



North Carolina General Assembly
 Senate Chamber
 State Legislative Building
 Raleigh 27601-2808

Senator John Hoeven
 Chairman
 Senate Indian Affairs Committee
 838 Hart Senate Office Building
 Washington, DC 20510

Senator Tom Udall
 Ranking Member
 Senate Indian Affairs Committee
 838 Hart Senate Office Building
 Washington, DC 20510

Dear Chairman and Ranking Member:

As members of the North Carolina General Assembly, we are writing to remind the Committee of the broad opposition to the Catawba Nation's request for land to be taken into trust for the purposes of gaming in Cleveland County, North Carolina. In 2013, over 100 members of the General Assembly opposed the Catawba gaming application with the Bureau of Indian Affairs (BIA). Unfortunately, the Catawba Nation is now trying to circumvent the BIA's long standing regulatory process because their application cannot be approved by BIA. Senate Bill 790, which would - for the first time in U.S. history - allow land to be designated for a tribe to build a casino outside of the Bureau of Indian Affairs process. This unprecedented legislation to allow the South Carolina-based Catawba Indian Nation to build a casino along I-85 in Cleveland County, North Carolina, is a last-ditch effort to game the system on a flawed application. The bill would also exempt the project from the Indian Gaming Regulatory Act that requires the Department of Interior consult with local and state governments for economic, environmental and infrastructure impact assessments.

The proposed casino site would encroach upon Cherokee aboriginal territory defined in the Cherokee Treaty 1777 map also adopted by the federal Indian Claims Commission. The US Bureau of Indian Affairs also recognizes this history-based treaty agreement and the boundaries set between the two tribes.

If passed, the legislation would deal an economic blow to a region of the state that depends on this industry and the thousands of jobs it provides annually. The bill would skirt the formal input process that has worked for decades and doesn't allow input from the state or the people who live near the proposed site.

We encourage the Committee to reject this unprecedented overreach. Please find attached two letters from the North Carolina State House and Senate in opposition to the Catawba Indian gaming project.

Sincerely,

Senator Jim Davis

Senator Chuck Edwards

Senator Ralph Hise

Terry Van Duyn



(Signature Page, Re: Catawba Opposition Letter)

Norma Sanderson
Norman Sanderson

W. Nickel
Wiley Nickel

Kathy Harrington
KATHY HARRINGTON

Jerry W. Tillman
Jerry W. Tillman

Paul Lowe, Jr.

PAUL LOWE, JR

DONALD G. DAVIS

Joyce Krawiec
Joyce Krawiec

Todd Johnson
Bill Rabon

Warren T. Daniel

Warren T. Daniel

Jim Perry

Jim Perry

Paul Newton

Richard Horner

Mike Woodard

Mike Woodard

Gladys A. Robinson

Gladys A. Robinson


Jay J. Chaudhuri


Milton Fitch, Jr

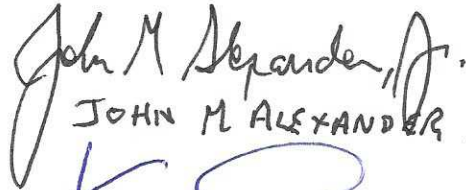
Milton Fitch, Jr

Sam Searcy

(Signature Page, Re: Catawba Opposition Letter)


Vickie Sawyer

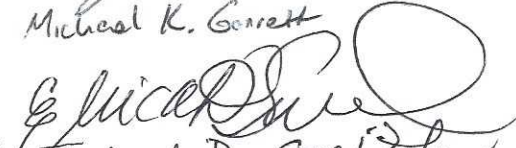

VALERIE P. FOUSHEE


JOHN M. ALEXANDER, JR.



KIRK DENSIOW




Michael K. Garrett


Eric D. Smith


DEANNA BALLARD


HARPER PETERSON

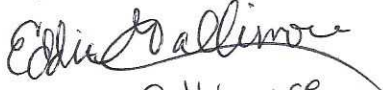

ANDY WELLS


Harry Brown


Philip E. BERGEN


CARL FORD


Brent Jackson


Eddie Gallimore



NORTH CAROLINA GENERAL ASSEMBLY

SENATE CHAMBER
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601-2808

October 18, 2013

VIA U.S. MAIL & FACSIMILE

Kevin Washburn
Asst. Secretary
Indian Affairs
MS-3071-MIB
1849 C Street, N.W.
Washington, DC 20240
Facsimile No. (202) 208-5320

Dear Secretary Washburn:

Each of us serves as a member of the North Carolina Senate. We understand that the South Carolina-based Catawba Indian Tribe recently applied to your Department with an ultimate goal of operating gaming facilities in the State of North Carolina. Our understanding is unconfirmed because we have been unsuccessful in obtaining a copy of any such application—multiple Freedom of Information Act (“FOIA”) requests remain pending.

