Going Off the Reservation

Why the Catawba Indians Have NO Legal Authority to Open a Casino in N.C.

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"OFF THE RESERVATION" IS A TERM USED SO OFTEN THAT IT HAS BECOME PART OF THE AMERICAN LEXICON. THE SAYING HAS ITS ROOTS IN YESTERYEAR, AND LITERALLY MEANS THAT SOMEONE HAS LEFT THEIR ESTABLISHED TRIBAL OR HOME BASE BOUNDARIES. *"OFF THE RESERVATION"* WAS USED IN ITS LITERAL SENSE TWO MINUTES INTO LAST YEAR'S BLOCKBUSTER MOVIE *GRAVITY*. WHEN ASKED BY MISSION CONTROL ABOUT THE FUEL STATUS OF HIS JET PACK DURING A LENGTHY SPACEWALK OUTSIDE THE SOON TO BE DOOMED SPACE SHUTTLE, GEORGE CLOONEY'S CHARACTER REPLIES, *"FIVE HOURS OFF THE RESERVATION, AND I SHOW 30 PERCENT DRAIN."* MORE OFTEN THAN NOT, HOWEVER, *"OFF THE RESERVATION"* IS USED IN A FIGURATIVE SENSE TO DESCRIBE WHEN SOMEONE IS OPERATING OUTSIDE OF THE ESTABLISHED RULES, OR IS ENGAGED IN DISRUPTIVE ACTIVITY OUTSIDE NORMAL BOUNDS. THE TERM WAS USED FIGURATIVELY IN *THE BOURNE IDENTITY* TO DESCRIBE THE LEAD CHARACTER JASON BOURNE, A ROGUE CIA AGENT ON THE RUN IN EUROPE: *"YOU'VE GOT A BLACK OPS AGENT WHO'S OFF THE RESERVATION."*

Given the disparity in meanings, it seems unlikely that a situation would exist where *"off the reservation"* could be used both literally *and* figuratively to describe the same set of circumstances. However, one need look no further than the Catawba Indian Nation and its attempt to build a Las Vegas-style casino in North Carolina for the perfect case study illustrating the literal and figurative meanings of *"off the reservation."*

The Catawba Indian Nation (the *"Catawba,"* or the *"Tribe"*) is a Native American tribe based in York County, South Carolina. The Tribe's only tribal reservation is located in Rock Hill, its tribal lands are all located within the State of South Carolina, and the overwhelming majority of its 2,800 members reside in South Carolina. The Catawba has no land in North Carolina, and it is not one of the tribes formally recognized by this State.[1] With no immediate connections to the Old North State, a lot of people were shocked to learn late last summer that the Tribe was aggressively pursuing plans to build a massive casino in North Carolina just across the state line in Kings Mountain.[2] When the Catawba finally went public with details of the project, the Tribe revealed plans for the development of a 16-acre site right off I-85 (about 30 miles west of Charlotte and about 30 miles northwest of the South Carolina reservation) that would include a $339 million, 220,000 square foot gambling facility and 1,500 room hotel.[3]

Since the casino plans became public, many North Carolinians have been scratching their heads wondering whether it is legally possible for the Catawba to go "off the reservation" and build an enormous gambling resort on land that is not only located outside its reservation, but that is situated in an entirely different state from its own. Determining the answer requires an analysis of the Tribe's 1993 land settlement agreement with the federal government and the State of South Carolina and its application to put the Kings Mountain property into trust with the United States Secretary of Interior for the purposes of gambling. Once thoroughly analyzed, the facts and the law make clear that the Catawba Tribe does not have the legal right or authority to operate a casino in North Carolina, and that the Tribe's plans to (literally) build a casino off the reservation are (figuratively) "off the reservation."

The 1993 Catawba Settlement

Although the Tribe has never engaged in land negotiations with North Carolina, the Catawba has been wrestling with South Carolina over land rights since first surrendering its aboriginal territory in 1760 in exchange for the right to settle on a large tract of land in South Carolina.[4] While the Tribe has entered into several treaties and service arrangements over the years, it did not settle all its land claims with South Carolina and the U.S. government until 1993, when a comprehensive Catawba settlement plan was enacted into law. The 1993 settlement plan was memorialized in three *"Settle-*

ment Documents:" (1) an act of Congress known as the Catawba Indian Tribe of South Carolina Land Claims Settlement Act (the *"Federal Act"*);[5] (2) an act of South Carolina legislature, known as the Catawba Indian Claims Settlement Act (the *"State Act"*);[6] and (3) a written settlement agreement between the Catawba Indian Nation and the State of South Carolina (the *"Settlement Agreement"*),[7] which is codified in both the Federal Act and the State Act.

