



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 27, 2023

Sent via USPS and Email

The Honorable Deb Haaland
Secretary of the Interior
1849 C. St. NW
Washington D.C. 20240
Email: Debra.Haaland@doi.gov

SUBJECT: Request for Government-to-Government Consultation on Colville Tribe's
Proposed Gaming Establishment within Yakama Nation's Treaty Territory

Dear Secretary Haaland,

On June 8, 2021, the Confederated Tribe and Bands of the Yakama Nation ("Yakama Nation") requested direct government-to-government consultation with you concerning the Confederated Tribes of the Colville Reservation's ("Colville Tribe") attempts to transfer land into trust and obtain a gaming determination for land within the Yakama Nation's Treaty Territory.¹ We are troubled that you have neither acknowledged receipt of our consultation request, nor scheduled government-to-government consultation with our Yakama Nation Tribal Council.

The purpose of this letter is to renew our consultation request to the United States Department of the Interior ("Interior"), and ask that you, acting in your capacity as Interior's Senior Departmental Official appointed by the President of the United States, join us in our Tribal Council Chambers to engage in government-to-government consultation. The Yakama Nation has the right to be heard by you, our Indian Agent, regarding a great harm being perpetuated against us by the Colville Tribe.

RIGHT TO GOVERNMENT-TO-GOVERNMENT CONSULTATION:

We are a Native Nation with inherent sovereign and Treaty-reserved rights, exercised as necessary to preserve our right to self-governance, to protect our members, and to ensure the United States upholds its promises established by Treaty of 1855 ("Treaty").² Since my ancestors negotiated our Treaty, we have abided by its terms, and have expended significant time and resources to ensure the United States does the same. Negotiations at

¹ Attachment A.

² See Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951.



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the Walla Walla Treaty Council are memorialized in the memories of my people, and by the Official Minutes of the Treaty Negotiations, all of which capture the historical context and understanding of how the Yakama Nation and the United States are to deal with one another on a government-to-government basis. An important understanding is that the United States would deal openly and honestly with my people and protect them from harm. As further captured by the Official Minutes, if the United States did not honor its Treaty obligations, we would have the ability to meet with the President of the United States to resolve our Treaty-based disputes.

The Treaty stands today, as it has for 167 years, as the foundation for the Yakama Nation's government-to-government relationship with the United States. The United States, its agencies, and their Senior Officials appointed by the President, all owe a fiduciary trust obligation to the Yakama Nation. A fundamental tenet of the trust obligation is the duty to meaningfully consult on federal actions that would have a detrimental impact on our inherent sovereign and Treaty-reserved rights. Executive Orders No. 13084 and 13175 confirm this duty, directing federal agencies to engage in "regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications", and directing federal agencies to "honor tribal treaty and other rights" and to "strive to meet the responsibilities" arising from the government-to-government relationship "when formulating and implementing policies that have tribal implications."³ This includes any Departmental regulation, rulemaking, policy, guidance, or operational activity that may have a substantial direct effect on an Indian tribe.

YAKAMA NATION'S TREATY TERRITORY:

Since time immemorial, the fourteen original, free, and independent Nations that comprise the Yakama Nation thrived both within and beyond the exterior boundaries of what later became the State of Washington. These fourteen tribes and bands – Yakama, Palouse, Pisuouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat – reached an accord on June 9, 1855, at the Walla Walla Treaty Council. These fourteen tribes and bands joined as one unified Nation under a shared political identify – the Confederated Tribes and Bands of the Yakama Nation. Together, they entered into the Treaty with the United States and established a government-to-government relationship between two sovereign Nations that endures to this day.

³ See 65 Fed. Reg. 67249, Executive Order No. 13175 (November 6, 2000); See also 63 Fed. Reg. 27655, Executive Order No. 13084 (May 19, 1998).



Article II of the Treaty established the boundaries of the Yakama Reservation, while Article I of the Treaty identified the areas where the Yakama people ceded certain enumerated rights. Article I recognized that, at the very least, our people ranged over twelve million acres at the time of the Treaty and utilized this territory as their homelands. To this day, our members exercise their off-Reservation Treaty-reserved rights both within and beyond this Treaty Territory, stretching from the North Cascade Mountains down to the Columbia River, and from the crest of the Cascades east to the Snake River. The Yakama Nation ceded certain rights to an expanse of land roughly one-third the size of modern day Washington State, to secure, among other rights, the right to the singular benefit of our Treaty Territory for the Yakama Nation and our people, exclusive and primary as to all other original Nations.

COLVILLE TRIBE'S PROPOSED GAMING ESTABLISHMENT WITHIN YAKAMA NATION'S TREATY TERRITORY:

The Colville Tribe has taken steps to develop gaming establishment within Franklin County, Washington State, which lies within the Yakama Nation's Treaty Territory. First, they purchased the subject property – 184 acres of fee land located approximately 165 miles south of the Colville Reservation's boundaries. Second, they entered into cooperative economic development agreements with local municipalities. Third, they filed an initial application with Interior, requesting that the Secretary take the subject property into to trust pursuant to 25 C.F.R. § 151, and requesting that the Secretary make the two-part gaming determination prescribed by 25 U.S.C. § 2719 and 25 C.F.R. § 292 to allow the Colville Tribe to conduct gaming activities on the subject property.

The Yakama Nation found the Colville Tribe's first two steps to be an attack on our sovereignty, and acted upon that concern by distributing letters voicing our opposition.⁴ The Colville Tribe's fee-to-trust application and request for a two-part gaming determination has escalated the matter to what we now deem to be a grave threat against the Yakama Nation's political integrity, economic wellbeing, and ability to maintain and exercise our Treaty-reserved cultural practices and traditions.

