

## Federal Judge Deals Setback For Mashpee Tribe's Casino Plans

1ST AUG 2016 | WRITTEN BY: SCOTT VAN VOORHIS

A Massachusetts tribe expects the federal government to appeal a Boston judge's ruling that it erred when it approved the tribe's reservation last year, possibly keeping a \$1bn casino project on track for the opening of its first phase next year.

U.S. District Court Judge William G. Young ruled in favor of a group of Taunton property owners who had sued to block the casino, claiming the U.S. Department of the Interior erred when it put land in trust for the [Mashpee Wampanoag Tribe](#).

On Thursday, Young held that the federal agency had no authority to acquire the land in trust since the tribe was not federally recognized at the time of the 1934 Indian Reorganization Act.

"I am confident the decision will be appealed," said Abim Thomas, an attorney with Goodwin Procter in Boston, who served as deputy chief legal counsel to former Governor Deval Patrick and helped negotiate a gaming compact with the Mashpee Wampanoag Tribe.

"It stands in stark contrast to the decision just rendered by the D.C. Circuit," Thomas said.

A federal appeals court on Friday upheld the Interior Department's decision to grant a reservation to the Cowlitz Tribe in southwestern Washington, rejecting efforts to block a \$510m casino on the land.

The Cowlitz had rejected proposed treaties offered by the U.S. government in the 19th century, and remained unrecognized until 2002, decades after the Indian Reorganization Act was passed.

The Cowlitz's facility, named ilani, is scheduled to open by Spring 2017.

However, the head of the tribe's gaming authority, as well as other legal observers, have said the Cowlitz decision by the U.S. Circuit Court of Appeals for the District of Columbia should bolster the Mashpees ability to prevail upon appeal.

Still, the decision has thrown a monkey wrench into the tribe's plans, with the Mashpees and their partner, [Genting Group](#), having begun construction earlier this year on the First Light casino in Taunton, an old industrial town 40 miles south of Boston.

The U.S. Department of the Interior last year agreed to take 140 acres of land into trust for the tribe in Taunton. The Mashpees this spring kicked off construction of their First Light casino, with hopes of opening a first phase in 2017.

Backed by Genting, tribal officials and legal experts brushed off the challenge, arguing that the Interior Department had spent years crafting its land-in-trust decision with an eye to making it as bullet-proof as possible in court.

But Young said the act defines Indians as persons, or the descendants of such persons, who were members of a tribe that was recognized at the time the law was passed.

A 2009 U.S. Supreme Court ruling, known as the [Carcieri decision](#), restricted eligibility for reservations to tribes that had an official relationship with the federal government in 1934.

“In light of the Supreme Court’s interpretation of ‘now under federal jurisdiction’ to mean under federal jurisdiction in June 1934, the secretary lacked the authority to acquire land in trust for the Mashpees, as they were not then under federal jurisdiction,” Young wrote.

By contrast, the Mashpees, after a 32-year struggle, won federal recognition in 2007.

If and when the Interior Department appeals, the Mashpee case would seem likely to wind up before the same D.C. appeals court that ruled in favor of the Cowlitz. The court traditionally handles cases involving the powers of federal regulatory agencies.

John Roberts, chairman of the Mashpee Wampanoag Gaming Commission, declined to comment, although he pointed to the D.C. Circuit Court’s decision last week as a reason to be encouraged.

Tribal officials have not yet said whether they plan to halt construction, with crews back on the site Friday morning the day after the ruling, according to local press reports.

Genting, the Malaysian-based casino giant backing the tribe’s casino plans, also operates Resorts World Casino at the Aqueduct racetrack, the largest slots casino in the country.

John Tahsuda, principal with Navigators Global and a former staff director of the U.S. Senate Committee on Indian Affairs, said Young’s ruling highlights the need for Congress to clarify the ambiguity around the wording of the Indian Reorganization Act.

That would mean making it clear the Interior Department truly has the authority to take land into trust for tribes recognized after 1934.

“I think it points to the need for Congress to step up and get some clarity on the Carcieri decision,” said Tahsuda. “It has been eight years — it would be helpful if Congress would step up and address the issue.”

**Geography:**

UNITED STATES

MASSACHUSETTS

Sectors:

CASINO

TRIBAL GAMING

Content:

REGULATORY NEWS