaming compact entered into between the Tribe and the State pursuant to IGRA, including payments required by Impact Mitigation Fund provisions.

(3) The Tribe shall enter into an agreement with Clark County substantially similar to the existing interlocal agreements between the County and the Cities, to the extent not prohibited by federal law, to compensate the County for the cost of jail beds, court-related and corrections programs, and costs per case for processing cases through Clark County District Court, to the extent that such costs are not otherwise covered by payments made by the Tribe pursuant to any Class III tribal-state gaming

compact entered into between the Tribe and the State pursuant to IGRA, including payments required by Impact Mitigation Fund provisions.

(C) Fire Protection and Emergency Response:

(1) The Cowlitz Indian Tribe shall compensate Clark County Fire District 12 for the provision of fire and emergency response services to the Tribe's trust lands, as set out in a separate agreement between the Tribe and Fire District 12, to the extent that such costs are not otherwise covered by payments made by the Tribe pursuant to any Class III tribal-state gaming compact entered into between the Tribe and the State pursuant to IGRA, including payments required by Impact Mitigation Fund provisions. Should Fire District 12 establish a Local Improvement District or mitigation fees in the future as a means to secure funding for additional equipment or fire services, the Tribe will participate in the same manner as other developers or persons owning property in the area.

(2) If the Tribe and Clark County Fire District 12 are unable to reach agreement regarding compensation for fire and emergency response services to the Tribe's trust lands, the Tribe shall establish its own Tribal fire and emergency response services, which will provide fire and emergency response services to the Tribe's trust land consistent with the levels of service anticipated to be provided by Clark County Fire District 12. Should the Tribe establish such Tribal fire and emergency response services, it will no longer have any obligation to provide compensation or funding for Fire District 12 under Subsection (C)(1).

(D) Public Health:

(1) The Cowlitz Indian Tribe shall comply with all health regulations adopted by the State of Washington and Clark County.

(2) The Tribe shall allow State or Clark County health inspectors access to the Tribe's trust land and structures thereon to ensure compliance with all state and local health regulations.

(E) Traffic and Transportation:

(1) The Cowlitz Indian Tribe shall mitigate traffic, safety, and circulation issues in conformity with Clark County requirements. The Tribe will make roadway and intersection improvements to maintain traffic levels-of-service existing prior to each phase of development. The Tribe shall ensure that in no event will it cause the public road system to operate below a level-of-service (LOS) D for intersection delay during the peak traffic hour. LOS D standards shall be determined based on the most recently adopted version of the Highway Capacity Manual (Transportation Research Board).

(2) The public road system shall include NW 319th Street, NW 324th Street, NW 41st Avenue, NW 31st Avenue, and the I-5/319th Street Interchange. The Tribe shall submit the design of public roadway and intersection improvements to Clark County for approval prior to beginning the improvement work. The Tribe shall submit the

design of the NW 319th Street interchange improvements for approval by the Washington State Department of Transportation prior to beginning the improvement work.

(3) The Tribe shall pay for all reasonable and negotiated costs, expenses or charges associated with the alteration, construction or improvement of the public road system set forth in Subsections (E)(1) and (2), to the extent that such costs are not otherwise covered by payments made by the Tribe pursuant to any Class III tribal-state gaming compact entered into between the Tribe and the State pursuant to IGRA, including payments required by Impact Mitigation Fund provisions.

(4) The Tribe shall make all reasonable efforts to work with the County to ensure that the so-called "late-comer" provisions as provided for at RCW § 35.72.040 will be applied to the Tribe's casino development, so that the Tribe can receive contribution or reimbursement for improvements as otherwise would be permitted under state law.

(F) Sewer and Water:

(1) The Cowlitz Indian Tribe shall provide sewage conveyance, treatment and disposal through development of a new independent sewage treatment plant constructed by the Tribe on its Clark County trust lands, or through a sewer service agreement with a local government, or through other means as the Tribe may deem necessary and appropriate. In any case, the sewage conveyance, treatment and disposal shall be conducted so as to meet or exceed applicable federal and state standards.

(2) The Tribe shall allow no public use of the proposed development until such time as the sewer service is fully compliant with applicable State of Washington and federal standards.

(3) The Tribe shall provide for water supply through Clark Public Utilities.

(G) Compliance with Clark County Ordinances:

(1) The Cowlitz Indian Tribe shall develop its Clark County trust land and any structures and uses of the property in a manner consistent with the Clark County codes as they existed at the time the MOU was executed by the Tribe (and as set forth in Appendix C of the MOU), which are hereby incorporated by reference into this Section as Exhibit 1. Any future changes, additions or modifications in the use or development of the parcel shall be consistent with such County ordinances.

(2) Any buildings constructed on the Tribe's trust land shall be constructed in a manner which is consistent with the applicable provisions of the attached Clark County building codes and ordinances in Exhibit 1.

(3) The Tribe shall request that Clark County assist the Tribe in implementing the aforesaid building standards by promptly conducting plan checks of all documents submitted to the County, on a priority basis if necessary, and assigning a building

inspector to conduct inspections on a timely basis. If the County provides such services, the Tribe shall pay the County reasonable fees for any such services as shall be agreed upon by the County and the Tribe.

(H) Impacts on Clark County Revenues:

(1) Payments in Lieu of Taxes. The Tribe shall compensate the County and local districts on a biannual basis in lieu of property taxes for revenue lost resulting from the removal of the Tribe's trust land from the tax rolls consistent with the customary assessment procedures used by the Clark County Assessor and the State Constitution, to the extent not otherwise specifically provided for in any Class III tribal-state gaming compact entered into between the Tribe and the State pursuant to IGRA, including payments from any Impact Mitigation Fund.

