



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

November 8, 2023

Department of the Interior
Office of the Solicitor
Attn: FOIA/Privacy Act Appeals Office
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240
Email: FOIA.Appeals@sol.doi.gov

Re: FREEDOM OF INFORMATION APPEAL
Control Number BIA-2023-004184

Dear FOIA Appeals Officer:

This letter constitutes an administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6). This appeal requests review of certain determinations made by the Bureau of Indian Affairs (BIA/agency) regarding an April 24, 2023 FOIA request assigned the following identification number: BIA-2023-004184. By letters dated May 19, 2023 and August 11, 2023, the agency partially denied the FOIA request, withholding 522 pages from the agency's responsive production of documents and records under FOIA Exemption 4, Exemption 5, and Exemption 6. This appeal challenges the agency's partial denial of the FOIA request.

I. BACKGROUND

Enclosed are copies of the relevant correspondence with the agency, including the request letter, the agency's acknowledgment of receipt, and the agency's responses.¹ In the April 24, 2023 request, the agency was asked to provide the following records:

“... a copy of the fee-to-trust and two-part determination application filed by the Colville Tribes (Colville Application), on or about April 7, 2023, for lands located in Franklin County, Washington.”

“... all information, letters, documents, and records (electronic or otherwise) which relate to the Colville Application. This includes anything received by, sent by, compiled by, created by, reviewed by, or stored by the BIA or any BIA field office or the Department of the Interior (Interior) which relate to the Colville Application.”

The request included instructions and provided the following qualifications intended to assist the agency with processing the request:

¹ See Attachment A-1; A-2; A-3; A-4.

“The term ‘records’ and ‘relate to’ should be given the broadest possible interpretation and includes, but is not limited to, correspondence, memoranda, meetings (dates, agendas, and written notes), telephone calls (dates, agenda, and written notes), electronic communications (emails or attachments to such emails, and any text or SMS messages), reports, and facsimiles.”

“The relevant timeframe includes the period of January 2018 through BIA’s full and complete response to this Freedom of Information Request. However, in an effort to ensure timely disclosure of the information and records sought, the Yakama Nation asks that BIA immediately provide a copy the Colville Application as a preliminary partial response to this Freedom of Information Request (Part 1). Thereafter, the Yakama Nation ask that BIA fulfill the remainder of its obligation to provide a full and complete response to this Freedom of Information Request (Part 2).”

The agency acknowledged receipt of the request in a letter dated April 28, 2023. The agency placed the request into its Complex processing track. The agency projected its preliminary determination would be issued by May 22, 2023.

On May 19, 2023, the agency issued its interim response to the request, stating it had enclosed six files consisting of 10 pages (excluding attachments) that were released in full. In its interim response, the agency noted this was only a partial response and explained there would be delay in processing the request. The agency stated the request should have been placed in the Extraordinary processing track due to the voluminous records sought and the requirement for an “Exemption 4 Consultation”. The agency stated it would take a 55-workday extension with expectation that the agency would dispatch a final determination before August 8, 2023.

On August 11, 2023, the agency issued its final determination to the request, stating it had enclosed 27 sperate electronic files consisting of approximately 522 pages that the agency released only in part, withholding (redacting) certain information. The agency stated it had exercised its discretion to withhold (redact) certain information as permitted by FOIA and under the following authorities:

- **Exemption 4** – approximately 183 pages were withheld (redacted) in full or in part under the claim that “the withheld information is commercial or financial information” and “[t]he submitter does not customarily release this information to the public, so the information is confidential for the purposes of Exemption 4.”
- **Exemption 5** – approximately 50 pages were withheld in full or in part under the claim that the withheld information is “inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency.” The explanation provided was that this incorporated customary privileges that protect materials from discovery in litigation. The agency asserted that the 50 pages included predecisional and deliberative process communications, as well as confidential communications between agency attorneys and agency clients.
- **Exemption 6** – approximately 9 pages were withheld in part under the claim that the withheld information is “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The agency explained that Exemption 6 protects personal privacy interests

of individuals, which includes names, tribal affiliations, TAAMS Identification Numbers, and individual interests held in trust.

The agency's August 11, 2023 final determination provided notice of a 90 workday window to submit a written appeal.

II. APPEAL – 5 U.S.C. § 552(a)(6)

This appeal is submitted timely. This appeal challenges the agency's partial denial of the FOIA request. The basis for the appeal includes the following:

- The agency performed an inadequate search for the information, documents, and records requested. No memoranda, meetings (dates, agendas, and written notes), telephone calls (dates, agenda, and written notes), electronic text or SMS messages, reports, or facsimiles were identified. There is sufficient reason to believe the requested information, documents, and records exist. If such information, documents, or records do not exist, then the agency should issue a response stating “no responsive information, documents, or records exist”.
- The agency has provided insufficient justification for its implementation of FOIA Exemption 4 as applied to the released information, documents, and records. Information, documents, and records withheld (redacted) pursuant to Exemption 4 are presumptively disclosable under FOIA, and the agency has not met its burden of demonstrating that the withheld (redacted) information is exempt from disclosure as being “commercial or financial information” *and* “confidential”.
- Notwithstanding the agency's *discretionary* determination that information, documents, and records may be withheld (redacted) under Exemption 4, Exemption 5, or Exemption 6, there is no law prohibiting disclosure and the public interest in releasing the withheld (redacted) information, documents, and records outweighs any interest in confidentiality.