Within its application, the Colville Tribe asserts rights within the Yakama Nation's Treaty Territory, claiming an ancestral tie to the Palouse band, who were signatories to the Yakama Nation's Treaty of 1855. Viewed in a light most favorable to the Colville Tribe, this assertion of rights is patently misleading. It is a position that has been repeatedly rejected by federal courts following the Colville Tribe's prior failed attempts to assume the Yakama

⁴ Attachment B.



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Nation's inherent sovereign and Treaty-reserved rights.⁵ In no way can the Colville Tribe's rejected assertions form the basis for making a Secretarial determination granting the Colville Tribe's request to place the subject property into trust status and allowing the Colville Tribe to conduct gaming activities within the Yakama Nation's Treaty Territory.

The rights vested pursuant to the Treaty belong to the Yakama Nation as a whole, and not to its constituent bands individually. In the Treaty, the Yakama Nation reserved rights that extend broadly throughout the Yakama Nation's Treaty Territory, and remain exclusive and primary as to any other original Nation within the lands described in Article I. To claim a right within the Yakama Nation's Treaty Territory, the Colville Tribe's constituent band must have "maintained sufficient political continuity with [the Nation] who signed the treaty [so] that it may fairly be called *the same tribe*."⁶ A showing of common ancestry alone is not sufficient to establish political cohesion.⁷ Likewise, a showing that a tribe includes descendants of a signatory tribe is inadequate.⁸ None of the Colville Tribe's constituent bands have maintained any degree of political continuity with the Yakama Nation that would be required to claim a right within the Yakama Nation's Treaty Territory.

The United States must reject the Colville Tribe's effort to rewrite its history. The Colville Tribe and its constituent bands owe their existence as a federally recognized sovereign to an Executive Order and subsequent Agreements.⁹ These properly define and place limitation on what can be considered the Colville Tribe's self-declared "aboriginal" lands. Here, the land the Colville Tribe purports to claim for themselves, is, without question, land defined by Article I of the Yakama Nation's Treaty—the very Treaty which courts have already concluded cannot be claimed by the Colville Tribe.

RIGHT TO NOTICE:

The Yakama Nation should not have to rely on the courts to once again stop the Colville Tribe from asserting a false history and claiming rights under our Yakama Nation

⁵ See, e.g., *United States v. Oregon*, 29 F.3d 481 (9th Cir. 1994); *United States v. Oregon*, 470 F.3d 809 (9th Cir. 2006); *United States v. Confederated Tribes of the Colville Indian Reservation*, 606 F.3d 698 (9th Cir. 2010).

⁶ See *United States v. Oregon*, 29 F.3d at 484.

⁷ *Id.*

⁸ See *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 776 (9th Cir. 1990).

⁹ The Colville Tribe and its Reservation were established by Executive Order of July 2, 1872. Colville's Reservation was diminished by an 1891 Agreement where the Colville Tribe sold the northern half of its Reservation for \$1,500,000. See *Antoine v. United States*, 420 U.S. 194, 197-198 (1975).



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Treaty. The Yakama Nation should be able to rely on you – our Indian Agent – to step forward and uphold the United States’ fiduciary trust responsibility to protect the Yakama Nation from the Colville Tribe in its illegitimate pursuit of a Secretarial determination over the subject property.

We first became aware of the Colville Tribe’s intentions after their purchase of the subject property. On June 21, 2019, they issued a public press release, claiming the purchase was part of a long-term strategy to buy back lands in *its* historic territories for cultural and economic development. Over the ensuing months, the words “economic development” morphed into “gaming development” as the Colville Tribe met with local city, county, and state officials to garner favor. Given the openness and alarming nature of this discourse, the Yakama Nation Tribal Council passed and widely distributed to federal, state, and Colville officials the attached Resolution T-087-21 to ensure our unequivocal opposition was stated, and to secure our position as an interested and affected party entitled to notice by the United States if and when the Colville Tribe submitted a fee-to-trust application or an application requesting a Secretarial two-part gaming determination.¹⁰

The sentiment expressed by Resolution T-087-21 is consistent with the Yakama Nation’s objections raised by our Tribal Council in a face-to-face meeting with then Assistant Secretary of Indian Affairs Tara Sweeny during a December 16, 2019 government-to-government consultation. The Yakama Nation reconfirmed its opposition in a follow up letter to the Assistant Secretary, and reiterated its expectation for notice of any fee-to-trust or Secretarial two-part gaming determination application filed by the Colville Tribes.¹¹

The Colville Tribe’s initial application is attached to this letter.¹² It is dated September 30, 2021. Both before and after this date, the Yakama Nation sent many letters and emails to the United States expressing opposition to any effort by the Colville Tribe to place the subject property into trust status. In addition to those communications sent to you and the Assistant Secretary, many more were sent to the BIA Regional Director for the Northwest Region, Bryan Mercier.¹³ The Yakama Nation asked that notice be immediately provided to the Yakama Nation if and when the Colville Tribe submitted a fee-to-trust or two-part gaming determination application. This message was echoed during face-to-face meetings with BIA Regional Director Mercier during his several visits with our Tribal Council. The Yakama Nation was entitled to such notice as a party having expressed

¹⁰ Attachment C.

¹¹ Attachment D.

¹² Attachment E.

¹³ Attachment F.



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interest, as a party with Treaty-reserved rights over the lands in question, and as a party who is owed fiduciary trust obligations by the United States. Yet, the only reason the Yakama Nation became aware of the Colville Tribe's initial application filing is because of the Yakama Nation's own investigations and persistence.