Land. The Settlement Documents apply to the Tribe as a whole, as well as to all members of the Tribe. Together, the Settlement Documents unequivocally extinguished all past, present, and future land claims of the Catawba (including claims based on aboriginal title, trespass, use, and occupancy), regardless of location.[8] Section 6(a) of the Federal Act also ratified all previous transfers by the Tribe "of land or natural resources located anywhere within the United States."[9] In return for resolving all claims and ratifying all transfers, the Tribe received certain settlement funds and the Tribe's "Existing Reservation" (consisting of approximately 630 acres) was transferred from the State of South Carolina to the Secretary of Interior. The Federal Act also sets out the Catawba's rights and limitations on expanding the Existing Reservation and acquiring non-reservation properties, and limits the "jurisdiction and governmental powers of the Tribe" to those set forth in the Federal Act and the State Act.[10]

Gambling. In addition to settling all land rights of the Tribe, the Settlement Documents also set out all of the rights of the Tribe with respect to gambling and operating "games of chance."[11] Each of the Settlement Documents specifically provide that the laws and regulations of the State of South Carolina "govern the regulation and conduct of gambling or wagering by the Tribe *on and off the reservation,*" and that the Indian Gaming Regulatory Act ("IGRA") does not apply to the Tribe.[12] So instead of tribal gambling being governed by IGRA,[13] the federal law that provides the statutory basis for the operation of casino (Class III) gambling by Indian tribes on tribal lands, the Catawba agreed that its gambling activities would be governed wholly by the terms of the Settlement Documents.[14]

A Quest for Big Time Gambling in S.C.

According to John Spratt, the South Carolina congressman who shepherded the Federal Act through Congress in 1993, the Catawba's agreement to give up any rights under IGRA was fundamentally necessary in order to get the State to approve the overall Catawba settlement arrangement.[15] Many South Carolina legislators simply did not want any additional gambling in their State, and by insisting that the Settlement Documents made IGRA inapplicable to the Tribe, those legislators believed they had effectively foreclosed all means for the Tribe to ever operate a Las Vegas-style casino in South Carolina.[16]

The years since the ratification of the Settlement Documents have proven the South Carolina legislature right, and the Catawba's numerous attempts at operating a casino gambling facility in South Carolina have met with failure at each turn.[17] The Catawba's latest such attempt failed when the Supreme Court of South Carolina issued its ruling in *Catawba Indian Nation v. State of South Carolina* on April 2, 2014. In that lawsuit, the Tribe alleged that the South Carolina Gambling Cruise Act (which permits video gambling on cruises in international waters) constitutes an authorization of video gambling by the State that permits the Tribe to offer casino-style video gambling on the Existing Reservation. The S.C. Supreme Court disagreed, holding that the Gambling Cruise Act does not authorize the Tribe to offer video gambling on its Existing Reservation in contravention of the existing statewide ban on video gambling devices.[18] The court specifically noted in its opinion that the Catawba had waived its right to be governed by IGRA, and that it had instead agreed to be solely "governed by the terms of the Settlement Agreement and the State Act as pertains to games of chance."[19] The court concluded that although "the Tribe is not treated the same as everyone else in certain respects of the law," "in regards to 'video poker or similar electronic play devices,' the Tribe has specifically agreed to be treated like everyone else" through the Settlement Agreement and the State Act, and as a result, the Catawba may not operate video gambling devices in South Carolina.