A. Inadequate Search

i. General Rule Statement

Agencies are required to conduct a search that is reasonably calculated to uncover all relevant information, documents, and records requested.² This means the agency has to do an adequate job of selecting search terms and searching in the right places for the information, documents, and records requested.³ In addition, agencies *have a duty* to interpret FOIA requests liberally rather than second-guessing the requester's intention to make the request narrower and more easily searchable.⁴

² See *Zemansky v. EPA*, 767 F.2d 569, 571 (9th Cir. 1985); see also *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

³ *Id.*

⁴ See *Yagman v. Pompeo*, 868 F.3d 1075, 1080 (9th Cir. 2017) (concluding agencies must construe FOIA requests liberally to achieve the core purpose of FOIA); see also *Rubman v. United States Citizenship & Immigration Servs.*, 800 F.3d 381, 389-91 (7th Cir. 2015) (explaining that the defendant agency was required to liberally construe plaintiff's request for “all documents” despite the

ii. Basis for Appeal

The April 24, 2023 request was for certain information, documents, and records with instruction that “[t]he term ‘records’ and ‘relate to’ should be given the broadest possible interpretation and includes, but is not limited to, correspondence, memoranda, meetings (dates, agendas, and written notes), telephone calls (dates, agenda, and written notes), electronic communications (emails or attachments to such emails, and any text or SMS messages), reports, and facsimiles.” Responsive documents and records provided by the agency only included emails, letters, and the Colville Application with its related attachments, exhibits, and appendices. Review of emails produced by the agency suggests related information, documents, and records exist, but that these were not included with the agency’s disclosure. For example:

- Emails sent by Regional Director Bryan Mercier stating he has quarterly meetings with the Colville Tribe and that the [proposed] Colville Application has been a regular subject of the meetings.⁵ Notes related to these quarterly meetings were not included with the agency’s May 19, 2023 interim response or August 11, 2023 final determination.
- Emails sent by Regional Director Bryan Mercier indicating the Colville Tribe arranged to have a meeting at the BIA Portland Regional Office on April 7, 2023 to hand deliver the Colville Application.⁶ Notes related to this meeting were not included with the agency’s May 19, 2023 interim response or August 11, 2023 final determination.
- Emails exchanged between agency staff and the Colville Tribe’s employees, agents, and contractors indicating that the Colville Tribe had meetings with agency solicitors to discuss elements of the fee-to-trust process related to the Colville Application.⁷ Notes related to such meetings between the Colville Tribe and agency solicitors, and referenced solicitor opinions, were not included with the agency’s May 19, 2023 interim response or August 11, 2023 final determination.
- Emails exchanged between agency staff and the Colville Tribe’s employees, agents, and contractors indicating that phone calls related to the Colville Application took place within the relevant timeframe.⁸ Logs and notes related to such phone calls were not included with the agency’s May 19, 2023 interim response or August 11, 2023 final determination.

ambiguity of the word “documents” in the request); *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1255 (11th Cir. 2008) (concluding that, even if ambiguous, the EPA was “obliged under FOIA to interpret [requests] . . . liberally in favor of disclosure”); *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (concluding that the Customs Service should have liberally construed a request for records “pertaining to” Ross Perot as seeking even those records that were not specifically indexed under Perot’s name).

⁵ See Attachment B-1.

⁶ See Attachment B-2.

⁷ See Attachment B-3.

⁸ See Attachment B-4.

- Emails exchanged between agency staff and the Colville Tribe's employees, agents, and contractors indicating collaboration between the agency and the Colville Tribe on the Colville Application, including pre-submission and post-submission elements.⁹ Logs and notes and related to this collaboration were not included with the agency's May 19, 2023 interim response or August 11, 2023 final determination.

This appeal requests that the agency perform a more diligent search for the information, documents, and records requested. This appeal requests that the agency provide a written log of every meeting and phone call between agency staff and the Colville Tribe's employees, agents, and contractors where the subject of the Colville Application or the Franklin County land being taken into trust was referenced, either directly or indirectly. The log should provide the meeting/call date and list of all persons in attendance. The log should be supplemented with any related written briefing and background materials prepared by, received by, sent by, or compiled by the agency in advance and in support of the meeting or phone call. The log should be further supplemented with relevant written notes, agendas, reports, memoranda, summaries, and opinions prepared by, received by, sent by, or compiled by the agency resulting from or as a consequence of such meeting or phone call. For any meeting or phone call noted in the log where written materials were not prepared by, received by, sent by, or compiled by the agency, then the agency should issue a response stating "no responsive information, documents, or records exist".

This appeal further requests copies of any and all written communications (letters, emails, texts, sms messages) exchanged between all agency staff and the Colville Tribe where the subject of the Colville Application or the Franklin County land being taken into trust was mentioned. Without limitation, individual senders/recipients should include Jarred Erickson, Karen Erickson, Cindy Marchand, and Cody Desautel from the Colville Tribe, and Bryan Mercier, Bodie Shaw, Kurt Fredenburg, Sherry Johns, Brian Haug, Sarraye Forrest-Davis, Theresa Cavasos, and Randall Friendlander from the agency. Again, this is not an exclusive list of persons, and the agency's search should include any and all written communications exchanged between all agency staff and any of the Colville Tribe's employees, agents, and contractors where the subject of the Colville Application or the Franklin County land being taken into trust was mentioned, either directly or indirectly. If no such communications exist, then the agency should issue a response stating "no responsive information, documents, or records exist".

This appeal further requests that the agency update the relevant timeframe for its search to include information, documents, and records to from the period of April 24, 2023 through the date of this appeal.

