



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

July 24, 2024

Hand Delivered

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

Hon. Bryan Newland
Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

**Re: Renewed Request For Consultation on Colville Tribe's Proposed Casino
Within Yakama Nation's Treaty Territory**

Dear Secretary Haaland and Assistant Secretary Newland,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") to reiterate our request for government-to-government consultation concerning the Department of the Interior's consideration of off-reservation Tribal gaming projects. We are concerned about the Confederated Tribes of the Colville Reservation's ("Colville") attempt to establish and operate a gaming facility in within the Yakama Nation's Treaty Territory. A tribe should not be allowed to operate a gaming facility in another tribe's territory without the affected tribe's prior consent. Pursuant to the attached letters, the Yakama Nation has sought government-to-government consultation with you on this issue since at least 2021. We reiterate that request here, and urge Interior to respect our Treaty Territory recognized by the Treaty with the Yakamas of June 9, 1855, 12 Stat. 951 by rejecting Colville's application.

For context, Colville has an active application for Interior to take land into trust and allow gaming within the City of Pasco, Washington. Pasco is located wholly within the Yakama Nation's Treaty Territory, which was recognized by Congress when it ratified our Treaty, and by the President when he proclaimed our Treaty. Colville, in contrast, did not sign a Treaty and generally does not have off-Reservation rights of any kind beyond their Executive Order Reservation located 160 miles north of Pasco. Colville has attempted for decades to assert the Yakama Nation's rights under the Treaty of 1855, claiming certain Yakama Nation-constituent tribes and bands as their own, but those efforts have consistently and resoundingly been rejected by federal courts. *See United States v. Confederated Tribes of the Colville Indian Reservation*, 606 F.3d 698 (9th Cir. 2010); *United States v. Oregon*, 470 F.3d 809 (9th Cir. 2006); *United States v. Oregon*, 29 F.3d 481 (9th Cir. 1994). Colville has no economic development rights to the Yakama Nation's Treaty Territory, including Pasco, and Interior should not be considering Colville's application to invade and colonize the Yakama Nation's Treaty Territory.

This is no small concern. The Yakama Nation uses the proceeds from our gaming operation to provide essential governmental services to our enrolled Members on our rural reservation. Our Treaty Territory represents the market from which we draw customers who fund those essential governmental services. Colville's extra-territorial attempt at developing a gaming facility within the Yakama Nation's Treaty Territory would devastate our ability to serve the needs of our People. It will frustrate our ability to fully realize our sovereignty and self-determination. Our position is consistent with the traditional practices of our respective peoples throughout the Pacific Northwest. When entering another tribe's territory, there were ceremonies, offerings of gifts, and ultimately a request for entry and access to resources that would be either approved or denied. Anything less was treated as an act of hostility, and is still perceived that way today. Colville already has three casinos; this would be their fourth. Interior should not be considering Colville's application.

We have repeatedly attempted to express our concerns to Interior, but to no avail. We provided numerous written comments to Interior that detail the relevant historical record, the above-noted case law, and our position regarding Colville extending beyond its Reservation boundaries to build a fourth casino 160 miles away within the legally recognized territory of another tribe. 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—Colville's trust land base includes 887,832 acres of tribal trust lands and 267,000 acres of individual trust lands across its 1.4-million-acre Reservation.

Colville does not lack a reservation, adequate trust lands, or attractive siting opportunities within its own territory to build yet another casino. Accordingly, we have made request after request to Interior for additional information regarding the underlying basis and justification for Colville's application and its choice of project siting. Unfortunately, at every turn, Interior has laid roadblocks that have restricted us from receiving information about the substance and scope of Colville's proposed project. Interior has demanded that we submit Freedom of Information Act ("FOIA") requests to receive project information about an incredible federal undertaking on lands of significant importance to us. Yet, Interior has responded to our FOIA requests with incomplete or heavily redacted documents that largely eliminate our ability to meaningfully engage in the available comment processes. Further, our many requests for government-to-government consultation have gone unanswered.