The Tribe Looks Northward

Given its total lack of success in South Carolina and the apparent commercial success of the Eastern Band of Cherokee Indians' Harrah's Casino in western North Carolina, it probably should not surprise anyone that the Catawba would look towards North Carolina in hopes of establishing a

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significant gambling operation. Still, when the news became public on August 15, 2013 that the Tribe was taking steps to put a casino in Kings Mountain, the public was caught entirely off guard. Leading policy leaders, including N.C. Governor Pat McCrory (R), N.C. Attorney General Roy Cooper (D), N.C. Insurance Commissioner Wayne Goodwin (D), leaders in the N.C. Senate, and over 100 members of the N.C. House of Representatives, quickly moved to state their opposition to the idea of the South Carolina-based Catawba establishing a casino in the Tar Heel State.[20]

Documents released by the office of Gov. McCrory in late 2013 revealed that top economic advisors to the Governor had been actively discussing the proposed Kings Mountain casino for several months before the news became public.[21] According to media reports, someone on the Tribe's behalf even presented Gov. McCrory's office with a draft of an "IGRA-style" compact containing a revenue sharing arrangement for the proposed casino similar to the one found in the Eastern Band of Cherokee's gambling compact (signed by Gov. Beverly Perdue (D) in 2012). But negotiations with Gov. McCrory eventually proved unsuccessful for the Tribe, as evidenced by his September 9, 2013 statement in which he said that he remained "unconvinced that any new casino proposal is in the best interest of North Carolina."[22]

Having failed to get Gov. McCrory to voluntarily move forward with a compact agreeing to the Kings Mountain casino, the Catawba quickly pivoted in another direction, and on August 30, 2013 filed an application with the U.S. Bureau of Indian Affairs (the *"Trust Application"*) asking the Secretary of Interior to take the 16-acre Kings Mountain parcel of land into trust on the Tribe's behalf for the purpose of operating a casino. Though the Catawba said that it had been very serious about reaching a compact with the State of North Carolina, the Tribe argued that it "can engage in gaming without a compact," and that the Trust Application made a compact with the Governor "of minimal concern."[23]

> **"The Settlement Documents therefore do not allow the Kings Mountain site to be placed in trust, and the Secretary of Interior should reject the Trust Application."**

Reservation Shopping

Through the Trust Application, the Tribe seeks to put the 16-acre tract in Cleveland County, North Carolina into trust with the Secretary of Interior on behalf of the Tribe to use "for economic development, including an entertainment complex, and to the extent permissible under relevant law, gaming." By "reservation shopping," and attempting to put land located outside the tribal reservation into trust for the purposes of operating a casino, the Catawba is following in the footsteps of other Indian tribes. Reservation shopping tribes have typically selected land for trust on the basis of whether it provides easy access to large numbers of potential gamblers, rather than on the basis of the tribes' historical connection to the land.[24] With its proposed casino site located on Interstate 85, just 30 miles from Charlotte and within a 100-mile drive for approximately five million adults,[25] the Catawba's selection of off reservation property is very much in line with the past practice of reservation shopping tribes.

The Tribe's reservation shopping initiative is nevertheless completely unprecedented, according to Matthew Fletcher, professor of law and director of the Indigenous Law & Policy Center at Michigan State University.[26] This is because all prior trust applications by Indian tribes seeking to have the Secretary of Interior place new land into trust for gambling purposes have been governed by IGRA.[27] IGRA, which has been used by a handful of tribes to successfully acquire off reservation land for casinos,[28] does not apply to the Catawba Tribe, and consequently does not apply to the Trust Application. In making its Trust Application, the Catawba may not rely on IGRA or any past decisions of the Secretary of Interior as precedent for deciding its Trust Application.

By ratifying all previous transfers of land and extinguishing all potential land claims of the Tribe *"anywhere within the United States,"* the Federal Act effectively prevents land from being taken into trust on the Tribe's behalf by any method other than the one provided in the Settlement Documents.[29] The Secretary of Interior's decision on whether the Kings Mountain site may be taken into trust for the Tribe's benefit must therefore be determined solely on the basis of the terms of the Federal Act, the State Act, and the Settlement Agreement.[30]