B. Exemption 4

i. General Rule Statement

FOIA establishes a strong presumption in favor of disclosure of information, documents, and records, placing the burden on the agency to justify the withholding of

⁹ See Attachment B-5.

requested documents.¹⁰ FOIA is grounded in “a general philosophy of full agency disclosure unless information is exempted under the clearly delineated statutory language.”¹¹ FOIA maintains nine exemptions to the general presumption of mandatory disclosure. 5 U.S.C. § 552(b)(1)-(9). “These exemptions are specifically made exclusive . . . and must be narrowly construed.”¹² When a requested document or record contains some information which falls under one of the nine exemptions, FOIA expressly mandates that any “reasonably segregable portion” of a record must be disclosed to a requester after the redaction (the deletion of part of a document to prevent disclosure of material covered by an exemption) of the parts which are exempt. 5 U.S.C. § 552(b).

If the agency decides to withhold any requested information, documents, or records, the burden is on the agency to demonstrate that the information falls within a FOIA exemption.¹³ When a third party seeks to prohibit the release of information, documents, or records, the third party also has the burden of demonstrating that the information falls within a FOIA exemption and can be withheld.¹⁴

ii. Exemption 4 - 5 U.S.C. § 552(b)(4) – “Commercial or Financial Information”¹⁵

Exemption 4 is intended to protect the submitter of the information from competitive harm resulting from public disclosure of commercial or financial information. 5 U.S.C. § 552(b)(4). Exemption 4 allows a federal agency to withhold information given to them by a person if (1) the information is properly characterized as commercial or financial information, *and* (2) the information is confidential.¹⁶

a. Commercial or Financial Information

Agencies may only withhold information that qualifies as “commercial” or “financial” in nature. Whatever commercial or financial means at the margins, at its core are records that reveal basic commercial operations, such as sales statistics, research data, technical designs, customer and supplier lists, profit and loss data, overhead and operating costs, and information of financial condition. Broader interpretations are generally rejected. The belief that disclosure might cause commercial repercussions does not suffice to show that information is “commercial” under Exemption 4.¹⁷ Similarly, exchange of information between governmental entities does not constitute a commercial transaction in the ordinary

¹⁰ See *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991).

¹¹ *Dept of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976).

¹² *Rose*, 425 U.S. at 361; see also *FBI v. Abramson*, 456 U.S. 615, 630 (1982).

¹³ See *Ray*, 502 U.S. at 173.

¹⁴ See *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 755 (1989)

¹⁵ 5 U.S.C. § 552(b)(4) also pertains to trade secrets. The agency’s August 11, 2023 final determination letter states that information withheld (redacted) pursuant to Exemption 4 is “commercial or financial information” and “[t]he submitter does not customarily release this information to the public”. The appeal presented here does not address trade secrets because no objection has been raised claiming that the sought after information is a trade secret.

¹⁶ This appeal does not challenge the submitter’s status as a “person” under FOIA.

¹⁷ See *Citizens for Resp. & Ethics in Wash. v. United States DOJ*, 58 F.4th 1255, 1268 (D.C. Cir. 2023).

sense.¹⁸ The burden is on the government to demonstrate that this element is satisfied, and “merely assert[ing], without any supporting detail” that records contain commercial or financial information is “inadequate.”¹⁹

b. Confidential

Even if the agency (or submitter) establishes that the requested information is commercial or financial, the agency (or submitter) must also establish that the information is “confidential”. There is a two-prong test for determining whether information is confidential. Information is confidential where (1) it is both customarily and actually treated as private by its owner, *and* (2) it is provided to the government under an assurance of privacy.²⁰

Information that has already been publicly released cannot qualify as confidential, i.e., Exemption 4 cannot be used to protect information that is publicly available or part of the public domain.²¹ For information to be deemed confidential, it cannot be shared freely; the information must be kept private or closely held by the submitter.²² A submitter’s selective disclosure of supposed confidential information elsewhere undercuts its contention that the submitter customarily treats said information as private or confidential.²³

Upon finding the first prong of the confidentiality analysis to be satisfied, the analysis then turns to the second prong – whether the government provided assurances that the information would be kept private. In 2016, Congress passed the FOIA Improvement Act to clarify that agencies withholding information under Exemption 4 are required to establish that release of the information would foreseeably cause harm to the submitter.²⁴ Under this foreseeable harm requirement, an agency must explain how disclosing the specific information withheld under Exemption 4 would cause genuine harm

¹⁸ See *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 38-39 (D.C. Cir. 2002).

¹⁹ *COMPTEL v. FCC*, 945 F. Supp. 2d 48, 57 (D.D.C. 2013) (rejecting as “conclusory” agency’s bare assertion that documents were “commercial” or “financial”); see also *Wash. Post Co. v. HHS*, 690 F.2d 252, 266 (D.C. Cir. 1982) (noting that “[w]e do not see, nor has the government explained, how the list of non-federal employment on Form 474 can be “commercial or financial information”); *Animal Legal Def. Fund, Inc. v. Dep’t of the Air Force*, 44 F. Supp. 2d 295, 303 (D.D.C. 1999) (denying summary judgment when the agency’s declaration merely “state[d]” that the company’s “proposals contain ‘commercial and financial information’” but failed to provide a “description of the documents to permit the [requester] or [the] Court to test the accuracy of that claim”).

²⁰ See *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

²¹ See *Besson v. U.S. Dep’t of Com.*, 480 F. Supp. 3d 105, 114-15 (D.D.C. 2020); see also *Niagara Mohawk Power Corp. v. DOE*, 169 F.3d 16, 19 (D.C. Cir. 1999) (holding that under the public domain doctrine, information that would otherwise be subject to a valid FOIA exemption must be disclosed if that information is preserved in a permanent public record or is otherwise easily accessible by the public).

²² See *Argus Leader*, 139 S. Ct. at 2363 (explaining that “it is hard to see how information could be deemed confidential if its owner shares it freely”).