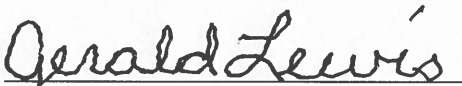
We are aware that numerous other Tribes have contacted you to express similar concerns. We respectfully ask that you commit to a government-to-government consultation with the Yakama Nation to discuss Colville's application. I recently met with White House senior policy advisors, Ms. Rose Petoskey and Mr. Morgan Rodman, concerning President Biden's continuing commitment to engage in meaningful consultation with federally recognized Indian tribes. They re-affirmed to me and other tribal elected officials that the President Biden's Administration is committed to consulting with federally recognized tribes on matters affecting their interests, and specifically on Interior's consideration of these extra-territorial gaming applications. The Yakama Nation asks that you, as Secretary of the

Interior and Assistant Secretary of Indian Affairs, uphold that commitment by engaging in meaningful consultation with the Yakama Nation on this issue.

Note that the Yakama Nation considers consultation to mean an in-person meeting at the Yakama Nation's headquarters in Toppenish, Washington, unless the Yakama Nation determines an alternative forum would be more effective. Furthermore, government-to-government consultation can only occur when the Yakama Nation Tribal Council has quorum, is sitting in a regular or special Tribal Council session, and the Tribal Council Members are fully informed on the issue subject to consultation. So too must Interior be represented by officials knowledgeable on the issue subject to consultation, and they must possess genuine authority and decision-making power over the issue. Any meeting between the Yakama Nation and the Interior that does not satisfy these requirements will not qualify as a government-to-government consultation, and will be affirmatively identified as a listening session.

To schedule a government-to-government consultation, please contact Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 834-8005 or ethan@yakamanation-olc.org.

Respectfully,



GERALD LEWIS, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

CC: Hon. Maria Cantwell, United States Senator
Hon. Patty Murray, United States Senator
Hon. Dan Newhouse, United States Congressman
Hon. Brian Schatz, United States Senator
Hon. Lisa Murkowski, United States Senator
Hon. Bruce Westerman, United States Congressman
Hon. Raul Grijalva, United States Congressman
Robert Anderson, Solicitor, Department of the Interior
Rose Petoskey, Director, White House Tribal Affairs
Morgan Rodman, Senior Policy Advisor, White House Domestic Policy Council

Enclosures: Exhibit A – Unanswered Correspondence From Yakama Nation to Interior
Concerning Colville's Gaming Application

EXHIBIT A

Unanswered Correspondence from Yakama Nation to Interior Concerning Colville's
Gaming Application



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 Nespelem, 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 identity — 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.”

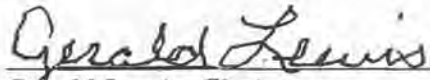
The Yakama Nation has asked for government-to-government consultation with Interior regarding this matter no less than seven times. To date, no federal official has met with the Yakama Nation to discuss this major federal action that could have a detrimental impact on Yakama Nation's inherent sovereign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

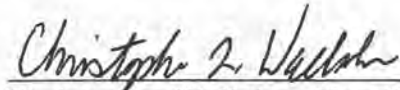
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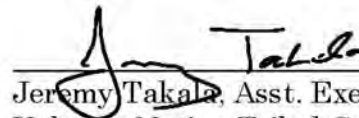
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Yakama Nation Tribal Council



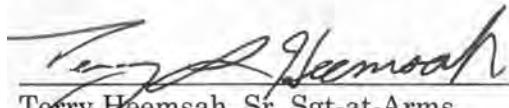
Stephen Selam, Executive Secretary
Yakama Nation Tribal Council



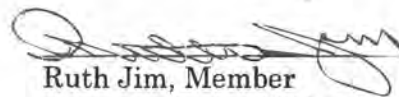
Christopher Wallahee, Vice Chairman
Yakama Nation Tribal Council



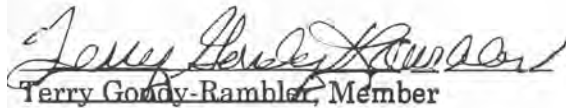
Jeremy Takala, Asst. Executive Secretary
Yakama Nation Tribal Council



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



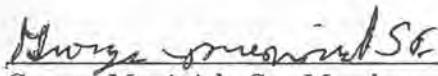
Ruth Jim, Member
Yakama Nation Tribal Council



