



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

December 11, 2024

Sent via USPS mail and email

Wizipan Garriott
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SUBJECT: Renewed Request for Government-to-Government Consultation and Follow Up to the November 25, 2024 Virtual Meeting, re: Status of the Colville Tribe's Fee-to-Trust Applications

Dear Principal Deputy Assistant Secretary Garriott,

On behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") and its Tribal Council, I write to express our appreciation for your recent initiative to engage with the Yakama Nation regarding the Colville Tribe's gaming fee-to-trust application ("gaming application"). You and Ms. Paula Hart are the first federal officials to reach out to the Yakama Nation and invite a meeting to discuss this gaming application matter.

For nearly five years, the Yakama Nation has repeatedly sought formal consultation with Interior regarding this gaming application only to be met with indifference and delay. It is disheartening that it took this long for the current Administration to initiate a meeting. While a step in the right direction, we cannot emphasize enough that this virtual meeting did not meet the standard of meaningful, in-person government-to-government consultation that our relationship demands. A virtual meeting, especially one that includes the attendance of multiple Indian tribes, cannot adequately address the complex issues at stake. Although we might have similar concerns, the Yakama Nation's concerns with the gaming application are unique and must be considered independent of any other Indian tribe. We request that Interior prioritize scheduling in-person government-to-government consultation to ensure a more respectful, meaningful, and productive dialogue.

Despite this criticism, we appreciate your willingness to engage with us and share important information regarding the status of the gaming application. The following are key takeaways from our recent discussion:

Timeline and Transparency

You state the gaming application is still in its early stages; however, Interior's lack of timely responsiveness over the past five years raises serious concerns about Interior's commitment to honoring the 25 C.F.R. Part 292 process. We fear that an expedited timeline, or the potential for future administrations to accelerate the process, could limit our ability to fully participate in the comment process and to advocate for our rights. This is particularly concerning given our experience with the Colville Tribe's travel plaza fee-to-trust application, which the Bureau of Indian Affairs approved pursuant to 25 C.F.R. Part 151 under an accelerated timeline approved by Interior. We urge Interior to adopt a more deliberate and transparent approach to the gaming application, ensuring that all affected Indian tribes, local governments, and surrounding community members are able to fully understand the status of the gaming application and the timeline for each stage of the fee-to-trust process.

This need for a deliberate and transparent approach extends to the substance of the gaming application itself, which the Bureau of Indian Affairs refused to release. It was not until the Yakama Nation submitted a Freedom of Information Act request that we received a heavily redacted copy of the gaming application. This deliberate suppression of information hinders our ability to fully understand and meaningfully engage in the comment process. Despite lodging several appeals with Interior, the Department has refused to act. Interior and the Bureau of Indian Affairs have demonstrated a concerted effort to frustrate the Yakama Nation's ability to participate in the comment process, casting a shadow of doubt over the fairness of Interior's consideration of the gaming application.

Halt Consideration

Interior's consideration of the gaming application directly violates the federal government's Treaty promises, undermines our sovereignty, and disregards the core tenants of Interior's trust responsibilities owed to the Yakama Nation. *See generally* SECRETARIAL ORDER NO. 3335. This egregious overreach seeks to redefine our homelands, our history, and our Treaty of 1855. We urge Interior to prioritize our concerns and to take immediate steps to halt its consideration of the gaming application or otherwise deny it outright.

The notion that Interior must see the process through, regardless of the clear violations of our Treaty rights, is a myopic response that ignores the significant expense and hardship borne by the Yakama Nation to defend against the gaming application. It also wastes valuable agency resources that could be better utilized to address other critical issues impacting Indian Country. By accepting and taking action on the gaming application, Interior appears to be prioritizing the economic aspirations of one Indian tribe over the legal rights of another. Whether Interior's rejection would be deemed arbitrary and capricious is a matter for the courts, not Interior.

Interior's Review and Potential Impacts

You affirmed that Interior will conduct a thorough review of the gaming application, including an assessment of the potential impacts on the Yakama Nation's Treaty rights, sovereignty, and economic well-being. You affirmed that physical distance from the Colville Tribe's headquarters would be considered. You affirmed that the proposed gaming project's siting within the Yakama Nation's Treaty Territory would be a critical factor. Accordingly, we trust that Interior will give significant weight to the following:

- 1) The Colville Tribe is not landless. At approximately 1.4-million-acres, the Colville Reservation is the 16th largest in the United States. The Colville Tribe is the beneficiary to over a million acres of trust land, including vast tracts of forested, agricultural, and rangeland. While some newly recognized, restored or geographically isolated Indian tribes may have legitimate need for additional land, the Colville Tribe's claim of "need" relative to more than 80% of other Indian tribes throughout the United States is disingenuous. The Colville Tribe does not lack a reservation, adequate trust lands, or attractive siting opportunities within its own territory for its proposed gaming project.
- 2) The proposed gaming project would significantly impact our ability to fulfill our governmental responsibilities, diverting revenue from our Reservation that supports our social services, law enforcement, health and education needs, and other essential governmental services. This would unjustly enrich an Indian tribe located 165 miles away from the proposed gaming project's location, allowing them to economically exploit the Yakama Nation's Treaty Territory while undermining our ability to provide for our people. For the Colville Tribe, it has no legitimate need as it already operates "3" casinos – more than any other Indian tribe in the Pacific Northwest. Their demand for a fourth casino within the Yakama Nation's Treaty Territory, far from their reservation and far from their people, is a blatant overreach that will set a dangerous precedent for future tribal gaming developments in the Pacific Northwest
- 3) In the Treaty of 1855, the Yakama Nation reserved rights that extend broadly throughout our 12-million-acre Treaty Territory. *See* 12 STAT. 951. Article II established our Reservation – lands for the Yakama Nation's exclusive use and benefit. Article I and Article III further established our reserved and perpetual right to access, use, and derive income and other benefit from lands stretching from the North Cascade Mountains down to the Columbia River, and from the crest of the Cascades east to the Snake River. This includes Pasco, Washington and the Tri-Cities region. The Yakama Nation exercises sovereign authority over these lands, including the power to manage and control resources, apply our laws, and enforce our police powers. By virtue of our Treaty of 1855, our rights over our Treaty Territory are primary and superior as to any other original Nation.
- 4) The Yakama Nation is the sole legal successor to the Palouse band. Our Treaty of 1855 unequivocally states that the Yakama Nation is the only sovereign that holds the legal authority to act on the Palouse band's behalf. The Colville Tribe's gaming application is a cynical ploy mirroring their past failed efforts to appropriate our

Palouse identity, our Palouse history, our Palouse homelands, and the rights reserved under our Treaty of 1855 – a tired tactic that has already been rejected by the courts. *See 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).

The Yakama Nation urges Interior to consider these as decisive factors. Failing to give these factors significant weight could destabilize the governing affairs of Indian tribes throughout the Pacific Northwest. In the event that an off-reservation gaming application is approved at such a substantial distance from an Indian tribe's headquarters, where the Indian tribe has no genuine connection to the area, and the area rests within the legally-defined territory of another Indian tribe, then off-reservation gaming could presumably be justified at virtually any location in the United States. This would undermine the principles of tribal sovereignty and self-determination, and erode the integrity of the Indian Gaming Regulatory Act.

Travel Plaza Fee-to-Trust Application

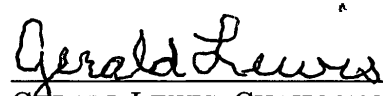
We continue to express our deep concern about the Bureau of Indian Affairs' approval of the Colville Tribe's travel plaza fee-to-trust application, particularly considering its proximity to the proposed gaming project and the potential cumulative impacts on our Treaty rights and sovereign interests. These adjacent lands are inextricably linked, and a decision on one significantly impacts the other. The approval of the travel plaza fee-to-trust application sets a dangerous precedent and undermines the integrity of the gaming application's NEPA and EIS review process. We urge Interior to intercede and rescind the approval of the travel plaza fee-to-trust application so that a comprehensive analysis of the potential impacts of both projects on the Yakama Nation can be conducted in parallel.

Future Engagement

We emphasize the critical importance of timely and substantive consultation with the Yakama Nation and other affected Indian tribes. We believe that meaningful consultation is essential to ensure that our legal rights and sovereign interests are fully protected and that our voices are heard in the decision-making process. We hope that the incoming Administration will commit to a more collaborative approach to government-to-government consultation, and that they will work with us to develop a process that values our input and prioritizes our Treaty rights. We acknowledge your statement regarding a potential "Treaty Project" focused on the Yakama Nation. We look forward to further discussions on this initiative.

For next steps for the gaming application matter, we formally renew our request for in-person government-to-government consultation and asks that you to direct Interior staff to coordinate accordingly with the incoming Administration. For further discussion regarding the contents of this letter, please respond in writing with courtesy copy to Ethan Jones at the Yakama Nation's Office of Legal Counsel at (509) 834-8005 or ethan@yakamanation-olc.org.

Respectfully,



GERALD LEWIS, CHAIRMAN

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