



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

May 3, 2024

Sent via USPS and Email: tobiah.mogavero@bia.gov

The Honorable Deb Haaland
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Regional Director Bryan Mercier
Bureau of Indian Affairs - Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232
Email: Bryan.Mercier@bia.gov

SUBJECT: Yakama Nation's NOI Comments, re: Concerns with NEPA/EIS Impacts from Colville's Fee-to-Trust and Casino Project (Case No. 49888)

Dear Secretary Haaland and Regional Director Mercier,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") and submit these initial scoping comments in response to the Federal Register Notice published by the United States Department of the Interior ("Interior") on April 3, 2024 (89 Fed. Reg. 23041). The Confederated Tribes of the Colville Reservation ("Colville") requests that Interior acquire land into trust pursuant to 25 C.F.R. Part 151 and 25 C.F.R. Part 292 to construct a casino resort. Colville's proposed gaming facility would be located squarely within the Yakama Nation's territory recognized by the Treaty with the Yakamas of June 9, 1855, 12 Stat. 951 ("Treaty of 1855"), and more than 160 miles south of Colville's governmental agency—an unprecedented distance for gaming facilities in the Pacific Northwest. Colville bases its proposal on purported ties to the Palouse band, a signatory to the Treaty of 1855 lawfully and solely represented by the Yakama Nation today. Colville is attempting to step into the Yakama Nation's shoes to build a casino using the Yakama Nation's rights in the Yakama Nation's territory, while keeping all financial benefit for themselves. The Yakama Nation opposes this major federal action and asks that Interior apply a hard look approach to the justifications and consequences of Colville's proposal.

The lands described in the Federal Register Notice and Colville's March 27, 2023 Land Acquisition Application ("Fee-to-Trust Application" or "Application") are described as the "Pasco Property," a 165-acre parcel of land located in Franklin County, Washington. Filing of the Application triggers a variety of federal processes, including the preparation of an Environment Impact Statement ("EIS") per the requirements of the National Environmental Protection Act ("NEPA") (42 U.S.C. §§ 4321 *et seq.*). Ultimately, this major federal action will require a collection of final approvals, including approval of Colville's Fee-to-Trust Application and the Secretarial Determination required by the Indian Gaming

Regulatory Act ("IGRA") (25 U.S.C. §§ 2701 *et seq.*) and its implementing regulations found at 25 C.F.R. Part 292.

The Yakama Nation has great respect for our northern Salish speaking relatives. As Chairman of the Yakama Nation Tribal Council, I understand Colville's need to seek opportunities that further its self-determination, self-governance, and economic development. The Yakama Nation would have significantly less concern if Colville desired to develop its proposed casino resort on its 1.4-million-acre Colville Reservation. The Yakama Nation does, however, oppose Colville seeking Interior's approval and authorization to take the Pasco Property into trust for the development of its proposed off-reservation casino project. Not only is the Pasco Property far from the Colville Reservation—165 miles south of Colville's headquarters in Nespelem—the Pasco Property is located within the Yakama Nation's federally recognized lands defined by the Treaty of 1855.

Given Interior's trust responsibility owed to Colville, the Yakama Nation acknowledges the consideration that Interior must give to Colville, regardless of the absurdity of Colville's Application; however, Interior's trust responsibility extends to the Yakama Nation and other Indian tribes as well. Preparation of the EIS is an expensive process, and there will be financial impacts for all participating parties. Preparation of the EIS is resource intensive, and the allocation of time and attention here will take away from other work, including critical services Interior is obligated to provide to Indian tribes. Some of this could be mitigated if Interior were to perform a preliminary assessment of Colville's Application and issue an early determination of the suitability of this major federal action.

REQUEST FOR PRELIMINARY ASSESSMENT OF COLVILLE'S APPLICATION

Before scarce agency resources are expended on NEPA's environmental review process, the Yakama Nation asserts that examination of the existing record, on its face, is sufficient to reject the Application and Colville's misguided effort. Colville has made no legitimate demonstration of its "need" for these trust lands or yet another casino. Colville's claims of "justification" for its desired project siting of its project would, if accepted, have unprecedented repercussions on the Yakama Nation and surrounding Indian tribes—the most egregious being Colville's unlawful assertion of authority to act on behalf of the Palouse band, one of the fourteen tribes and bands confederated by the Treaty of 1855 into a singular sovereign nation, the Yakama Nation.

1) Colville's Existing Reservation and Trust Lands.