The Settlement Documents Deny Trust Application

The Tribe filed its Trust Application with the Secretary of Interior "pursuant to" Section 12 of the Federal Act,[31] which governs the expansion of the Existing Reservation.[32] The Tribe argues that the proposed land into trust acquisition of the Kings Mountain property is mandatory under the Federal Act because the Trust Application meets all of the requirements for putting land into trust under the

terms of the Settlement Documents. The Catawba asserts that because the Kings Mountain property lies within the Tribe's federal *"service area"* (as defined in the Federal Act),[33] the Settlement Documents specifically permit placing North Carolina property into trust for the benefit of the Tribe. The Tribe also contends that because the targeted land is located outside of the State of South Carolina, it is entirely free from the restrictions imposed by the Settlement Documents on land acquisitions within South Carolina. According to the Tribe's arguments then, the Settlement Documents' detailed requirements for expanding the Existing Reservation only apply *to lands acquired in South Carolina*, and land in North Carolina that is taken into trust is subject to *no state or federal oversight whatsoever.*

In its Trust Application, the Tribe chooses to ignore the specific requirements outlined in the Settlement Documents for expansion of the Existing Reservation, perhaps because such requirements effectively prevent expanding the Existing Reservation into land within North Carolina.[34] Contrary to the Tribe's arguments in the Trust Application, the plain language of the Settlement Documents makes clear that only land within South Carolina may be held in trust with the Secretary of Interior and used to expand the Catawba's Existing Reservation.

The Settlement Documents define the word *"State"* only to mean the *"State of South Carolina."*[35] Neither *"North Carolina"* (nor any other state) is even mentioned in the State Act or the Settlement Agreement. Moreover, in each place that the Settlement Documents reference a state legislature or governor, such terms are defined to mean the state legislature and governor of South Carolina. The legislative history of Section 12 of the Federal Act (which provides the only means for the Tribe to acquire land in trust), clarifies that all of the land that is acquired and taken into trust for the benefit of the Tribe must be land located in York County and Lancaster County, South Carolina.[36]

The only Settlement Document that even mentions "North Carolina" is the Federal Act, which references it one time in the definition of *"service area,"* an area consisting of all of South Carolina and six "counties in the State of North Carolina" (Cabarrus, Cleveland, Gaston, Mecklenburg, Rutherford, and Union). The term "service area" appears only five times in the Federal Act: once in the definition of the term; once with respect to federal benefits and services for members of the Tribe; and three times in relation to the Tribe's "base membership roll."[37] The term "service area" is never used in the Settlement Documents to discuss land acquisitions, lands eligible for being placed into trust, or the expansion of the Existing Reservation. The legislative history of the Federal Act indicates that the term "service area" appears in the Federal Act only in order to define the "Catawba health care service area"[38] in the context of Section 4(b) of the Federal

Act, which concerns "eligibility for federal benefits and services" for members of the Tribe.

The Tribe's contention that the inclusion of six counties in North Carolina in the definition of federal "service area" somehow permits the Kings Mountain property to be placed into trust and used to expand the Existing Reservation is simply without merit. The Settlement Documents make clear that the only land that may be held in trust by the Secretary of Interior for the benefit of the Tribe is land located within South Carolina. The Settlement Documents therefore do not allow the Kings Mountain site to be placed in trust, and the Secretary of Interior should reject the Trust Application.

South Carolina law governs the Tribe's trust land and all of the Tribe's gambling activities.

In the Catawba's Trust Application, the Tribe argues that any "service area" land in North Carolina that is taken into trust for the benefit of the Tribe is exempt from the regulatory requirements imposed by the Settlement Documents on lands within South Carolina. This interpretation flies in the face of the precise language of the Settlement Documents themselves, which provide that any land taken into trust for the benefit of the Tribe is singularly governed by the laws and regulations of the State of South Carolina.[39] Section 4 of the Settlement Agreement specifically provides that the Tribe, its members, and "lands held in trust for the Tribe" are subject to the "civil, criminal and regulatory jurisdiction" of the State of South Carolina. Section 11 of the Settlement Agreement also states that South Carolina exercises exclusive criminal jurisdiction over the Catawba' reservation.[40]

The fact that South Carolina law governs the Tribe and its land is also made evident by Section

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14(b) of the Federal Act, which concerns the conduct of “games of chance” by the Tribe and provides “all laws, ordinances, and regulations of the State [of South Carolina], and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.”[41] The State Act contains the exact same language, and the Settlement Agreement provides in two different subsections that “all laws, ordinances, and regulations of the State of South Carolina, and political subdivisions” govern the regulation and conduct of gambling or wagering by the Tribe.[42] The Settlement Documents therefore make crystal clear that South Carolina law governs the regulation and conduct of any and all gambling *anywhere* by the Tribe.