On February 16, 2023, in response to the Yakama Nation's *third* Freedom of Information Act request concerning the same issue, the BIA Northwest Region finally released a copy of the Colville Tribe's September 30, 2021 application. This was provided to the Yakama Nation **more than 500 days** after its submission to you, to Assistant Secretary of Indian Affairs Bryan Newland, and to Regional Director Mercier. The effort needed to provide timely notice was minimal. The expectation that timely notice would be provided was reasonable. The failure to provide *any* notice after numerous formal requests and reminders is unconscionable. The United States' failure to provide the Yakama Nation with its right to notice is an incredible breach of the United States' fiduciary trust obligation and must not be ignored.

Beyond well founded trust principles confirmed by all three branches of the Federal Government, the Yakama Nation should not need to rely on its persistence alone to receive the notice it demands. Interior's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for the Secretary to acquire land in trust. 25 C.F.R § 151.11 requires that, upon receipt of a tribe's written request to have lands taken into trust, the Secretary shall notify state and local governments having regulatory jurisdiction over the land to be acquired, invite written comments, and consider whether any jurisdictional problems and potential conflicts of land use may arise. To date, the Yakama Nation has not received any notice of invitation to comment on the Colville Tribe's September 30, 2021 application and its request to Interior to take the subject property into trust.

The right to notice is further implicated by the Indian Gaming Regulatory Act and its implementing regulations at 25 U.S.C. § 2719 and 25 C.F.R. Part 292. These require that the BIA's Regional Director provide notice of any two-part gaming determination application to local governments and nearby Indian tribes, and issue a consultation letter inviting comments from local governments and nearby Indian tribes. To date, the Yakama Nation has not received any notice or invitation to comment on the Colville Tribe's September 30, 2021 application for two-part gaming determination. **To remove all doubt as to the Yakama Nation's position, please consider this letter as the Yakama Nation's formal petition for notice and consultation described at 25 CFR § 292.2.** You – our Indian Agent – must consult with us on a government-to-government basis to understand the direct and detrimental impacts the Colville Tribe's proposed gaming activities on lands within the Yakama Nation's Treaty Territory will have on the Yakama Nation's



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governmental functions, political integrity, economic wellbeing, and ability to exercise and maintain our Treaty-reserved cultural practices and traditions.

To the extent there is an ongoing National Environmental Policy Act environmental review being conducted in relation to the Colville Tribe's September 30, 2021 application, the Yakama Nation formally requests to be included as a participating agency and a consulting party to ensure that the Yakama Nation has every opportunity to protect our interests from the Colville Tribe's patently misleading assertions and false claim of rights under our Yakama Nation Treaty.

RENEWED INVITATION:

The Yakama Nation calls upon you to honor the intent and words of the Treaty, and to meet with myself and fellow Chiefs of the Yakama Nation to consult on this Colville Tribe matter and resolve this Treaty-based dispute. I call upon you, in your official capacity as the Secretary of Interior and our Indian Agent, to come to Toppenish, Washington and formally engage in government-to-government consultation with the Yakama Nation Tribal Council in our Tribal Council Chambers to hear directly from us why we oppose the Colville Tribe's fee-to-trust application and request for a two-part gaming determination allowing it conduct gaming activities on the subject property within our the Yakama Nation's Treaty Territory. Until this face-to-face meeting takes place, I call upon you to direct your emissaries to order their staff to immediately suspend all work being performed on the Colville Tribe's behalf, subject to the following exception – the preparation and issuance of a decision letter denying the Colville Tribe's application.

Your prompt response to this matter is appreciated. Please respond to this request for government-to-government consultation in writing, with courtesy copies to Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at P.O. Box 150, Toppenish, WA 98948, and electronically at ethan@yakamanation-olc.org.

Respectfully,

Kahloola (Gerald Lewis), Chairman
Yakama Nation Tribal Council

CC: Bryan Newland
Assistant Secretary - Indian Affairs
United States Department of the Interior



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of the Yakama Nation

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Bryan Mercier
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Portland, Oregon 97232
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Wyeth Chad Wallace
BIA Superintendent, Yakama Agency
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Toppenish WA, 98948
Email: Wyeth.Wallace@bia.gov

Attachments: (6)

- A. Letter_06/08/21_Yakama Nation Opposition, Request for Notice, and Request for Government to Government Consultation _Sec. Haaland
- B. Letter_03/13/20_Yakama Nation Opposition and Request for Notice_President Trump
- C. Resolution_05/06/21 _Yakama Nation Tribal Council_T-087-21
- D. Letter_01/16/20_Yakama Nation Opposition and Request for Notice_ASIA Sweeney
- E. Letter/Application_09/30/21_Colville Tribe
- F. Letter_01/10/20_Yakama Nation Opposition and Request for Notice_Reg. Dir. Mercier

Attachment “A”



Confederated Tribes and Bands
of the Yakama Nation

Established by the
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June 8, 2021

Sent via Electronic Mail and Certified Mail

Secretary Deb Haaland
United States Department of Interior
1849 C. St. N.W.
Washington D.C., 20240

Re: Call For Consultation And To Reject Colville's Attack On The Yakama Nation's History And Lands

Dear Secretary Haaland, Our Indian Agent:

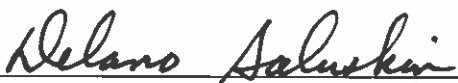
I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (the "Yakama Nation"). The Confederated Tribes of the Colville Reservation ("Colville") have purchased land within our Treaty Territory, for the purpose of building a casino, and have made concerted efforts to re-write the aboriginal history of our Palouse people.