Colville is neither newly recognized, restored, nor landless. While the United States recognizes roughly 574 Indian tribes, it only recognizes approximately 326 federal Indian reservations (e.g., reservations, pueblos, rancherias, missions, villages, communities, etc.). At just under 1.4 million acres, the present-day Colville reservation is the 16th largest in the United States, and the second largest in Washington State. Colville's trust land base includes 887,832 acres of tribal trust lands and 267,000 acres of individual trust lands. While some Indian tribes can justify the need for additional land, Colville's claim of "need" relative to more than 80% of other Indian tribes throughout the United States is disingenuous.

Many of the larger Indian reservations in the United States are isolated and barren of basic natural resources, which challenges the basic human ability to survive on these lands, let alone build economic ventures. The Colville Reservation is located in northeastern Washington State, overlapping southeastern Okanogan County and southern Ferry County. It is bounded on the east and south by the Columbia River, on the west by the Okanogan River, and extends northward toward the U.S.-Canadian border. Forests cover almost two-thirds of the Reservation land area. Its commercial forest alone is 673,025 acres, accounting for 48.3% of the Reservation. Open rangeland and forested rangeland account for almost one-third of Reservation lands at 455,276 acres. Residential, agricultural, and surface water comprise the remainder. The Colville Reservation boasts tremendous natural resources, rich ecosystems, and stunning scenery.

Colville does not lack a Reservation, adequate trust lands, or attractive siting opportunities within its own territory to build a casino resort.

2) Colville's Existing Casinos.

All 29 federally recognized Indian tribes in Washington have negotiated gaming compacts with Washington. Gaming facilities sited on Indian reservation lands are authorized by federal law. Tribal gaming has become a business lifeline for Indian reservation economies. Without the tax base that many non-Indian governments enjoy, many Indian tribes depend on gaming revenue to fund essential government services provided on Indian reservations, like healthcare, public safety, housing, and education. And here, Colville's stated justification for its proposed casino project is "to improve the economic status of [Colville's] Tribal government so that it can provide comprehensive services and ensure the continued social and economic well-being of its Tribal members."

Colville's justification demands immense scrutiny, especially when considering that Colville already operates "3" casinos located at Lake Chelan, Omak, and Coulee Dam. Colville's economic engine already exists. Colville's "3" casinos is more than any other Indian tribe in Washington. Indian tribes with only "1" casino are able to support their Tribal governments and provide services to their people. Every Indian tribe could benefit from more revenue, and as many have done, they have invested into their existing gaming facilities, improving upon and maximizing what they already have. Colville has every opportunity to do the same.

3) Project Siting and Distance from Reservation.

Colville's proposed casino project is nowhere close to the Colville Reservation. The Pasco Property is located off-reservation, 165 miles south of Colville's headquarters in Nespalem, or 125 miles from the southern edge its Reservation boundary. As noted above, this is not a situation where an Indian tribe has no or very little reservation land, which would support the need for an off-reservation land acquisition. Instead, this is a situation driven solely by Colville's short-sighted financial interest.

There is an ongoing concern by many Indian tribes based in Washington about the potential for Colville to unwittingly disrupt the careful political balance of Tribal gaming in Washington, which depends upon the respect for one another's reservations and Treaty-defined territories. This respect has been the bedrock for inter-tribal governmental

relations since time immemorial, and remains the bedrock of Tribal gaming in Washington. If Colville were to convince Interior to sanction this major federal action, it would promote a harmful precedent that will destabilize the Tribal gaming economy—and in turn our Tribal governments—throughout our Region. The entirety of Washington would be opened to Tribal gaming projects proposed by Indian tribes from both within and outside the state expecting the same lack of federal scrutiny and disrespect for other Tribes' legally recognized territories as they pursue their off-reservation casino project proposals. The threat that this poses to the Yakama Nation's and other Indian tribes' continued ability to provide essential governmental services to our respective Members cannot be overstated.

The potential benchmark of 165 miles is no small distance. For reference, the linear distance between Seattle, Washington and Portland, Oregon is 145 miles; the linear distance between Seattle, Washington and Yakama Nation's agency headquarters is 128 miles; the linear distance between Portland, Oregon and Yakama Nation's agency headquarters is 129 miles. Disrupting the political balance of Tribal gaming in Washington through proliferation of distant off-reservation casinos is a monumental issue. Of equal consequence is how such proliferation might threaten the current status of Tribal exclusivity in the Washington gaming market, endangering all of Washington's gaming Indian tribes. If Colville's casino proposal is allowed to proceed, its policy impacts would be far reaching, both regionally and nationally.