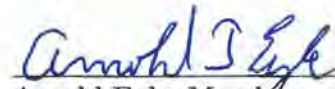
Terry Gandy-Rambler, Member
Yakama Nation Tribal Council



Charlene Tillequots, Member
Yakama Nation Tribal Council



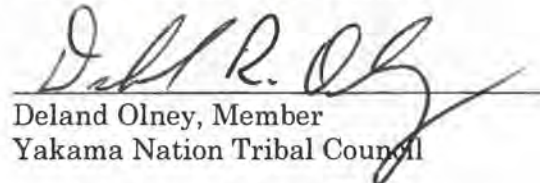
George Meninick, Sr., Member
Yakama Nation Tribal Council



Arnold Eyle, Member
Yakama Nation Tribal Council



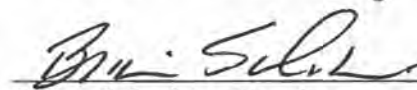
Caseymac Wallahee, Member
Yakama Nation Tribal Council



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.



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.



Confederated Tribes and Bands of the Yakama Nation

Established by the
Treaty of June 9, 1855

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.



Confederated Tribes and Bands of the Yakama Nation

Established by the
Treaty of June 9, 1855

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).



Confederated Tribes and Bands of the Yakama Nation

Established by the
Treaty of June 9, 1855

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.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

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



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

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

Post Office Box 151, 401 Fort Road, Toppenish, WA 98948 (509) 865-5121



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

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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
Treaty of June 9, 1855

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.

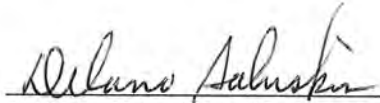
The Yakama Nation has lodged its standing objection to Colville, the Governor of Washington, the City of Kennewick, the City of Richland, the City of Pasco, Franklin County, and now to the President of the United States, the Bureau of Indian Affairs, and its Department of the Interior Secretary from 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
Secretary, Department of the Interior
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.
Washington, D.C. 20240
MS-4141-MIB
Tara_Sweeney@ios.doi.gov
Jessie.Young@bia.gov

Darryl LaCounte
Director, Bureau of Indian Affairs
Department of the Interior
1849 C. Street, N.W.
MS-4606
Washington, D.C. 20240

Bryan Mercier, Regional Director
Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169
Brian.Mercier@bia.gov

E. Sequoyah Simermeyer (Coharie)
Chairman
Nation Indian Gaming Comm'n
1849 C. Street, N.W.
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.

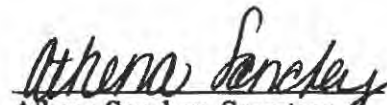
BE IT FURTHER RESOLVED, all available Yakama Nation governmental resources are hereby directed to carry out the systematic and non-violent opposition of Colville's efforts to colonize the Yakama Nation's Article I lands.

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 Sanchez, 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

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RECEIVED
2021 OCT -5 PM 2:08
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.

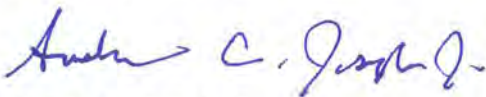
The Subject Property is located in the City of Pasco (City) in Franklin County, Washington within Section 17 of Willamette Meridian Baseline & Meridian in Township 9 North, Range 30 East as depicted on the Glade USGS 7.5' quadrangle maps. The Subject Property lies within the aboriginal lands of the Palus 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, appearing to read "Andrew C. Joseph Jr.", is written above the typed name.

Andrew C. Joseph Jr.
CHAIRMAN

Cc:

Bodie Shaw, Deputy Regional Director, Trust Services

Brian Haug, Regional Environmental Scientist, Bureau of Indian Affairs

CONFIDENTIAL
2021-719

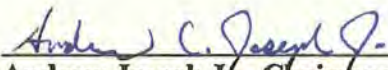
RESOLUTION

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 A
Regional Location

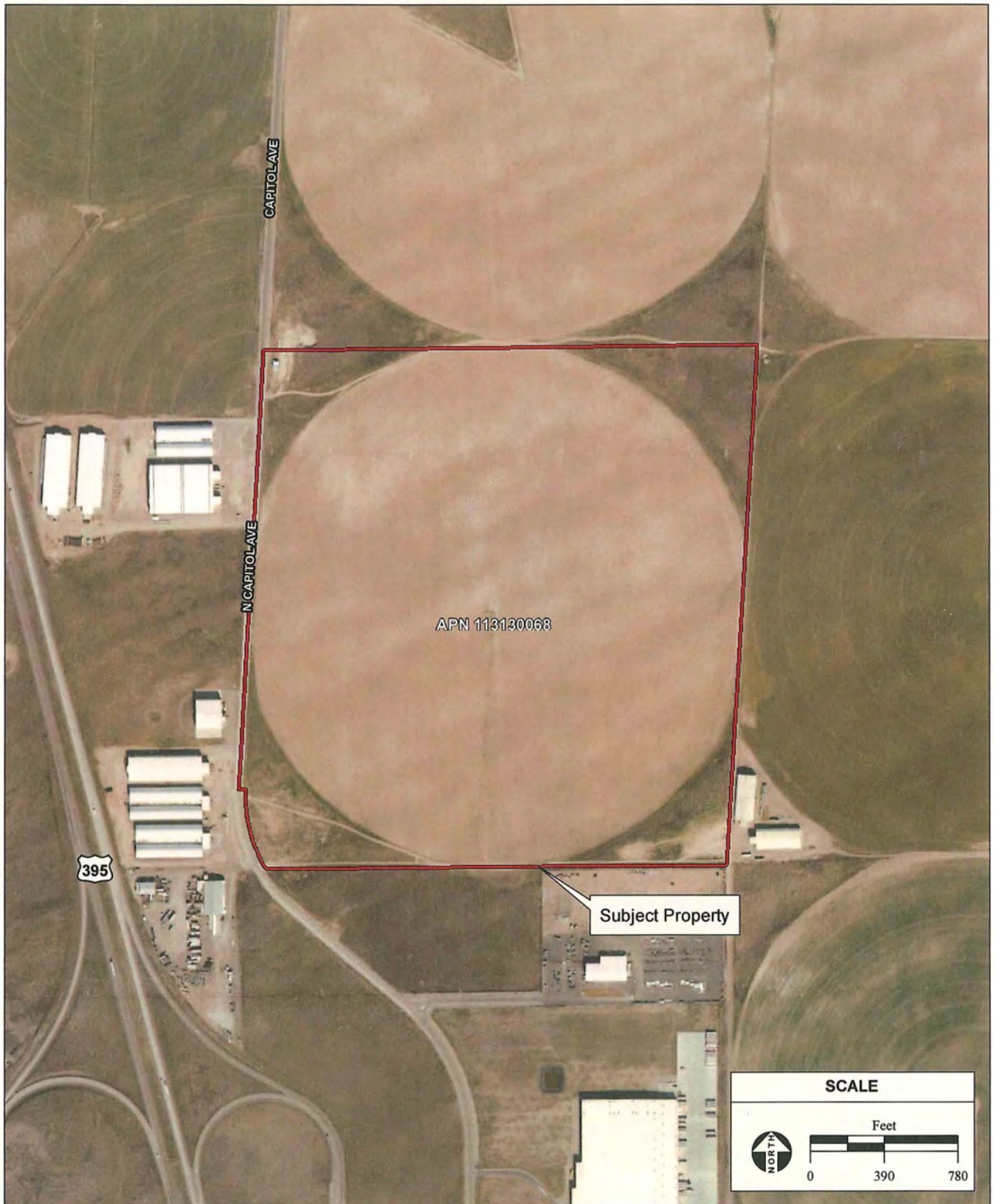


Exhibit B
Aerial Photograph

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 Tamanwálá, 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 Tamanwálá'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.

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.

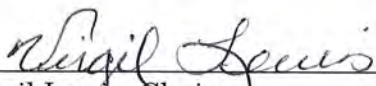
The Yakama Nation has lodged its standing objection to Colville, the Governor of Washington, the City of Kennewick, the City of Richland, the City of Pasco, Franklin County, and now the United States, its Bureau of Indian Affairs, and its Department of the Interior Secretary from taking any action towards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