²³ See *Am. Small Bus. League v. DOD*, 411 F. Supp. 3d 824, 831-33 (N.D. Cal 2019).

²⁴ “An agency shall . . . withhold information under this section only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or . . . disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i).

to the submitter's economic or business interests, and thereby dissuade others from submitting similar information to the government.²⁵

c. Administrative Process

To rely on Exemption 4 as a basis for nondisclosure, the submitter must provide a detailed written statement to the agency that explains why the information is confidential information. 43 C.F.R § 2.30, .31. To do this, the submitter must provide certification that the information is both customarily and actually treated as confidential by the owner of the information. 43 C.F.R § 2.31. The statement must also include any available background on whether the information was provided to the government under an assurance that the government would keep it private. 43 C.F.R § 2.31.

ii. *Basis for Appeal*

a. Misuse of Exemption 4

The agency's May 19, 2023 interim response referenced an "Exemption 4 Consultation" that would provide the submitter the opportunity to object to release of the Colville Application and other materials related to the request. Significant portions of the released Colville Application, including related attachments, exhibits, and appendices, could only be withheld (redacted) if the submitter claimed the withheld information is either commercial or financial information, and that the information is confidential.

This appeal contends that the agency's implementation of Exemption 4 has been misused as applied to the Colville Application, including related attachments, exhibits, and appendices. The majority of the withheld (redacted) information is neither commercial nor financial as it does not meet common definitions generally assigned to either term. And to the extent any of the withheld (redacted) information is properly concluded by the agency to be commercial or financial, the submitter has no reasonable expectation of confidentiality because the information is already publicly available as part of the public domain, historical record, or is readily accessible from public databases.

For example, significant portions of the Colville Application that was withheld (redacted) is reasonably characterized as publicly available information that is neither commercial or financial, including:

²⁵ See *Am. Small Bus. League*, 411 F. Supp. 3d at 835-36 (confirming that foreseeable harm standard applies to Exemption 4); see also *Ctr. for Investigative Reporting v. United States Customs & Border Prot.*, 436 F. Supp. 3d 90, 113 (D.C. Cir. 2019) (finding that foreseeable harm requirement applies to Exemption 4, and explaining that "[t]o meet this requirement, the defendants must explain how disclosing, in whole or in part, the specific information withheld under Exemption 4 would harm an interest protected by this exemption, such as by causing 'genuine harm to [the submitter's] economic or business interests,' . . . , and thereby dissuading others from submitting similar information to the government . . .") (internal citations omitted).

- Recitation of the history of Indigenous peoples is a matter of existing public knowledge, memorialized in non-fiction books, academic research and teaching materials, congressional records, and judicial decisions.²⁶
- Data concerning the Colville Tribe's enrolled membership is a matter of record already shared for public purposes (e.g., allocating shares of federal funding among Tribes) and also disclosed by the Colville Tribe to the media.²⁷
- The names of state and municipal public entities that the Colville Tribe has entered into Cooperative Agreements with has already been publicly shared by those state and municipal public entities.²⁸ Similarly, Cooperative Agreements with these entities are a matter of public record.²⁹
- Distances between known geographic points, and the location of the Franklin County land relative to state boundaries and reservation boundaries, are a matter of public record.³⁰
- Deed, land description, and title/survey information are a matter of public records.³¹

Elsewhere within the Colville Application, information that might be characterized as non-public is nonetheless *not* subject to Exemption 4 because the information is neither commercial or financial, including: The Environmental Site Assessment and information relating to 25 C.F.R. § 151.10(H) environmental review procedures,³² 25 C.F.R. § 151.10(B) statement of need and purpose,³³ 25 C.F.R. § 151.10(C) statement of purpose,³⁴ 25 C.F.R. § 151.10(E) statement of impacts to local governments,³⁵ and 25 C.F.R. § 151.10(F) statement of jurisdictional problems and potential conflicts,³⁶ and 25 C.F.R. § 151.10(G) statement of impacts to the BIA.³⁷

The above-highlighted examples are only those that could be ascertained by contextual clues found before, after, or within redacted passages. This list is not exclusive. Other portions of the Colville Application have large block redactions that make it impossible to know what information has been suppressed. Given the gratuitous misuse of Exemption 4, it is reasonable to assume that the information within such large block redactions is similarly publicly available, or otherwise not commercial or financial information that could be appropriately designated as confidential.

²⁶ See Attachment C at 3, 10.

²⁷ See Attachment C at 6.

²⁸ See Attachment C at 8-9.

²⁹ See Attachment C at 8-9; *see also* Attachment C at 13 (reference to Exhibit 7 (Port of Pasco), 8 (unknown), 9 (Franklin County Sheriff), 10 (unknown), 11 (unknown)).

³⁰ See Attachment C at 10.

³¹ See Attachment C at 4, 8; *see also* Attachment C at 13 (reference to Exhibit 2 (Title Commitment), 4 (Land Description Review Certificate), 7 (Preliminary Commitment for Title Insurance)).

³² See Attachment C at 1, 9-10; *see also* Attachment C at 13 (reference to Exhibit 12).

³³ See Attachment C at 6-7, 13.

³⁴ See Attachment C at 7.

³⁵ See Attachment C at 8.

³⁶ See Attachment C at 8-9; *see also* Attachment C at 13 (reference to Exhibit 7 (Port of Pasco), 8 (unknown), 9 (Franklin County Sheriff), 10 (unknown), 11 (unknown)).

³⁷ See Attachment C at 8-9.