4) *Yakama Nation's Treaty Territory.*

The Yakama Nation is the well-established sole legal successor to the Palouse band pursuant to the Treaty of 1855 and federal precedent interpreting our Treaty. Colville's tired attempt to claim our Palouse band and our territory as their own amounts to "cultural community shopping"—exploiting any minor connection it might have to areas proximate to the Pasco Property to support its false and misleading assertions that Colville is a legal successor to the interests of those indigenous tribes and bands that once called the region their homeland. Many Indian tribes have questioned Colville's sincerity and whether Colville is acting in good faith. Colville's convenient narrative that they now carry legal rights to Palouse ancestral lands because some of their membership descended from the Palouse band, is an affront to the Yakama Nation who holds the only legal authority to act on the Palouse band's behalf. Colville's Fee-to-Trust Application is merely a cynical new twist on their past efforts to acquire rights through the Yakama Treaty—something that the Courts have rejected many times already.¹

Regarding this specific matter, the Yakama Nation has provided numerous written comments to Interior that accurately detail the relevant historical record.² In short, Colville asserts rights outside their own executive order territory and within the Yakama Nation's Treaty Territory, claiming an ancestral tie to the Palouse band. The Palouse band is one of 14 tribes and bands – Yakama, Palouse, Pisquouse, Wenatshapam, Klikatat, Klinquit, Kow

¹ See, e.g., *United States v. Oregon*, 787 F. Supp. 1557 (D. Or. 1992), *aff'd* 29 F.3d 481 (9th Cir. 1994), *amended*, 43 F.3d 1284 (9th Cir. 1994), *cert. denied* 515 U.S. 1102 (1995); *United States v. Oregon*, 2008 U.S. Dist. LEXIS 62743 (D. Or., Aug. 13, 2008), *aff'd sub nom United States v. Confederated Tribes of the Colville Indian Reservation*, 606 F.3d 698 (9th Cir. 2010).

² See, e.g., Yakama Nation correspondence to Interior and the Bureau of Indian Affairs dated 09/08/23, 02/27/23, 06/08/21, 01/10/20.

was-say-ee, Li-ay-was, Skinpah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat – that signed the Treaty of 1855. These 14 tribes and bands joined as one unified Nation under a shared political identify — the Confederated Tribes and Bands of the Yakama Nation.

The rights vested pursuant to the Treaty of 1855 belong to the Yakama Nation as a whole, and not to its constituent tribes and bands individually. In the Treaty of 1855, 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 of the Yakama Treaty. The Pasco Property, located in Franklin County, Washington, unquestionably falls within the Yakama Nation's Treaty Territory. To claim a right within the Yakama Nation's Treaty Territory, Colville's constituent bands must have “maintained sufficient political continuity with [the Nation] who signed the treaty [so] that it may fairly be called *the same tribe*.”³ A showing of common ancestry alone is not sufficient to establish political cohesion.⁴ Likewise, a showing that an Indian tribe includes descendants of a signatory Indian tribe is inadequate.⁵ None of Colville's constituent bands have maintained any degree of political continuity with the Yakama Nation that is legally required to claim a right within the Yakama Nation's Treaty Territory.

Unlike Colville, the Yakama Nation is *the* legal successor to the Palouse band. Our stories, our Sahaptin/Ichishkin Sinwit language, and our traditions are tied to cultural and historical landscapes proximate to the Pasco Property and surrounding region. Our ancestors are buried here. We continue to exercise our Treaty-reserved rights in this area. For the Yakama Nation, our stance is entrenched in our respect for treaties, our respect for boundaries, and our respect for sovereignty. Colville's disregard for these sacred tenets cherished across Indian Country represents nothing more than a shameful cash grab. Moreover, if Interior were to reverse its policies and treat the Yakama Nation and Colville interests in the region as equal, it would undermine our ability to protect our Treaty-reserved rights, with cascading impacts that go far beyond the Fee-to-Trust Application at hand.

NEPA/EIS SCOPING COMMENTS

If Interior is intent on proceeding with the fee-to-trust process despite the balance of factors weighing heavily against approval of Colville's Application, then Interior can expect the Yakama Nation's continued engagement and opposition to this large-scale, destabilizing, controversial casino project. The Yakama Nation demands the proposed casino project be comprehensively analyzed in a full EIS at exhaustive levels and standards, with robust public involvement. As the only government entity with lawful authority to represent the Palouse band, the Yakama Nation demands complete access and authority over EIS information related to our Yakama Nation government, sovereignty, territory, economy, and people—which includes everything related in any way to the Palouse band.