As already discussed, the Settlement Documents do not permit lands outside South Carolina to be placed into trust for the benefit of the Tribe. However, even if one assumes that the Settlement Documents could somehow be read to allow the Kings Mountain site to be placed into trust, the Settlement Documents mandate that the laws and regulations of South Carolina will govern such land, as well as all gambling activities of the Tribe on such land. The South Carolina Supreme Court recently slammed the door on video gambling operations in that State when it held that the Tribe is subject to South Carolina gambling law in the same manner as any ordinary citizen of South Carolina.[43] Therefore, even if the Settlement Documents would allow the Kings Mountain site to be placed in trust as the Tribe argues, South Carolina law would foreclose the Tribe from opening a casino on the property because South Carolina law, as reiterated by the South Carolina Supreme Court, expressly prohibits all forms of video and Las Vegas-style casino gambling.

The Tribe dismisses the applicability of South Carolina law by simply asserting that South Carolina law would not apply to property in North Carolina that is held in trust. The Catawba’s interpretation of the Settlement Documents produces a scenario where the Tribe would be free of any laws or regulations governing the Kings Mountain site or the operation of a gambling casino on North Carolina property if such property were placed in trust. Clearly, the Tribe’s “anything goes” approach is not intended by the Settlement Documents, which would not provide a highly regimented regulatory process for South Carolina land on one hand, and then place absolutely no guidelines or regulations on North Carolina land on the other. In fact, the Federal Act expressly states that, “The jurisdiction and governmental powers of the Tribe shall be solely those set forth in this Act and the State Act.” The Tribe simply cannot produce an entirely new set of rights and privileges out of thin air. The only plausible understanding of the Settlement Documents is that they simply do not contemplate or permit lands outside of South Carolina to be taken into trust for the benefit of the Catawba.

Placing the Kings Mountain site into trust would lead to an unconstitutional dead end.

According to the terms of the Settlement Documents, any property placed in trust for the benefit of the Tribe is necessarily subject to the laws of South Carolina, including the state’s “civil, criminal, and regulatory jurisdiction,”[44] gambling laws,[45] real property taxes, local building codes,[46] etc. If the Kings Mountain site were placed into trust, as the Tribe argues it should be, such North Carolina land would correspondingly fall under the jurisdiction of another State, resulting in a clear violation of the U.S. Constitution. To interpret the Settlement Documents in the manner requested by the Tribe thus produces an unconstitutional dead end, which could also create some unintended consequences for the Tribe if it somehow resulted in the nullification of the Federal Act.

“Off the Reservation”

The Settlement Documents make absolutely clear that the only land that may be taken into trust by the Secretary of Interior for the benefit of the Tribe is land located within South Carolina. Even if a strained reading of the Settlement Documents were to somehow permit the Kings Mountain site to be taken into trust, the land and the gambling activities of the Tribe would still be governed by the laws of South Carolina, which specifically outlaw casino gambling. The Settlement Documents, which provide the only means for the Tribe to have land taken into trust on its behalf, therefore prohibit the Catawba from possessing trust land in North Carolina and bar the Tribe from operating a casino on the Kings Mountain site. All this, one might add, makes the Catawba’s plans to build a casino off the reservation completely “off the reservation.” ❖

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Endnotes

1. See Chapter 71A, N.C. GEN. STAT.

2. John Frank, "McCrory's interest in proposed casino faded abruptly," Raleigh News and Observer, Jan. 11, 2014.

3. *Id*.