Attached represents a formal governmental act by the Yakama Nation Tribal Council, calling on all federal, state, and local governments to reject Colville's effort to colonize the Yakama Nation's Treaty Territory and from re-writing the Yakama Nation's history through its strategic propaganda campaign.

The Yakama Nation recognizes Colville's activities as an attack against our most important resources: our People, our Lands, and our History. The Yakama Nation, pursuant to Article III of the Treaty with the Yakamas, calls on the Federal Government to intervene on the Yakama Nation's behalf to stop Colville from its modern-day war effort. As an act of self-defense, the Yakama Nation has directed all available governmental resources to carry out a systemic, non-violent opposition against Colville's efforts. The Yakama Nation asks that you and your leadership support the Yakama Nation and reject Colville's efforts to develop gaming within our Treaty Territory.

The Yakama Nation is open and ready to discuss our position. We therefore request direct, government-to-government consultation with you, our Indian Agent, so that we may work together to stop this unrighteous and disheartening attack.

Respectfully,



DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

Attachment “B”



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

March 13, 2020

Sent via Certified Mail and Email

Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500
President@whitehouse.gov

Re: The Yakama Nation's Opposition to the Colville Tribes' Fee-to-Trust Acquisition in Pasco, Washington

Dear President Trump:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"). The Confederated Tribes of the Colville Reservation ("Colville") have wrongfully entered and purchased Yakama Nation lands. Colville plans to apply for a Fee-to-Trust acquisition in an effort to transfer title of our lands into trust for their benefit and for the purpose of operating a Casino Enterprise within our ceded territory. The Yakama Nation asks that you, the President of the United States, cease Colville's effort to take any Yakama Nation aboriginal lands into trust for Colville. The Yakama Nation objects to Colville's attempt to lay any claim within our Treaty Territory. Neither Colville nor any constituent band of Colville may claim aboriginal rights to the Yakama Nation's ancestral lands. The Yakama Nation will oppose this development at every level.

Since time immemorial, the original, free, and independent Nations that were later confederated as the Yakama Nation, have thrived on the lands and resources handed down from Tamanwala', the Creator. We signed the Treaty with the Yakamas of June 9, 1855 (12 Stat. 951) ("Treaty of 1855") and became one Nation, the Yakama Nation, "which [is] the entity vested with the rights of the 1855 Treaty." *United States v. Oregon*, 2008 WL 3834169, at *16 (D. Or. Aug. 13, 2008), *aff'd sub nom. United States v. Confederated Tribes of Colville Indian Reservation*, 606 F.3d 698 (9th Cir. 2010). These sacred rights vested pursuant to our Treaty "belong to the tribal entity as a whole, [and] not to its component bands individually." *United States v. State of Or.*, 29 F.3d 481, 487 (9th Cir.), *amended*, 43 F.3d 1284 (9th Cir. 1994).

In the Treaty of 1855, the Yakama Nation reserved the right to live by Tamanwala's laws. These rights extend broadly throughout our original aboriginal territory. Our rights prove both *exclusive* and *primary* as to any other original nation within the territory described in Article I of our Treaty of 1855 ("Treaty Territory"):

Commencing at Mount Rainer, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119° 10',) which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47°) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction in the Moh-hah-ne-she, or southern tributary of the same; thence, in a southeasterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Percé tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks," below the Priest's Rapids; thence westerly to a lake called "La Lac;" thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the westerly extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

In other words, our Ancestors reserved rights both *exclusive* and *primary* as to any other original nation. The Treaty today stands executed by the Yakama Nation, the Nation that "by agreement of the separate tribal groups, [became] the successor in interest to the rights of the former separate entities." 12 Ind. Cl. Comm. 301 at 367. It was by our Treaty that all "tribal rights to the land to which each separate tribal entity held Indian title were *merged*." *Id.* (emphasis added). It is our Nation, the Yakama Nation, that possesses the rights to the lands above ceded. Neither Colville nor any constituent band of Colville possess such rights.

Colville attempts to tie its history to our lands through its Palouse Band members. Members of the Palouse Band signed our Treaty and remain named in its Preamble, but some Palouse people did not join the Yakamas and eventually became located on the Colville Reservation to become the Palouse of Colville. *Id.* at 368. Consequently, the Palouse of Colville possess only those rights that Colville established by the Colville Indian Reservation Executive Order of July 2, 1872, and Colville's 1891 Agreement.

Indeed, Colville and its constituent bands are not parties to any treaty with the United States and do not possess rights beyond the exterior boundaries of their previous Reservation. The United States Supreme Court recognized the jurisdictional breadth of Colville's rights in *Antoine v. United States*, 420 U.S. 194, 197-98 (1975), where the Supreme Court determined that Colville's 1891 Agreement reserved rights only within the diminished northern half of Colville's previous Reservation. Neither the Executive Order of July 2, 1872, nor the 1891 Agreement established any right to Colville or any constituent band or person of Colville beyond the exterior boundaries of the Colville Reservation that was established in 1872.