³ See *United States v. Oregon*, 29 F.3d at 484, fn. 2.

⁴ *Id.* at 484 (citing *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 776 (9th Cir. 1990)).

⁵ See *Suquamish Indian Tribe*, 901 F.2d at 776.

As for the level of EIS scoping this federal action demands, the Yakama Nation's ability to meaningfully comment is limited by the lack of a full project description from the documents Interior has shared to date. The Yakama Nation is confidently able to discern only the following facts from the Federal Register Notice and the project website (<http://www.colvilleeis.com>): 1) the proposed land to be acquired is located off-reservation in Pasco, Franklin County, Washington (Assessor Parcel No. 113130068); 2) the proposed use of the land is for Tribal gaming under IGRA; and 3) the proposed project includes a 184,200-square-foot casino, 200-room hotel, an event center, and supporting facilities.

The Yakama Nation has been able to obtain some additional information about the proposed project, but not without issue. Interior refused to release Colville's Fee-to-Trust Application without the Yakama Nation first submitting a Freedom of Information Act ("FOIA") request. And, what the Yakama Nation received was heavily redacted. Due to the excessive redactions, the Yakama Nation (and the rest of the public) are unable to discern what unique interests Colville claims that might justify this major federal action.

In a separately attached document, the Yakama Nation submits its initial set of EIS scoping comments. These should not be considered final; rather, they are merely preliminary based on the limited information Interior has made available thus far. The Yakama Nation reserves the right to supplement these comments with more EIS scoping comments when a full project description is shared, including Colville's full and unredacted Application.

RENEWED DEMAND FOR GOVERNMENT-TO-GOVERNMENT CONSULTATION

Pursuant 25 U.S.C. § 2719, gaming on lands acquired in trust by the Secretary after October 17, 1988, is prohibited unless one of the enumerated exceptions is met. The exception asserted for the casino project here allows gaming on such lands if:

“the Secretary, after consultation with the Indian tribe and appropriate State and local officials, *including officials of other nearby Indian tribes*,⁶ 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***, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.”

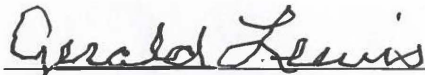
The Yakama Nation has asked for government-to-government consultation with Interior regarding this matter no less than seven times. To date, no federal official has met with the Yakama Nation to discuss this major federal action that could have a detrimental impact on Yakama Nation's inherent sovereign and Treaty-reserved rights. At the very

⁶ Surrounding community means local governments and nearby Indian tribes located within a 25-mile radius of the site of the proposed gaming establishment. Interior has already recognized the Yakama Nation's status as a local government having regulatory jurisdiction over lands subject to possible acquisition. (see BIA's May 8, 2023 Notice of Gaming Land Acquisition Application).

least, please respect the integrity of our sacred government-to-government relationship and provide the Yakama Nation with the audience the law requires you to provide.⁷

For further discussion regarding this comment letter and the renewed request for consultation, please respond in writing with a courtesy copy to Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at P.O. Box 151, Toppenish, WA 98948, and electronically at ethan@yakamanation-olc.org.

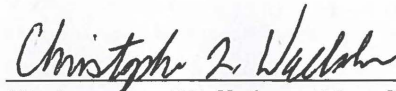
Respectfully,



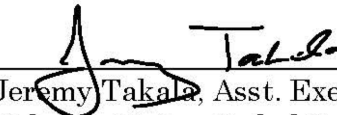
Gerald Lewis, Chairman
Yakama Nation Tribal Council



Stephen Selam, Executive Secretary
Yakama Nation Tribal Council




Christopher Wallahee, Vice Chairman
Yakama Nation Tribal Council



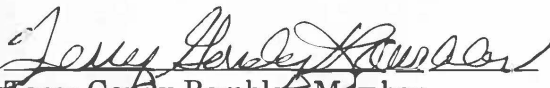
Jeremy Takala, Asst. Executive Secretary
Yakama Nation Tribal Council



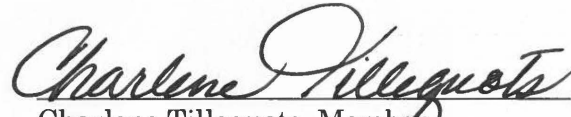
Terry Heemsah, Sr, Sgt-at-Arms
Yakama Nation Tribal Council