4. For a more thorough discussion of the Catawba's treaties and land settlements with the State of South Carolina (with additional citations), see *Catawba Indian Nation v. State of South Carolina*, No. 27374 (S.C. April 2, 2014), http://www.judicial.state.sc.us/opinions/HTMLFiles/SC/27374.pdf. The Tribe first surrendered its aboriginal territory (located in North and South Carolina) through a treaty with the British in 1760, in exchange for the right to settle on a 144,000-acre tract of land in South Carolina. After leasing much of its settlement land to others, the Catawba entered into the Treaty of Nation Ford with the State of South Carolina in 1840, through which the Tribe conveyed the 144,000-acre tract to the State of South Carolina in exchange for a smaller 630-acre reservation and the provision of certain benefits. Over subsequent years, the Tribe consistently maintained that South Carolina was not performing its obligations under the Treaty of Nation Ford. Finally in 1943, South Carolina and the U.S. Department of Interior entered into an agreement to provide certain benefits and services to the Tribe whereby the Catawba became federally recognized under the Indian Reorganization Act (*as codified* at 25 U.S.C. § 461), and South Carolina purchased 3,434 acres of land and conveyed it to the Secretary of Interior to be held in trust for the Tribe. Just 10 years later though, the Catawba agreed to end federal oversight of the Tribe in keeping with the federal government's policy of terminating relationships with Indian tribes that it determined were ready for complete assimilation into U.S. culture. As a result, the Tribe's 1943 reservation land was liquidated and distributed to the Tribe's members pursuant to the 1959 Catawba Indian Tribe Division of Assets Act (25 U.S.C. §§ 931 – 938).

5. Federal Act, 25 U.S.C. §§ 941 – 941n.

6. State Act, S.C. CODE §§ 27-16-10 to -140.

7. Settlement Agreement, H.R. REP. NO. 2399, 103rd Cong. (1993) (hereinafter, the "Settlement Act").

8. Federal Act, 25 U.S.C. § 941a, § 941d (b), (c), (d).

9. Federal Act, 25 U.S.C. § 941d (a).

10. Federal Act, 25 U.S.C. § 941b(e).

11. Federal Act, 25 U.S.C. § 941l.

12. Federal Act, 25 U.S.C. § 941l(1); Settlement Agreement, §16.1; S.C. CODE § 27-16-110(A).

13. 25 U.S.C. §§ 2701 -2721.

14. *Catawba Indian Nation v. State of South Carolina*, No. 27374 (S.C. April 2, 2014), http://www.judicial.state.sc.us/opinions/HTMLFiles/SC/27374.pdf.

15. Julie Rose, "Why the Catawbas want a casino in NC, not SC," Charlotte Observer, Oct. 7, 2013.

16. *Id*.

17. In 1993, at the time that the Settlement Documents were implemented, video poker was legal in South Carolina. The Tribe (like all South Carolinians) lost the ability to operate video poker machines in 1999 when the South Carolina General Assembly passed a statewide ban on all video poker devices, and the Catawba was forced to eliminate video gambling from its Rock Hill reservation bingo facility. In 2005, the Tribe brought a lawsuit against South Carolina, arguing that the Settlement Documents provided it with the right to use video poker machines on the Existing Reservation, but in 2007, the South Carolina Supreme Court held that the statewide ban applied to the Tribe and that it could not offer video poker on its reservation. The Catawba also attempted, but failed, to obtain a ruling in 2003 that IGRA would apply (and the jackpot limits imposed by South Carolina law would not apply) to a high stakes bingo operation the Tribe planned to open in Santee.

18. *Catawba Indian Nation v. State of South Carolina*, No. 27374 (S.C. April 2, 2014), http://www.judicial.state.sc.us/opinions/HTMLFiles/SC/27374.pdf.

19. *Id*.

20. John Frank and Rick Rothacker, "McCrory administration explores casino deal with Catawba tribe," Raleigh News and Observer, Aug. 15, 2013.

21. *Id*.

22. John Frank, "McCrory's interest in proposed casino faded abruptly," Raleigh News and Observer, Jan. 1, 2014.

23. *Id*.

24. Opponents of reservation shopping have noted that the practice of reservation shopping "redefines the term 'sacred ground' to mean 'any land near an interstate highway with an interchange close to a metropolitan center.'" Edward Lynch, Citizens Against Reservation Shopping website, http://nothereplease.org/shopping/index.html.

25. John Frank and Rick Rothacker, "Catawba casino developer has long ties to video poker industry," Raleigh News and Observer, Feb. 8, 2014.

26. Dan Way, "Murky legal language could let Catawbas open NC casino," Carolina Journal, January 4, 2014.

27. IGRA allows federally-recognized tribes like the Catawba with land claim settlements already in place to conduct tribal gambling operations on lands acquired in trust after October 17, 1988, if (i) the Secretary of Interior, "after consultation with the Indian tribe and appropriate State and local officials . . . determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community," and (ii) "the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." IGRA, 25 U.S.C. § 2719(a) and (b).