Colville's attempt to use a constituent band to gain aboriginal rights outside its 1872 Reservation boundaries has been determined an erroneous act before. In *U.S. v. Confederated Tribes of the Colville Reservation*, 606 F.3d 698 (9th Cir. 2010), the Yakama Nation successfully opposed the Colville's attempt to assert 1855 Treaty-based fishing rights within the Wenatshapam Fishery. The Ninth Circuit Court of Appeals engaged a factual inquiry into whether the constituent band of Colville "claiming treaty rights ha[d] maintained sufficient political continuity" with the Yakama Nation as to exercise a treaty right to the Fishery. *Id.* at 706. The Ninth Circuit honored the Yakama Nation's claims and concluded that the constituent band of Colville "had not maintained political cohesion with the [Yakama Nation that was] created by the 1855 treat[y]." *Id.* at 706 (quotations omitted). In its analysis, the Ninth Circuit examined the history of each band who sought to "trace their cultural and political lineage to" the Yakama Nation. *Id.* The Ninth Circuit determined that these lineal tribes, "*prior to being subsumed by the Colville Confederacy*, were separate bands who disengaged from the Yak[a]ma Nation by refusing to relocate to the reservation established" by our Treaty of 1855. *Id.* (emphasis added and quotations omitted).

Similar to our situation here, the Palouse of Colville disengaged from the Yakama Nation by refusing to relocate to our Reservation and later became subsumed by the Colville Confederacy. *See id.* To claim a right to develop a Casino Enterprise within the Yakama Nation's ceded territory, the Palouse of Colville must have "maintained sufficient political continuity with [the Yakama Nation] who signed the treaty [so] that it may fairly be called the same tribe." *Id.* The Palouse of Colville failed to maintain such continuity with the Yakama Nation.

In sum, Colville does not possess rights or the ability to develop a Casino Enterprise outside its 1872 Reservation boundaries. Colville failed to reserve its rights by a treaty with the United States. Colville preserved rights simply in the northern half of its 1872 Reservation through negotiations of an 1891 Agreement. Neither Colville nor a constituent band may lay claim to any right outside this area. Accordingly, there is no basis for Colville to now assert a claim to the Yakama Nation's ancestral territories within the Tri-Cities area.

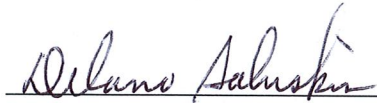
The Yakama Nation has lodged its standing objection to Colville, the Governor of Washington, the City of Kennewick, the City of Richland, the City of Pasco, Franklin County, and now to the President of the United States, the Bureau of Indian Affairs, and its Department of the Interior Secretary from taking any action towards acquiring Yakama Nation aboriginal lands in trust for the benefit of Colville.

The Federal Government possesses a fiduciary duty to the Yakama Nation pursuant our Treaty of 1855—a duty higher than one established by a mere Agreement. The Yakama Nation requests that you, the President of the United States, and the Federal Government

uphold its trust responsibility and protect the Yakama Nation from the ensuing harm of Colville's wrongful attempt at this land acquisition and Casino development. The Yakama Nation requests that you stop Colville's attempt to colonize our homelands.

All Notices of Application or Decision, and any questions or concerns should be directed to Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 834-8005 or via email at Ethan@yakamanation-olc.org.

Respectfully,



Delano Saluskin, Chairman
Yakama Nation Tribal Council

CC: David Bernhardt
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1849 C. Street, N.W.
Washington, D.C. 20240

Tara Sweeney
Assistant Secretary of Indian Affairs
Department of Indian Affairs
1849 C. Street, N.W.
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Darryl LaCounte
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Bryan Mercier, Regional Director
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Bureau of Indian Affairs
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E. Sequoyah Simermeyer (Coharie)
Chairman
Nation Indian Gaming Comm'n
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Mail Stop #1621
Washington, D.C. 20240

Attachment “C”



RESOLUTION

T-087-21

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation by the authority delegated by the Resolution of February 1944 and Resolution T-38-56, and

WHEREAS, the Yakama Tribal Council has the duty and responsibility according to the Resolutions T-38-56 and T-10-61 to protect and preserve the Treaty Rights of the Yakama Nation, and

WHEREAS, the Confederated Tribes of the Colville Reservation ("Colville") were not established by Treaty, and have no recognized rights outside the boundaries of their executive order reservation, and

WHEREAS, Colville has waged war against the Yakama People for a generation to take our Treaty rights for themselves, losing battle after battle in the courts, and establishing the very precedent that limits themselves to their executive order reservation, and

WHEREAS, having failed in their efforts to steal the Yakama Nation's territory to steal our land and history in a modern day act of cultural genocide, and

WHEREAS, Colville's actions constitute acts of war against the Yakama Nation, and

WHEREAS, the United States holds Treaty obligations to protect the Yakama Nation from Colville, a rogue entity the United States created by executive order.

NOW, THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in Regular Session at Yakama Nation Legends Casino Hotel Event Center, with a quorum being present, that pursuant to Article VIII of the Treaty of 1855, the Yakama Nation calls on the United States to intervene on the Yakama Nation's behalf to stop Colville from placing the Yakama Nation's Article I land into trust.

BE IT FURTHER RESOLVED, pursuant to Article VIII of the Treaty of 1855, the Yakama Nation calls on the United States to intervene on the Yakama Nation's behalf to stop Colville from developing a gaming facility, and other economic enterprises within the Yakama Nation's Article I lands.

BE IT FURTHER RESOLVED, pursuant to Article VIII of the Treaty of 1855, the Yakama Nation calls on the United States to intervene on the Yakama Nation's behalf to stop Colville from attacking the Yakama Nation's natural resources, cultural resources, and history throughout our traditional territory.


BE IT FURTHER RESOLVED, the Yakama Nation calls on the Governor of the State of Washington to reject every fee to trust application filed by Colville for lands within the Yakama Nation's Article I lands.

BE IT FURTHER RESOVLED, the Yakama Nation calls on all local governments to reject Colville's active efforts to colonize the Yakama Nation's Article I lands and re-write the Yakama Nation's history through propaganda.