This appeal contends the withheld (redacted) information is presumptively disclosable under FOIA and the agency has not met its burden of demonstrating that the information is exempt from disclosure under Exemption 4. If the agency deems otherwise, then this appeal requests that for all information withheld (redacted) pursuant to Exemption 4, the agency detail its process for reaching its conclusion that the information is either commercial or financial information, and that the information is confidential.

This appeal further requests that for all information withheld (redacted) pursuant to Exemption 4, the agency explain why it characterizes the information as either commercial or financial information, why it characterizes the information as confidential, and how disclosing the information would cause genuine harm to the submitter's economic or business interests.

This appeal further requests that the agency produce all relevant documents and records showing that both the agency and the submitter followed the requisite administrative process for relying on Exemption 4 as a basis for nondisclosure. Documents and records to be produced include the following:

- A copy of the Exemption 4 Consultation notice provided to the submitter. 43 C.F.R § 2.27, .28, .29. If none exist, then the agency should issue a response stating “no responsive information, documents, or records exist”.
- A copy of the submitter's written statement that specified all grounds for withholding (redacting) the particular information from the Colville Application. 43 C.F.R § 2.30, .31. If none exist, then the agency should issue a response stating “no responsive information, documents, or records exist”.
- A copy of the submitter's certification that the information is both customarily and actually treated as private by the owner of the information. 43 C.F.R § 2.31. If none exist, then the agency should issue a response stating “no responsive information, documents, or records exist”.
- A copy of the submitter's written statement that claimed the information was provided to the government under an assurance that the government would keep it private. 43 C.F.R § 2.31. If none exist, then the agency should issue a response stating “no responsive information, documents, or records exist”.

III. Discretionary Release

i. General Rule Statement

FOIA exemptions are not absolute; they simply permit, but do not require, an agency to withhold exempted information from the public.³⁸ An agency has the authority to construe 5 U.S.C. § 552(b)(1)-(9) as discretionary rather than mandatory when no harm would result from disclosure of the requested information.³⁹ Consequently, even if the requested information, document, or record falls within one of the nine exemptions, the

³⁸ See *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 282 (D.C. Cir. 1997).

³⁹ See *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979).

agency is permitted to release it anyway as an exercise of its discretionary powers where they are not otherwise prohibited by law from doing so.⁴⁰

ii. Basis for Appeal

Notwithstanding the agency's *discretionary* determination that information, documents, and records may be withheld (redacted) under Exemption 4, Exemption 5, or Exemption 6, this appeal requests that the agency exercise its discretion and release withheld (redacted) portions of information free from any redactions.

The public interest in releasing the withheld (redacted) information outweighs any interest in confidentiality the submitter or the agency might have. In its introduction, the Colville Application states it is submitted “[p]ursuant to 25 U.S.C. § 5108 and 25 C.F.R. Part 151” to acquire land into trust.⁴¹ On May 8, 2023, the agency issued formal written notice that it received the Colville Application and that consistent with regulations, the agency must solicit written comments to assess impacts to local governments from the proposed federal action. To support this comment process, the agency's May 8, 2023 written notice stated the Colville Application would be available for review.

The requestor here, Yakama Nation, is a Tribal government that possess Treaty-reserved rights over the lands described in the agency's May 8, 2023 written notice and the Colville Application.⁴² The agency's May 8, 2023 written notice was specifically directed to Yakama Nation, serving as the agency's recognition of Yakama Nation's status as a local government having regulatory jurisdiction over lands subject to possible acquisition. 25 C.F.R. § 151.11. Yakama Nation's purpose for its FOIA request is to better understand a proposed federal undertaking that the agency sought comment for.⁴³ Providing meaningful comment on the substance of the Colville Application has been unnecessarily frustrated in its gratuitously redacted form, which in turn precludes a full understanding of this proposed federal undertaking.

To promote accountability over this proposed federal undertaking, the following information from the Colville Application must be released in full:

- *The Environmental Site Assessment*⁴⁴ – Local governments (and the public they serve) have an interest in being made aware of and understanding the extent to

⁴⁰ *Id.* (reasoning that application of agency FOIA policies may require “some balancing and accommodation” and noting that “Congress did not design the FOIA exemptions to be mandatory bars to disclosure”).

⁴¹ See Attachment C at 1.

⁴² See Treaty with the Yakamas, U.S. – Yakama Nation, 12 Stat. 951 (June 9, 1855, ratified Mar. 8, 1859, proclaimed Apr. 18, 1859).

⁴³ The FOIA request was submitted April 24, 2023, and the agency's written notice was issued May 8, 2023. Consistent with the written notice's invitation, Yakama Nation submitted a request for a copy of the Colville Application. The agency responded that to process the request, Yakama Nation must submit a FOIA request. A series of subsequent communications resulted in the understating that the agency would process the request pursuant to the April 24, 2023 FOIA request and that no duplicative FOIA request would be required.

⁴⁴ See Attachment C at 9-10; see also Attachment C at 13 (reference to Exhibit 12).

which the Colville Tribe has provided information that allows the Secretary to comply with National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 4) and Hazardous Substances Determinations for Exchange/Disposal of Real Property and Land Acquisition (602 DM 2).

- *The Business Plan*⁴⁵ – Local governments (and the public they serve) have an interest in being made aware of and understanding benefits to the community from the proposed project, as well as potential burdens the public might bear from the proposed project, e.g., employment of the local community, governmental resource allocation, increased expenditures for services governmental provided services, etc.
- *Cooperative Agreements*⁴⁶ – Local governments (and the public they serve) have an interest in being made aware of and understanding what cooperative agreements exist, what cooperative agreements *do not* exist, and how jurisdictional problems between the Colville Tribe and the impacted governments will be addressed.
- *25 C.F.R. § 151.10(B), The need of the individual Indian or the tribe for additional land*⁴⁷ - Local governments (and the public they serve) have an interest in the ability to check the veracity and legitimacy of data being used to support the Colville Tribe's claims of why it needs the Franklin County land to be acquired by BIA into trust status.
- *25 C.F.R. § 151.10(G), Whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status*⁴⁸ – Local governments (and the public they serve) have an interest in being made aware of and understanding whether the BIA is equipped to discharge the additional responsibilities resulting from its acquisition of the Franklin County land.