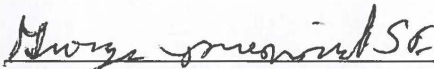
Ruth Jim, Member
Yakama Nation Tribal Council



Terry Gandy-Rambler, Member
Yakama Nation Tribal Council



Charlene Tillequots, Member
Yakama Nation Tribal Council



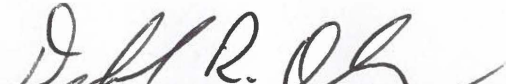
George Meninick, Sr., Member
Yakama Nation Tribal Council



Arnold Eyle, Member
Yakama Nation Tribal Council



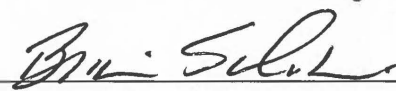
Caseymac Wallahee, Member
Yakama Nation Tribal Council



Deland Olney, Member
Yakama Nation Tribal Council



Ralph Sampson, Jr., Member
Yakama Nation Tribal Council



Brian Saluskin, Member
Yakama Nation Tribal Council

⁷ 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).

As referenced in the attached comment letter, the Yakama Nation submits these initial scoping comments in response to the Federal Register Notice published by Interior on April 3, 2024 (89 Fed. Reg. 23041).

GENERAL COMMENTS

1) Federal and State Level Approvals

The Environmental Impact Statement (“EIS”) scoping the draft EIS must provide a clear and complete explanation of the federal and state level approvals required for the project, and address whether Colville will be required to implement any feasible mitigation or consider alternative to the project. EIS scoping should specifically address whether discretionary approvals are required from the National Indian Gaming Commission (“NIGC”), the U.S. Environmental Protection Agency (“EPA”), the U.S. Fish and Wildlife Service (“FWS”), and the U.S. Army Corps of Engineers (“ACE”). This list is provided only for example and is not intended to be exhaustive. The EIS scoping should describe the criteria for issuing those approvals, including the ability of the federal and state level agencies to impose any feasible mitigation. In support of this, Interior is urged to provide a more thorough description in advance of the preparation of a final scoping document to allow interested agencies to better evaluate the potential for and nature of impacts within their jurisdictions.

2) Purpose and Need for Project Alternatives to the Proposed Project

The EIS scoping and the draft EIS should contain a complete statement of purpose and need for the proposed casino project. This is necessary to evaluate the rationale for and appropriateness of the project site and to evaluate potential alternatives to the casino project and site as proposed. Typical alternative for such major federal actions include a reduced-intensity alternative, a non-gaming alternative, and a no action alternative. The EIS scoping and draft EIS must include another alternative – a project location that is within the Colville Reservation.

3) Mitigation

Colville has made publicly available through press releases information relating to how it proposes to mitigate potential impacts of the proposed casino project. The proposed mitigation apparently is largely in the form of payments to the City of Pasco, Franklin County, and the Port of Pasco. Colville has provided no information about how the casino project will affect all surrounding areas, including the surrounding municipalities, unincorporated areas of Franklin County, and federally recognized Indian tribes. The potential impacts from the proposed casino project will be substantial. Moreover, cash payments may serve to mitigate certain socioeconomic and infrastructure impacts, but will not fully mitigate environmental impacts and other reasonably foreseeable indirect impacts (temporary and permanent) from the proposed casino project. The EIS scoping and the draft EIS needs to evaluate and recommend concrete mitigation measures to reduce or eliminate impacts throughout the surrounding area, irrespective of any proposed cash payments.

SPECIFIC COMMENTS

1) Cultural/Historic/Archeological Resources

The proposed project location is within a region that is legally recognized under federal law as the Yakama Nation's Treaty-defined territory (*see* 12 Stat. 951). There is no question that the proposed project location may contain archeological and cultural resources important to the Yakama people. Beyond the presence of nearby recorded archeological sites and traditional cultural properties, the proposed project location is proximate to several water bodies, including the Columbia River. Given this proximity, there is reasonable probability that indigenous villages would have been situated on and around the proposed project location. Moreover, given the scale of the proposed project—construction of a 184,200-square-foot casino, 200-room hotel, event center, an event center, restaurant/bars, parking and infrastructure, and other supporting facilities—it is reasonably foreseeable that any ground disturbance at the project location would likely unearth archeological and cultural resources, which would be an adverse impact of significant consequence to the Yakama Nation. The EIS scoping and draft EIS must allow for processes to gain more information in order to properly assess the potential impact of the proposed project on the Yakama Nation cultural resources and traditional cultural properties. The Yakama Nation emphasizes the importance of considering cultural resources and proper National Historic Preservation Act (“NHPA”) review. Interior must undertake review pursuant to the NHPA and consult with the State Historic Preservation Office (“SHPO”) and surrounding Tribal Historic Preservation Offices (“THPO”), including concurrence on the Area of Potential Effects (“APE”) and necessary identification and evaluation of cultural and historic resources and the project's impacts.