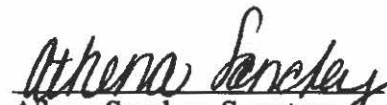
BE IT FURTHER RESOLVED, all available Yakama Nation governmental resources are hereby directed to carry out the systematic and non-violent opposition of Colville's efforts to colonize the Yakama Nation's Article I lands.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish our Sovereign Immunity, whether expressed or implied, by virtue of this resolution for any and all administrative or legal action, which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter, or otherwise diminish our rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 6th, day of May 2021 by the Yakama Nation Tribal Council by a vote of 13 for, 0 against and 0 abstentions.


Delano Saluskin, Chairman
Yakama Tribal Council

ATTEST:


Athena Sanchey, Secretary
Yakama Tribal Council

Cc: File
Timber OED Ca#175-2021-1

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

Attachment “E”



The Confederated Tribes of the Colville Reservation

P.O. Box 150, Nespelem, WA 99155

(509) 634-2200

FAX: (509) 634-4116



Thursday, September 30, 2021

Hon. Deb Haaland
Secretary of the Interior
United States Department of the Interior
1849 C Street, N.W.
Washington DC 20240

000089

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OFFICE OF THE
EXECUTIVE SECRETARIAT

Bryan Newland
Assistant Secretary – Indian Affairs
United States Department of the Interior
1849 C Street, N.W. MS-4660-MIB
Washington DC 20240

Bryan K. Mercier
Regional Director
Bureau of Indian Affairs – Northwest Region
United States Department of the Interior
911 Northeast 11th Avenue
Portland, Oregon 97232

Dear Secretary Haaland, Assistant Secretary Newland, and Regional Director Mercier,

The Confederated Tribes of the Colville Reservation (Colville Tribes) is submitting this letter as an initial application to the Bureau of Indian Affairs (BIA) to take a 160-acre property in Pasco, Washington (Subject Property) that it owns into federal trust on behalf of the Colville Tribes in accordance with 25 CFR Section 151; and as an initial application to the Secretary of the Interior (Secretary) to make the two-part determination required under 25 USC Section 2719 and 25 CFR Section 292 to enable the Colville Tribes to conduct gaming activities on the Subject Property. The attached Tribal Resolution 2021-719 presents the formal request of the Colville Business Council on behalf of the Colville Tribes membership.

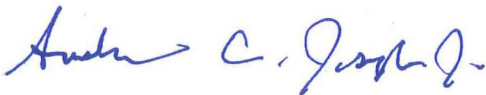
The Subject Property is located in the City of Pasco (City) in Franklin County, Washington within Section 17 of Willamette Meridian Baseline & Meridian in Township 9 North, Range 30 East as depicted on the Glade USGS 7.5' quadrangle maps. The Subject Property lies within the aboriginal lands of the Palus Tribe, a member tribe of the Colville Tribes; the pasxa village site is located approximately 3.5 miles from the property. As shown on **Exhibit A**, regional access is provided by U.S. Highway 395 located west of the Subject Property. The Subject Property consists of one parcel (Assessor's Parcel Number [APN] 113-130-068) and contains an agricultural field with a center-pivot irrigation system fed by an on-site well. An aerial image of

the Subject Property is presented in **Exhibit B**. Surrounding land uses include agriculture, light industrial, and commercial uses.

The Colville Tribes are currently in the process of preparing supplemental applications that will include the information and necessary assessments required by 25 CFR Section 151 and 25 CFR Section 292 for the respective federal actions. We have engaged prominent economic and architecture firms to assist us in developing a detailed proposal for a casino development on the Subject Property.

We intend to request a meeting with Regional Director Mercier and the BIA Northwest Regional Office to discuss the supplemental application and environmental review process. The Colville Business Council, and the tribal staff and attorneys are at your disposal as you embark on this task that is of the utmost importance to the Colville Tribes.

Respectfully submitted,

A handwritten signature in blue ink, reading "Andrew C. Joseph Jr." with a stylized flourish at the end.

Andrew C. Joseph Jr.
CHAIRMAN

Cc:

Bodie Shaw, Deputy Regional Director, Trust Services

Brian Haug, Regional Environmental Scientist, Bureau of Indian Affairs

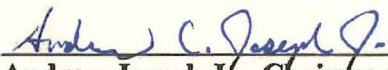
RESOLUTION

WHEREAS, it is the recommendation of the Natural Resources Committee to approve the attached application letter, Chairman or designee is authorized to sign all relevant documents. **THIS RECOMMENDATION SHEET AND ANY RESOLUTION APPROVED BY THE CBC AS A RESULT WILL BE CONFIDENTIAL AND NOT RELEASED TO ANY UNAUTHORIZED PERSON WITHOUT APPROVAL OF THE CBC.**

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in a **SPECIAL SESSION** this **23rd day of September, 2021** acting for and in behalf of the Colville Confederated Tribes, Nespelem Washington, do hereby approve the above recommendation of the Natural Resources Committee.