The ability of affected local governments to provide meaningful comment relevant to the above-highlighted items has been significantly curtailed by the agency's implementation of Exemption 4. The submitter's privacy interests are comparatively insignificant to a local a local government's need to understand the proposed federal undertaking. Release of the withheld (redacted) information will improve the ability of local governments (and the public the serve) to evaluate and assess the potential impacts from the proposed federal undertaking, and to test the legitimacy and accuracy of certain claims made in the Colville Application.

Similarly, the decision-making process underlying the proposed federal undertaking is of equal concern. Exemption 5 protects information that is covered by established legal privileges, such as those that protect attorney-client and similar relationships, lawyers' legal strategies, and deliberative materials prior to a final decision by government officials. Exemption 5 only include communications between federal employees and federal agencies, and not those communications with other persons, including Indian tribes, where there is

⁴⁵ See Attachment C at 7; see also Attachment C at 13 (reference to Exhibit 14 (Business Plan))

⁴⁶ See Attachment C at 8-9.

⁴⁷ See Attachment C at 8-9; see also Attachment C at 13 (reference to Exhibit 7 (Port of Pasco), 8 (unknown), 9 (Franklin County Sheriff), 10 (unknown), 11 (unknown)).

⁴⁸ See Attachment C at 9.

no unity of common interest.⁴⁹ Because Exemption 5 protects the government's own privileges, disclosure of material covered by Exemption 5 is discretionary, and the agency may choose to release potentially exempt information if the agency does not foresee harm from doing so.

The justification for discretionary release of information withheld under Exemption 5 is that this information will help to inform the public's understanding about agency actions and policy-making processes. The agency's privacy interests are comparatively insignificant to the public's need to understand the proposed federal undertaking. This understanding is critical to exercising public oversight of a federal undertaking, giving the public a resource to assess the agency's conduct or misconduct, and promoting accountability throughout the federal government.⁵⁰ If the agency denies this request and instead chooses not to exercise its discretion to release the withheld (redacted) information, then this appeal requests that the agency provide a denial letter that details which part of Exemption 5 (what specific privilege) the agency relied on in making its determination to withhold (redact) the specific information it claimed was privileged.

Under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in FOIA.⁵¹ Generally, when a record reflects personal details regarding an individual, albeit within the context of a business (i.e., transactional) record involving the federal government, an individual's privacy interest is not necessarily implicated as the simple acknowledgment of names and activities does not reveal sensitive personal information about the individual rising to a clearly unwarranted invasion of personal privacy.⁵² In the present instance, no significant personal privacy interest is threatened by disclosure, and the justification for discretionary release of the information withheld under Exemption 6 is that this information will provide a relevant and necessary understanding over the transactional history, land status history, and beneficial ownership history of trust lands owned and managed by the federal government.

IV. CONCLUSION

This appeal requests review of the agency's May 19, 2023 interim response or August 11, 2023 final determination, challenges the agency's partial denial of the April 24, 2023 FOIA request, and requests certain remedies consistent with FOIA and the agency's obligations. Thank you for your consideration.

⁴⁹ See *Am. Small Bus. League*, 372 F. Supp. 3d at 1031-32 (N.D. Cal. 2019) (finding that common interest doctrine applies to Exemption 5 but holding that, where parties communicated about matter over four-year period but only entered into formal joint defense agreement for one month before agreement was withdrawn, common interest doctrine does not apply to "communications that were not legitimately made pursuant to a joint defense agreement").

⁵⁰ See *SDC Dev. Corp. v. Mathews*, 542 F.2d 1116, 1119 (9th Cir. 1976) (Congress believed that "the public as a whole has a right to know what its Government is doing."); see also *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (An informed citizenry is "needed to check against corruption.").

⁵¹ See *Norton*, 309 F.3d at 32.

⁵² See *Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel.*, 639 F.3d 876, 888 (9th Cir. 2010).

Respectfully Submitted,



Marcus Shirzad, Senior Attorney
Yakama Nation Office of Legal Counsel
401 Fort Rd / P.O. Box 150
Toppenish, WA 98948
(509) 865-7268
marcus@yakamanation-olc.org

Enclosures: 3

- Attachment A (14 pages)
- Attachment B (37 pages)
- Attachment C (13 pages)



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

April 24, 2023

Sent via Email and Submitted Electronically to FOIA.gov

Northwest Regional Office
Bureau of Indian Affairs
Attn: Sean Johnson, FOIA Coordinator
911 NE 11th Avenue
Portland, OR 97232
sean.johnson@bia.gov

RE: FOIA REQUEST

Dear FOIA Coordinator:

The Yakama Nation requests that the Bureau of Indian Affairs ("BIA") provide a copy of the fee-to-trust and two-part determination application filed by the Colville Tribes ("Colville Application"), on or about April 7, 2023, for lands located in Franklin County, Washington.

In addition to the full Colville Application sought by this Freedom of Information Request, the Yakama Nation requests all information, letters, documents, and records (electronic or otherwise) which relate to the Colville Application. This includes anything received by, sent by, compiled by, created by, reviewed by, or stored by the BIA or any BIA field office or the Department of the Interior ("Interior") which relate to the Colville Application.