2) Water Supply

Franklin County and the surrounding region is currently facing dramatic water shortages that are drought-related, but also systemic. This water is vital for instream flows and supporting resident and anadromous fish habitat. It is critical that the basin be protected from overdraft of the water table. Given the scale of the proposed, the EIS scoping and draft EIS must adequately study the risk to the community, wildlife, and vegetation from drought and the short term and long term impact of siting a casino that consumes massive amounts of water out of the local aquifer on this area. The EIS scoping and draft EIS must outline the need to identify off-site water supplies to support the proposed project. Similarly, Interior must carefully consider impacts to surrounding water bodies and associated riparian areas and/or potential wetlands and whether permitting is required under the Clean Water Act.

3) Biological Resources

Due to the proximity of the project to the Columbia River, which is protected habitat under various federal laws, Interior must initiate Section 7 consultation under the Endangered Species Act (“ESA”). Ultimately, the EIS scoping and draft the EIS should provide sufficient information regarding the baseline environmental setting to understand the proposed project's significant impacts on the environment. The baseline assessment

must include examination for protected, threatened or endangered, or other special-status plant, fish, avian, and wildlife species and potentially located within the proposed project location and surrounding lands. The EIS scoping and draft EIS should describe aquatic habitats, such as wetlands, vernal pools, and/or waters of the United States or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the project site.

4) Wastewater

It is reasonably foreseeable that the proposed project would result in an increase in water use and wastewater demand that could significantly drawdown on regional wells and the overall groundwater basin, even with implementation of an on-site tertiary wastewater treatment plant. The EIS scoping and draft EIS must include a comprehensive water/wastewater assessment, and explain how the proposed project's impacts can be addressed through implementation of actions that do not draw from or otherwise impact existing sources. Further, the EIS scoping and draft EIS must study groundwater contamination stemming from various elements of this proposed project from construction, underground pipes, onsite wastewater treatment, and other sources can cause varying degrees of groundwater contamination. Study must assess the potential adverse effects from contamination to groundwater from these sources including the impact on individuals and agricultural users of common well water and the effects on the aquifer.

5) Socioeconomic/Environmental Justice Impacts

The EIS scoping and draft EIS should include a specific analysis of reasonably foreseeable and disproportionate impacts on the Yakama Nation's Treaty-reserved rights. The proposed project location is within a region that is legally recognized under federal law as the Yakama Nation's Treaty-defined territory (*see* 12 Stat. 951). Article I and Article III of the Yakama Treaty establish, at the very least, a primary, reserved, and perpetual right to access, use, and derive income and other benefit ("usufructuary rights") from over twelve million acres of *off-Reservations* lands—Yakama Nation's Treaty Territory. The EIS scoping and draft EIS must examine the potential for adverse impacts to the Yakama Nation's rights and interests secured and reserved by the Yakama Treaty.¹

The EIS scoping and draft EIS should include a specific analysis of reasonably foreseeable and disproportionate impacts on the surrounding Indian reservations, indigenous communities, Tribal government, and tribal casinos. The proposed project would derive visitation from population centers in Central and Southeastern Washington. Two tribal casinos are a 1-hour drive from the proposed Project site. One of those two casinos is Yakama Nation Legends Casino, whose market area encompasses the City of Pasco. The capture rate for the subject property would be large, resulting in incredible declines for the revenues of Yakama Nation Legends Casino. Revenues from Yakama Nation Legends Casino are the primary source of funding for Tribal governmental functions and fund

¹ *See* *Confederated Tribes and Bands of the Yakama Nation v. United States Dep't of Agric.*, 2010 WL 3434091, at *4 (E.D. Wash. 2010) (observing that a threatened federal undertaking "would immeasurably harm the [off-Reservation] resources and waterways enjoyed by the Yakama Nation . . . as well as the Yakama Nation's [commercial] logging industry.").

critical services to tribal members. For example, the revenue from Yakama Nation Legends Casino goes directly to the Tribal government's general fund, which supports housing for tribal members, funds social services, education, environmental protection, fire safety, information technology, public safety, and tribal programs. The EIS scoping and draft EIS must examine the potential for adverse impacts to the Yakama Nation's commercial enterprises that support its Tribal government operations.²

The EIS scoping and draft EIS should analyze reasonably foreseeable and disproportionate impacts on minority and low-income populations, and analyze socioeconomic issues such as employment, housing, local business revenue, substitution effects, property values, problem gambling, and crime rates.