The foregoing was duly enacted by the Colville Business Council by a vote of **10 FOR 0 AGAINST 0 ABSTAINED**, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:



Andrew Joseph Jr., Chairman
Colville Business Council

cc: Jarred Erickson, NRC Committee Chair
Peggy Circle, NRC Committee Secretary
Francis Somday, Executive Director
William Nicholson II, Chief Financial Officer
Dept. or Program: Cody Desautel, Natural Resources Director



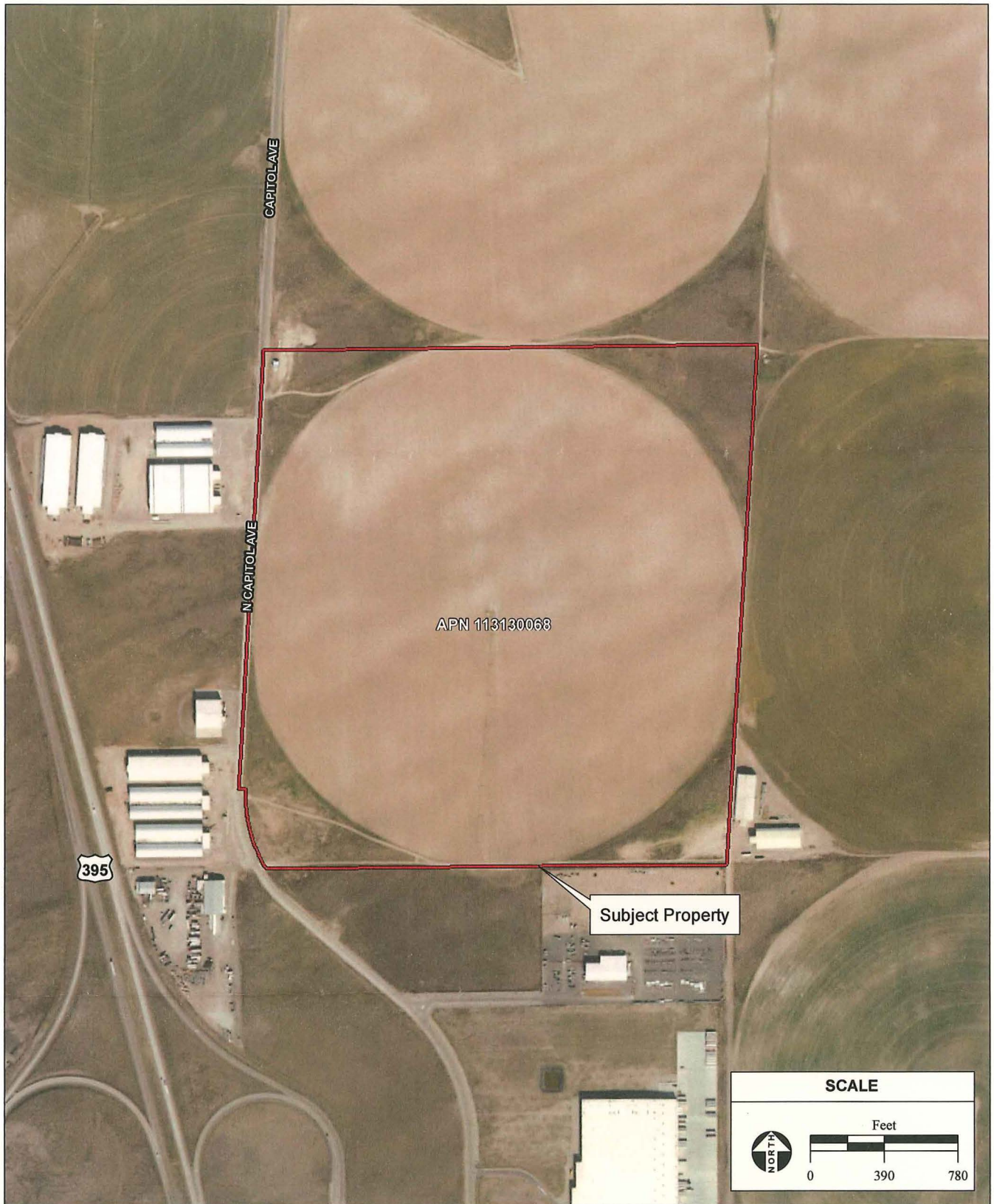


Exhibit B
Aerial Photograph

Attachment

“F”



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

January 10, 2020

Sent via Certified Mail

Bryan Mercier, Regional Director
Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169
(509) 231-6702

Re: The Yakama Nation's Opposition as an Interested Party to the Colville Tribes' Fee-to-Trust Acquisition in Pasco, Washington

Dear Regional Director Mercier:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"). The Yakama Nation asks that the Northwest Regional Office of the Bureau of Indian Affairs and the U.S. Department of Interior Secretary cease taking any Yakama Nation aboriginal lands into trust for the Confederated Tribes of the Colville Reservation ("Colville"). The Yakama Nation objects to Colville's attempt to lay any claim within our Treaty Territory. We stand firm in our position that neither Colville nor any constituent band may claim aboriginal rights to the Yakama Nation's ancestral lands. The Yakama Nation will oppose this development at every level.

Since time immemorial, the original, free, and independent Nations that were later confederated as the Yakama Nation, have thrived on the lands and resources handed down from Tamanwala', the Creator. We signed the Treaty with the Yakamas of June 9, 1855 (12 Stat. 951) ("Treaty of 1855") and became one Nation, the Yakama Nation, "which [is] the entity vested with the rights of the 1855 Treaty." *United States v. Oregon*, 2008 WL 3834169, at *16 (D. Or. Aug. 13, 2008), *aff'd sub nom. United States v. Confederated Tribes of Colville Indian Reservation*, 606 F.3d 698 (9th Cir. 2010). These sacred rights vested pursuant to our Treaty "belong to the tribal entity as a whole, [and] not to its component bands individually." *United States v. State of Or.*, 29 F.3d 481, 487 (9th Cir.), *amended*, 43 F.3d 1284 (9th Cir. 1994).