The term "records" and "relate to" should be given the broadest possible interpretation and includes, but is not limited to, correspondence, memoranda, meetings (dates, agendas, and written notes), telephone calls (dates, agenda, and written notes), electronic communications (emails or attachments to such emails, and any text or SMS messages), reports, and facsimiles.

The relevant timeframe includes the period of January 2018 through BIA's full and complete response to this Freedom of Information Request. However, in an effort to ensure timely disclosure of the information and records sought, the Yakama Nation asks that BIA immediately provide a copy the Colville Application as a preliminary partial response to this Freedom of Information Request (Part 1). Thereafter, the Yakama Nation ask that BIA fulfill the remainder of its obligation to provide a full and complete response to this Freedom of Information Request (Part 2).



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

Under 43 C.F.R. Part 2, the Yakama Nation's fee category should be considered as "other". The Yakama Nation is a federally recognized Indian tribe. If BIA's review of this FOIA request exceeds the amount of free search hours and/or the number of free duplications, the Yakama Nation requests a waiver of all fees under both FOIA and the United States' trust obligations owed to the Yakama Nation.

Disclosure of the requested information is in the public interest because it concerns the current and potential future ownership status of lands in Washington State and is not primarily in the Yakama Nation's commercial interest. The Yakama Nation is not a data broker and does not market or sell government information for direct economic return. This information interests the public because it may concern the operation or activities of the government in managing federal trust lands. The disclosure is likely to contribute to public understanding of these operations and activities because of the public's strong interest in how the federal government manages and operates its trust lands including lands held in trust for Indian tribes.

Further, BIA should provide the documents requested here without any fees because the request is made in furtherance of the United States' trust relationship with the Yakama Nation. See *United States v. Mitchell*, 463 U.S. 206, 225 (noting "the undisputed existence of a general trust relationship between the United States and the Indian people"). Indian tribes may demand the federal government provide copies of government documents used in aid of trust administration. *Osage Nation v. United States*, 66 Fed. Cl. 244 (2005). 43 C.F.R. § 2.56(a)(6) specifically refers to furnishing records to Indian tribes without charge when to do so is an appropriate courtesy, "or when the recipient is carrying on a function related to a Departmental function and the waiver will help accomplish the Department's work." Because the Yakama Nation, as beneficiary, requests copies of government documents used by its trustee in aid of trust administration, a discretionary waiver is particularly appropriate.

If you have any questions or concerns, please contact me at (509) 865-7268 or by email at marcus@yakamanation-olc.org.

Sincerely,

Marcus Shirzad

Marcus Shirzad, Senior Attorney
Yakama Nation Office of Legal Counsel
P.O. Box 151, 401 Fort Road
Toppenish, WA 98948
Telephone: (509) 865-7268
marcus@yakamanation-olc.org



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Northwest Regional Office

911 Northeast 11th Avenue

Portland, Oregon 97232

April 28, 2023

In Reply Refer To:
FOIA Coordinator
FOIA Control Number BIA-2023-004184

SENT VIA EMAIL – READ RECEIPT REQUESTED

Mr. Marcus Shirzad
marcus@yakamanation-olc.org
Post Office Box 151
Toppenish, Washington 98948

Dear Mr. Shirzad:

The Bureau of Indian Affairs (BIA), Northwest Regional Office (NWRO), received your Freedom of Information Act (FOIA) request, dated April 24, 2023, and assigned it control number BIA-2023-004184. Please cite this number in any future communications with our office regarding your request. Within your online submission, you requested the following:

The Yakama Nation requests that the Bureau of Indian Affairs (“BIA”) provide a copy of the fee-to-trust and two-part determination application filed by the Colville Tribes (“Colville Application”), on or about April 7, 2023, for lands located in Franklin County, Washington.

In addition to the full Colville Application sought by this Freedom of Information Request, the Yakama Nation requests all information, letters, documents, and records (electronic or otherwise) which relate to the Colville Application. This includes anything received by, sent by, compiled by, created by, reviewed by, or stored by the BIA or any BIA field office or the Department of the Interior (“Interior”) which relate to the Colville Application.

The term “records” and “relate to” should be given the broadest possible interpretation and includes, but is not limited to, correspondence, memoranda, meetings (dates, agendas, and written notes), telephone calls (dates, agenda, and written notes), electronic communications (emails or attachments to such emails, and any text or SMS messages), reports, and facsimiles.

The relevant timeframe includes the period of January 2018 through BIA’s full and complete response to this Freedom of Information Request. However, in an effort to ensure timely disclosure of the information and records sought, the Yakama Nation asks that BIA immediately provide a copy the Colville Application as a preliminary partial response to this Freedom of Information Request (Part 1). Thereafter, the Yakama Nation ask that BIA fulfill the remainder of its obligation to provide a full and complete response to this Freedom of Information Request (Part 2).

Acknowledgment:

Other Use Requester—43 C.F.R. §§ 2.38, .39

We have classified you as an “other-use” requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected.

Agreement to Pay Fees—43 C.F.R. § 2.6

You have agreed to pay up to \$200.00 for the processing of your request. If we find that this will not cover the cost of processing your request, we will stop processing your request at the point this amount has been reached and will let you know before we incur additional charges. You can then either agree to pay the additional amount needed or narrow the scope of your request. Your request for a fee waiver is currently under review.

Multitrack Processing—43 C.F.R. § 2.14, .15

We use Multitrack Processing to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis.

Your request falls into Complex processing track. There are twelve requests pending ahead of yours in this processing track. Presuming that our current FOIA capacity and burden remain constant, we expect that we will dispatch a preliminary determination to you by May 22, 2023. You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a different track (which may have the effect of reducing the cost of processing your request and having it processed more quickly).