6) Land Use

If the property at issue is placed into trust by the United States, that land is then exempt from local city, county, and state zoning and land use regulations. The EIS scoping and draft EIS should identify existing land use policies applicable to the location of the proposed project, including zoning and land use regulations. There should be an assessment of potential conflicts with local city, county, and state land use regulations. There should be an assessment of potential conflicts with nearby airports, and also the potential for land use conflicts with other surrounding lands used for agricultural, residential, environmental protection, and other uses.

7) Infrastructure

The proposed project is located in a largely undeveloped area and has unmet infrastructure needs. The EIS scoping and the draft EIS should consider all reasonably foreseeable necessary improvements to or extensions of the infrastructure in the surrounding area. These should be identified and the impacts associated with the required improvements should be evaluated. Cost estimates for necessary infrastructure improvements also should be provided in order to evaluate the adequacy and feasibility of any proposed mitigation.

8) Land Resources/Geology/Soils

The proposed project will require extensive grading and disruption to the current geology. The EIS scoping and draft the EIS should analyze what the impact will be to the local environment caused by site grading and development and should also study what the impact will be to residents from grading and development at the location of the proposed project.

9) Future Development of the Project Site

The proposed project is located on a large undeveloped site, giving rise to the possibility of additional future development. The EIS scoping and the draft EIS should

² *Id.*

consider all reasonably foreseeable future development plans, including any proposed retail uses or other commercial development.

10) Public Services

If the property at issue is placed into trust by the United States, that land is then exempt from State and local taxation. 25 U.S.C. § 5108. The EIS scoping and draft EIS must consider the impacts on the County resulting from the removal of the property from the tax rolls. The proposed project will have significant impacts on the demand for public services. Once the property is placed in trust, it will not generate any property taxes that can be used to offset those impacts.

The proposed project will easily bring in tens of thousands of visitors a day. Further, the risk of fire, crime, and other human health and safety issues is very real. Careful planning is essential. The proposed project will have significant impact on the demand for public services, including police, fire, and emergency services. The EIS scoping and the draft EIS should include a thorough analysis of the potential for an increase in crime and the demand for police services in all surrounding areas. The analysis of the increase in demand for services should not be limited to the City of Pasco and Franklin County, even if they have agreed to provide such services. The proposed project is adjacent to several other jurisdictions. The potential for impacts in all surrounding jurisdictions needs to be addressed.

Colville has made publicly available through press releases information relating to how it proposes to mitigate potential impacts of the proposed casino project. Colville has mentioned entering into contracts for fire protection and emergency services with a local fire district. However, the EIS scoping and draft EIS should evaluate both the increase in demand for on-site services and the increase in demand in surrounding areas. Moreover, most of the local jurisdictions have in place back-up agreements that will result in impacts to other jurisdictions if demand increases in any one area. The EIS scoping and draft EIS should study the emergency response time of fire, police, and ambulance service during high traffic volume times and assess how the increase in traffic to a casino resort at the proposed location will further impair emergency response.

11) Traffic – Roads and Transit

The proposed project will easily bring in tens of thousands of visitors a day. The EIS scoping and the draft EIS should evaluate the increase in demand for police, emergency and social services related to an increase in traffic-related incidents. It is reasonably foreseeable that the proposed project will result in a substantial increase in traffic on surface streets in the surrounding area. A key issue to examine is the capacity and condition of those surface streets and whether those streets can handle the anticipated increase in traffic. The EIS scoping and the draft EIS should evaluate the current and projected level of service on existing roadways, as well as any necessary roadway improvements to determine if impacts can be mitigated.

Any significant increase in traffic will significantly affect traffic conditions next to the proposed project, but also conditions on adjacent and connecting highways that run

through the surrounding communities. Specifically, the EIS Scoping and draft EIS should evaluate impacts and potential mitigation for the following roadways segments: Hwy 82, Hwy 182, Hwy 12, Hwy 395. The EIS scoping and draft EIS should evaluate these impacts along with any necessary mitigation to improve capacity and traffic flow.