The Catawba Tribe’s apparent effort directly affects a matter of North Carolina sovereignty. Given that sensitivity, and while we await action on our pending FOIA requests, this letter affirms the legal basis by which the State of North Carolina has the authority to legislate on matters of gaming in this State. In addition, we believe that there is no lawful basis upon which non-reservation land in North Carolina acquired by the Catawba Tribe may be placed into trust and held by the federal government. We reserve the right to comment further.

The Indian Gaming Regulatory Act (“IGRA”) is the sole avenue for the conduct of gaming by federally-recognized Indians on tribal lands. The IGRA provides regulations for limited types of gaming, and requires a Tribal-State Compact for more expanded, Class III

gaming. See *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) (emphasizing that it is only pursuant to the IGRA that an Indian tribe may conduct gaming on tribal lands, and that the IGRA alone provides the procedures for limited gaming absent state agreement).

For the Catawba Tribe, though, IGRA rights are a non-starter. In the Catawba Indian Tribe of South Carolina land Claims Settlement Act of 1993, 25 USC § 941, Congress enacted into law the Tribe's agreement to be both exempt from the IGRA *and* subject to "all laws, ordinances, and regulations of the State" with regard to the conduct of gambling or wagering by the Tribe both on or off the Reservation. Section 16 of the Memorandum of Agreement; 25 U.S.C. § 9411. The Catawba Tribe's exemption from the IGRA is not limited to lands in the State of South Carolina; the Tribe's exemption is a cloak that stays with the Tribe regardless of where it may seek lands.

Even if the Catawba Tribe had not waived its rights under the IGRA, the Tribe faces a separate and equally disqualifying problem: the Department cannot accept into trust North Carolina land acquired by the Tribe. We understand that one approach the Tribe might be pursuing is to convince the federal government to accept lands into trust for ostensibly non-gaming purposes only to later petition for gaming rights on those lands. The Settlement Agreement entered into by the Catawba Tribe, and incorporated into federal law, provides that the Tribe may acquire trust lands only in South Carolina, and that all non-reservation properties acquired by the Catawba Tribe are to be held in fee simple and subject to South Carolina law. Section 15, Memorandum of Agreement, Catawba Indian Tribe of South Carolina and State of North Carolina (November 29, 1993). Consequently, regardless of a statutory basis for imposition of a trust over Catawba land in this State, the Catawba Tribe agreed—and Congress enacted into law—a provision that non-reservation land acquired by the Catawba Tribe be held in fee simple, *wherever located*. Further, Section 14.16 of the Memorandum of Agreement provides that the Bureau of Indian Affairs land acquisition regulations are not applicable to the Catawba Tribe's establishment of an expanded reservation; the tribe may only acquire reservation or non-reservation land in the manner provided in the Agreement. Thus, to the extent the Catawba Tribe envisions a piecemeal approach to obtaining gaming rights in North Carolina via BIA land acquisition regulations, that approach, too, is unavailing.

In summary, the federal government's authority to authorize Indian gaming—and any federally-recognized tribe's avenue to pursue gaming—depend entirely on the applicability of the IGRA. By making the IGRA inapplicable to the Catawba Tribe and instead enacting the Settlement Act, Congress—and, indeed, the Catawba Tribe itself—affirmatively chose

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to defer to the State to determine whether the Catawba Tribe would be authorized to conduct lawful gaming. Further, the Catawba Tribe itself agreed that non-reservation lands acquired by the Tribe are to be held in fee simple, and not placed into trust, thereby foreclosing any piecemeal approach to gaming.

For the reasons described above, we believe that the Catawba Tribe's application to acquire land for trust purposes in North Carolina is legally defective on its face. If the Catawba Tribe is allowed to pursue these operations without approval from the legislature of this State, and with disregard for its previous agreements, it would set a new and dangerous precedent for tribes re-negotiating comprehensively settled litigation, operating outside of a settled regulatory framework and infringing on the fundamental sovereignty reserved to the several States by the United States Constitution.

We respectfully request that the Department deny the Catawba Tribe's application for North Carolina land to be placed into trust for gaming or any other purpose. As stated above, we reserve the right to comment further once we have an opportunity to review the application, if any, filed by the Tribe.

Sincerely,

Sen. Phil Berger	Sen. Tom Apodaca	Sen. Jim Davis	Sen. Martin Nesbitt
President Pro Tempore (R-Rockingham)	48 th District (R-Henderson)	50 th District (R-Macon)	49 th District (D-Buncombe)

CC: Thomas A. Stith III (via hand delivery only)

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