In the Treaty of 1855, the Yakama Nation reserved the right to live by Tamanwala's laws. These rights extend broadly throughout our original aboriginal territory. Our rights prove both *exclusive* and *primary* as to any other original nation within the territory described in Article I of our Treaty of 1855 ("Treaty Territory"):

Commencing at Mount Rainer, thence northerly along the main ridge of the Cascade Mountains to the point where the northern

Yakama Nation, Post Office Box 151, Toppenish, WA 98948 (509) 865-5121

tributaries of lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119° 10'), which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47°) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction in the Moh-hah-ne-she, or southern tributary of the same; thence, in a southeasterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Percé tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks," below the Priest's Rapids; thence westerly to a lake called "La Lac;" thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the westerly extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

In other words, our Ancestors reserved rights both *exclusive* and *primary* as to any other original nation. The Treaty today stands executed by the Yakama Nation, the Nation that "by agreement of the separate tribal groups, [became] the successor in interest to the rights of the former separate entities." 12 Ind. Cl. Comm. 301 at 367. It was by our Treaty that all "tribal rights to the land to which each separate tribal entity held Indian title were *merged*." *Id.* (emphasis added). It is our Nation, the Yakama Nation, that possesses the rights to the lands above ceded. Neither Colville nor any constituent band of Colville possess such rights.

The Palouse of Colville members cannot lay claim to the Yakama Nation's lands. It is true that members of the Palouse Band signed our Treaty and remain named in its Preamble. Some Palouse people, however, did not join the Yakamas and eventually became located on the Colville Reservation to become the Palouse of Colville. *Id.* at 368. Consequently, the Palouse of Colville possess only those rights that Colville established by the Colville Indian Reservation Executive Order of July 2, 1872, and Colville's 1891 Agreement.

Indeed, Colville and its constituent bands are not parties to any treaty with the United States and do not possess rights beyond the exterior boundaries of their previous Reservation. The

United States Supreme Court recognized the jurisdictional breadth of Colville's rights in *Antoine v. United States*, 420 U.S. 194, 197-98 (1975), where the Supreme Court determined that Colville's 1891 Agreement reserved rights only within the diminished northern half of Colville's previous Reservation. Neither the Executive Order of July 2, 1872, nor the 1891 Agreement established any right to Colville or any constituent band or person of Colville beyond the exterior boundaries of the Colville Reservation that was established in 1872.

Colville's attempt to use a constituent band to gain aboriginal rights outside its 1872 Reservation boundaries has been determined an erroneous act before. In *U.S. v. Confederated Tribes of the Colville Reservation*, 606 F.3d 698 (9th Cir. 2010), the Yakama Nation successfully opposed the Colville's attempt to assert 1855 Treaty-based fishing rights within the Wenatshapam Fishery. The Ninth Circuit Court of Appeals engaged a factual inquiry into whether the constituent band of Colville "claiming treaty rights ha[d] maintained sufficient political continuity" with the Yakama Nation as to exercise a treaty right to the Fishery. *Id.* at 706. The Ninth Circuit honored the Yakama Nation's claims and concluded that the constituent band of Colville "had not maintained political cohesion with the [Yakama Nation that was] created by the 1855 treat[y]." *Id.* at 706 (quotations omitted). In its analysis, the Ninth Circuit examined the history of each band who sought to "trace their cultural and political lineage to" the Yakama Nation. *Id.* The Ninth Circuit determined that these lineal tribes, "*prior to being subsumed by the Colville Confederacy*, were separate bands who disengaged from the Yak[a]ma Nation by refusing to relocate to the reservation established" by our Treaty of 1855. *Id.* (emphasis added and quotations omitted).

Similar to our situation here, the Palouse of Colville disengaged from the Yakama Nation by refusing to relocate to our Reservation and later became subsumed by the Colville Confederacy. *See id.* To claim a right to develop a Casino Enterprise within the Yakama Nation's ceded territory, the Palouse of Colville must have "maintained sufficient political continuity with [the Yakama Nation] who signed the treaty [so] that it may fairly be called the same tribe." *Id.* The Palouse of Colville failed to maintain such continuity with the Yakama Nation.

In sum, Colville does not possess rights or the ability to develop a Casino Enterprise outside its 1872 Reservation boundaries. Colville failed to reserve its rights by a treaty with the United States. Colville preserved rights simply in the northern half of its 1872 Reservation through negotiations of an 1891 Agreement. Neither Colville nor a constituent band may lay claim to any right outside this area. Accordingly, there is no basis for Colville to now assert a claim to the Yakama Nation's ancestral territories within the Tri-Cities area.

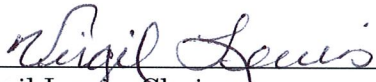
The Yakama Nation has lodged its standing objection to Colville, the Governor of Washington, the City of Kennewick, the City of Richland, the City of Pasco, Franklin County, and now the United States, its Bureau of Indian Affairs, and its Department of the Interior Secretary from taking any action towards acquiring Yakama Nation aboriginal lands in trust for the benefit of Colville.

The Federal Government possesses a fiduciary duty to the Yakama Nation pursuant our Treaty of 1855—a duty higher than one established by a mere Agreement. The Yakama Nation requests that the Federal Government uphold this trust responsibility and protect the Yakama Nation from the ensuing harm of Colville's wrongful attempt at this land

acquisition and Casino development. The Yakama Nation requests that the BIA deny Colville's attempt to colonize our homelands.

All Notices of Application or Decision, and any questions or concerns should be directed to Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 834-8005 or via email at Ethan@yakamanation-olc.org.

Respectfully,



Virgil Lewis, Chairman
Yakama Nation Tribal Council