The EIS scoping and draft EIS should evaluate the adequacy of the existing transit infrastructure and identify and evaluate the impacts associated with necessary upgrades to serve the proposed project. The evaluation should provide analysis of the potential for increased use of mass transit to reduce traffic congestion resulting from the Project. The EIS scoping and draft EIS should consider whether the facilities purpose built for the proposed project are designed to encourage use of transit. The evaluation should address necessary public transit accommodations on existing roads and the need for road widening to accommodate expanded transit service. The evaluation should examine the possibility of a dedicated shuttle service for employees and patrons to reduce impacts on traffic and the existing transit system.

12) Jobs

The number of employees needed to operate the proposed casino is unknown. Given the scale of the proposed project—construction of a 184,200-square-foot casino, 200-room hotel, event center, an event center, restaurant/bars, parking and infrastructure, and other supporting facilities—it is reasonably foreseeable that greater than 1,000 employees will be needed to work at the casino, resort, and supporting facilities. The EIS scoping and draft EIS must include a comprehensive assessment of the number of jobs the project would create for Colville's 9,300 enrolled members who live on or near the Colville Reservation, the reasonable likelihood that its members would make the estimated daily round trip of 250 to 400 miles for newly created jobs, and the impacts to multiple communities – the area surrounding the Pasco Property and the Colville Reservation – caused by the economic exodus of Colville's enrolled members choosing to move closer to the location of the proposed project for work. Also, while short term jobs would be created for the construction phase of the project, the EIS scoping and draft EIS must include a comprehensive assessment of the number, type, and skill level of jobs that would be created for the existing community.

13) Housing

The number of employees needed to operate the proposed casino is unknown. Given the scale of the proposed project—construction of a 184,200-square-foot casino, 200-room hotel, event center, an event center, restaurant/bars, parking and infrastructure, and other supporting facilities—it is reasonably foreseeable that greater than 1,000 employees will be needed to work at the casino, resort, and supporting facilities. The EIS scoping and draft EIS must include a comprehensive assessment of the housing needs and demand for housing that will be needed to support the proposed project. A casino operation as described will employ many lower wage service workers who will need to obtain housing in the vicinity. This is likely to increase the demand for affordable housing at the low and very low income levels. Typically that housing can only be produced with some degree of public participation. The EIS scoping and draft EIS should describe and quantify the wage levels of the jobs being introduced, the anticipated number of jobs, and the number of housing units necessary to meet this demand.

14) Noise, Hazards, and Aesthetics

The proposed project will drastically change the environment surrounding the proposed Project. The EIS scoping and draft EIS must include a comprehensive assessment of the reasonable expectation of increase in litter, vandalism, homelessness, and drug use from more people being present 24 hours a day and increased traffic and visitors who have no connection to the community. The EIS scoping and draft EIS must study how many residents will be impacted by traffic, noise, light pollution, loss of scenic corridor, and contributing hazards resulting from inflow of tens of thousands of visitors daily with increase in crime and accidents, and increase in drunk and intoxicated driving accidents on local residents.

15) Air Pollution and Public Health

The EIS scoping and draft EIS must study the possibility of local air pollution and public health impacts from increased vehicle traffic on neighborhood roads and highways, as well as the impacts from idling vehicles. The EIS scoping and draft EIS should assess all phases of the proposed project, including the foreseeable increase in air pollution from commercial trucks and offroad construction equipment during the project's construction, from delivery trucks and other commercial vehicles during the project's daily operations, and from buses, shuttles, and other passenger vehicles. It is likely that a project of this size will have a measurable impact on air pollution in nearby neighborhoods. The EIS scoping and draft EIS should assess the possibility that there will be long term public health impact due to inflow of tens of thousands of visitors daily, increasing particulate matter, air toxics, carbon dioxide emissions, and air pollutants.

16) Indirect Impacts and Cumulative Impacts

For each category identified above, the EIS scoping and draft EIS must provide an analysis of any reasonably foreseeable indirect impacts (temporary and permanent) and growth inducing effects from the proposed project, determine the significance of each indirect impact, and assess the significance of the proposed project's contribution to the indirect impact. Similarly, for each category identified above, the EIS scoping and draft EIS must provide an analysis of any reasonably foreseeable cumulative impacts associated with the proposed project, determine the significance of each cumulative impact, and assess the significance of the proposed project's contribution to the impact. Such analysis should include examination and study impacts during construction and over the life of the operation of the proposed casino project.