28. Dave Palermo, "Off Rez, On Point," Global Gaming Business Magazine, Sept. 27, 2013.

29. Federal Act, 25 U.S.C. § 941d(a).

30. Section 12(m) of the Federal Act also provides that the general land acquisition regulations of the Bureau of Indian Affairs do not apply to the acquisition of lands authorized under the Settlement Documents, effectively foreclosing appeals by the Catawba in its Trust Application to any legal sources outside the scope of the Settlement Documents. Federal Act, 25 U.S.C. § 941j(m). It should be noted that the general land acquisition regulations of the Bureau of Indian Affairs found at 25 C.F.R. § 151 are derived from the statutory authority provided under Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. § 465 (the "IRA"). In *Carcieri v. Salazar,* 555 U.S. 379 (2009), the U.S. Supreme Court held that the Secretary of Interior may not use Section 5 of the IRA to take land into trust for tribes that were not "under federal jurisdiction" when the IRA was enacted in 1934. Because the Catawba was not a federally recognized tribe under the IRA until at least 1943, the Catawba are arguably barred from using the IRA as a basis for its Trust Application.

31. Federal Act, 25 U.S.C. § 941j.

32. Federal Act, 25 U.S.C. § 941j(b). Note that Section 13 of the Federal Act applies to the "Acquisitions of Non-reservation Properties." 25 U.S.C. § 941k(a). The Tribe apparently concedes through the Trust Application that Section 13 of the Federal Act does not apply to the Tribe's attempt to acquire the Kings Mountain off reservation property. This is perhaps because Section 13 of the Federal Act provides that such acquisitions are governed by Section 15 of the Settlement Act, which in turn provides that such provisions relate only to fee simple purchases of property, not property placed in trust.

33. Federal Act, 25 U.S.C. § 941a(9).

34. For example, the Federal Act provides "before requesting that any *non-contiguous tract* be placed in reservation status," the Tribe must "in consultation with the Secretary [of Interior] . . . make every reasonable effort to expand the Existing Reservation by assembling a composite tract of contiguous parcels that border and surround the Existing Reservation." Federal Act, 25 U.S.C. § 941j(d); Settlement Agreement, § 14.2.6. Sitting at least 30 miles from the Existing Reservation, the Kings Mountain site is clearly not "contiguous" to the Existing Reservation, and on its own, is not eligible to be used for expanding the Existing Reservation. The Settlement Agreement also provides that the "minimum desirable area" for any *non-contiguous parcels* taken into trust on behalf of the Tribe is 250 acres. Settlement Agreement, § 14.2.6.2(iii). The Kings Mountain property is only 16 acres in area, making the proposed casino site also ineligible for being placed in trust as *non-contiguous* property.

35. Federal Act, 25 U.S.C. § 941a(11) ("the term 'State' means, except for sections 6(a) through (f), the State of South Carolina." Sections 6(a) through (f) of the Federal Act refers to any state within the United States and plainly applies to only to the ratification of prior transfers and the extinguishment of land claims "anywhere in the United States."); Settlement Agreement, § 2.3; State Act, S.C. CODE § 27-16-30(13).

36. S. Rep., 103-124 at 23-24 (1993); see also H. Rep., 103-257(I), at 21 (1993).

37. Federal Act, 25 U.S.C. § 941a(11), § 941b(b), § 941e(b) and (c).

38. S. Rep., 103-124 at 21 (1993); H. Rep., 103-257(I), at 19 (1993).

39. Settlement Agreement, § 4.3.

40. Settlement Agreement, § 11.

41. Federal Act, 25 U.S.C. § 941l(b).

42. State Act, S.C. CODE § 27-16-110(A); Settlement Agreement, § 16.1, § 16.2.

43. *Catawba Indian Nation v. State of South Carolina*, (Opinion No. 27374, S.C., April 2, 2014), http://www.judicial.state.sc.us/opinions/HTMLFiles/SC/27374.pdf.

44. Settlement Agreement, § 4.3, § 11.1.

45. State Act, S.C. CODE § 27-16-110(A).

46. State Act, S.C. CODE § 27-16-120(A), (B).