(2) Sales Tax. Based on the Tribe's understanding that sales tax collected within Clark County is based on a blended tax rate incorporating both State and County sales taxes, the Tribe shall collect sales tax as appropriate on all non-Indian sales which take place on the Tribe's trust land in business enterprises owned and operated by the Tribe. The rate of collection shall be in conformance with the applicable State-County blended tax rate as provided by the Washington Department of Revenue. The Tribe agrees to remit such sales tax to the State of Washington as required by state law.

(3) Transient Occupancy Tax. The Tribe shall make an annual payment of the equivalent of a transient occupancy tax as would be payable by non-tribal members to the County pursuant to Clark County Code 3.16 but for the Tribe's status as a sovereign nation.

(I) Problem Gambling:

(1) The Cowlitz Indian Tribe shall make a contribution of not less than $50,000 to a program designated by Clark County which deals with and treats problems associated with compulsive behavior including compulsive gambling, and which expends the money to address problem gambling issues. Payments shall be annually increased or decreased coincident with the then-current consumer price index for the Portland Metropolitan area.

(2) The Tribe shall review, and request that the County also review, such programs every five years.

(J) Education and Arts Fund:

(1) Establishment. The Cowlitz Indian Tribe shall establish the Cowlitz Tribe Education and Arts Fund for the support of charitable activities in Clark County, including arts, education and local government support. The Tribe shall commit two percent (2%) of the net revenues (as defined in 25 U.S.C. § 2703(9)) from Class III gaming on the Tribe's Clark County trust lands.

(2) Management/Grant Awards. The Fund shall be managed by a five-person Board, comprised of two (2) tribal appointees and two (2) appointees of Clark County. If the County fails to appoint two members to the Board the Tribe shall appoint such members. The fifth member of the Board shall be selected by the four other Board members. The Board will promulgate both standards for application and application forms to be made available to all prospective applicant groups for grants from the Fund. Grant awards shall be made biannually and such award decisions will be made at the Board's discretion.

(3) Impact Mitigation Payments. This Fund shall be separate from, and in addition to any impact mitigation payments provided for in any Class III tribal-state gaming compact entered into between the Tribe and the State pursuant to IGRA, and monies paid to the Education and Arts Fund shall not be used as a credit against state-tribal impact mitigation contribution requirements.

Section 4. **Implementation, Enforcement and Compliance**

(A) Creation and Maintenance of Tribal Enforcement and Compliance Officer (TECO) Position: Within a reasonable period of time after the Tribe's Clark County land is taken into trust, and in any event before any gaming facility construction commences on the Tribe's Clark County trust land, the Tribal Council shall appoint a Tribal Enforcement and Compliance Officer (TECO). At no time after commencement of construction or operation of the Tribe's gaming facility will the Tribe allow the TECO position to remain unoccupied for more than one month, although temporary appointments may be made.

(B) Duties:

(1) The TECO shall be responsible for ensuring the proper and timely implementation of and compliance with this Environment, Public Health and Safety Protection Ordinance. The TECO will be responsible for accepting complaints alleging violations of this Ordinance, whether the complaint arises from the Tribal Council, a tribal member, a patron, a local government instrumentality, the federal government, or any other person or entity. The TECO shall also serve as the main point of contact for Clark County with respect to the proper implementation and enforcement of the provisions of this Ordinance, and as the main point of contact for the federal government with respect to enforcement of the provisions of this Ordinance.

(2) The TECO may assume such other related duties as may be deemed necessary by the Tribal Council and assigned by the Tribal Council pursuant to future tribal ordinances.

(C) Enforcement:

(1) The TECO will work with the Tribe's gaming facility management to address alleged or proven violations of this Ordinance.

(2) If the TECO determines that there has been a violation of this Ordinance, and further determines that the Tribe's gaming facility management has failed to cure the violation in a reasonable manner or in a reasonable time period, the TECO may issue a notice of violation to the gaming facility management. If the TECO determines that the gaming facility management has not cured or made substantial progress in curing the violation within the time period specified in the notice, the TECO may impose a penalty or other appropriate sanction.

(3) Annual Report. No later than January 31st of each calendar year, the TECO shall prepare a report on the status and implementation of the foregoing provisions of this Ordinance. Such report shall be submitted to the Tribal Gaming Commission and the Tribal Council no later than January 31st of each calendar year. Copies of such report shall also be provided to the NIGC NEPA/EPHS Compliance Officer and the BIA Northwest Regional Office.

(D) Procedures: No later than sixty days after appointment of the first TECO, the TECO will establish and submit to the Tribal Council for approval written procedures that will govern:

(1) In what manner a person or entity may submit a complaint about an alleged violation of this Ordinance;

(2) The process by which the TECO will investigate the allegation of the alleged violation;

(3) The process by which the TECO will alert the Tribe's gaming facility management of the alleged violation;

(4) The process by which the TECO will issue notices of violation, and determine and impose appropriate penalties and sanctions.

Such procedures shall not be effective until approved in writing by the Tribal Council. The Tribal Council must make a determination whether to approve the procedures within no more than 45 days of submission.

--- CERTIFICATION ---

The foregoing ordinance was adopted October 4, 2007, at a duly called meeting of the Cowlitz Tribal Council by a vote of 17 for, 0, against, and 0 abstaining.

William Iyall, Tribal Council Chair

Nancy Osborne, Tribal Council Secretary