If you have any questions about our acknowledgment of your request, you may contact Ms. Cherisse Tiger, Program Analyst/Regional FOIA Coordinator, BIA, NWRO, by email at cherisse.tiger@bia.gov or by mail at the address located on the letterhead. The BIA, NWRO is committed to providing you, our customer, with the highest quality of service possible.

Sincerely,

 Digitally signed by
BRYAN MERCIER
Date: 2023.04.28
13:04:28 -07'00'

Bryan K. Mercier
Northwest Regional Director



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Northwest Regional Office

911 Northeast 11th Avenue

Portland, Oregon 97232

05/19/2023

In Reply Refer To:
FOIA Coordinator
FOIA Control Number BIA-2023-004184

SENT VIA EMAIL – READ RECEIPT REQUESTED

Mr. Marcus Shirzad
marcus@yakamanation-olc.org
Post Office Box 151
Toppenish, Washington 98948

Dear Mr. Shirzad:

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The term “records” and “relate to” should be given the broadest possible interpretation and includes, but is not limited to, correspondence, memoranda, meetings (dates, agendas, and written notes), telephone calls (dates, agenda, and written notes), electronic communications (emails or attachments to such emails, and any text or SMS messages), reports, and facsimiles.

The relevant timeframe includes the period of January 2018 through BIA’s full and complete response to this Freedom of Information Request. However, in an effort to ensure timely disclosure of the information and records sought, the Yakama Nation asks that BIA immediately provide a copy the Colville Application as a preliminary partial response to this Freedom of Information Request (Part 1). Thereafter, the Yakama Nation ask that BIA fulfill the remainder of its obligation to provide a full and complete response to this Freedom of Information Request (Part 2).

Preliminary Determination:

Other Use Requester—43 C.F.R. §§ 2.38, .39

We have classified you as an “other-use” requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected.

Agreement to Pay Fees—43 C.F.R. § 2.6

You have agreed to pay up to \$200.00 for the processing of your request. If we find that this will not cover the cost of processing your request, we will stop processing your request at the point this amount has been reached and will let you know before we incur additional charges. You can then either agree to pay the additional amount needed or narrow the scope of your request.

Multitrack Processing—Revising Track Placement—43 C.F.R. § 2.14, .15

As you know, we use Multitrack Processing to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis.

On April 28, 2023 we informed you that your request fell into the Complex processing track; however, we now realize that because voluminous records were sought and an Exemption 4 Consultation is required, your request falls into the Extraordinary processing track. As a result, we expect that we will dispatch a final determination to you after May 22, 2023.

Interim Response—43 C.F.R. § 2.22, .23, .24

We are writing to partially respond to your request. We have enclosed six files consisting of 10 pages (excluding attachments) which are being released to you in full. We are continuing to search for and review additional records that are responsive to your request. Please note, we have conducted a foreseeable harm analysis under the FOIA Improvement Act of 2016 and, after consulting with a subject matter expert, 1) we do not reasonably foresee that disclosure of this information would harm an interest that the FOIA's exemptions were designed to protect and 2) disclosure would not be prohibited by law. As a result, we are releasing this information in full. Please be aware that our decision to release this information does not mean that we have waived our ability to invoke applicable FOIA exemptions for similar or related information in the future.

Extension—More than Ten Workdays—43 C.F.R. §2.19

Your request falls into the Extraordinary processing track. There are thirteen requests pending ahead of yours in this processing track. Because we will need to search for, collect, and examine a voluminous amount of separate and distinct records that are demanded in a single request and consult, with all practicable speed, with another agency, or among two or more components of the Department having a substantial interest in the determination of the request, we are taking a 55-workday extension and expect that we will dispatch a final determination to you before August 8, 2023.

At this time, we have gathered some of the responsive material and conducted an initial survey to identify the quantity and nature of the records; however, we have not reached a final decision on whether responsive material is exempt from release. Currently, we have identified approximately 26 emails and 291 pages as potentially responsive to your request. We intend to comply with your request. We expect to invoke the deliberative process privilege of Exemption 5, because this set of records may include predecisional information. For all the materials, we will segregate and release information appropriately where there would be no foreseeable harm caused by the release. In addition, some information may be protectible under Exemption 4. We apologize for this delay in finalizing our decision. You may narrow the scope of your request to obtain quicker processing in your currently-assigned track or move the request into a different track (which may have the effect of reducing the cost of processing your request and having it processed more quickly). You also may agree to an alternative time period for processing by communicating with us, our FOIA Requester Center, or the FOIA Public Liaison. Contact information is contained herein.

Notification Involving the Submitter—43 C.F.R. §2.35(a)

Due to the Exemption 4 consultation process, you are being notified that we will provide the submitter with an opportunity to object to disclosure. *See 43 CFR 2.35(a).*

Appeal Rights—43 C.F.R. § 2.57, 2.58, 2.59

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of our final response. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the BIA's response is in error. You must also include with your appeal copies of all correspondence between you and the BIA concerning your FOIA request, including your original FOIA request and the BIA's response. Failure to include with your appeal all correspondence between you and the BIA will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal. Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Attn: FOIA/Privacy Act Appeals Office
Department of the Interior
Office of the Solicitor
Attn: FOIA/Privacy Act Appeals Office
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA and Privacy Act Appeals Officer. Additionally, contact information for the Department's FOIA Requester Center and FOIA Public Liaison is available at <http://www.doi.gov/foia/foiacenters>.

If you have any questions about our preliminary determination of your request, you may contact Mr. Sean N. Johnson, Management and Program Analyst/Alternate FOIA Coordinator, BIA, NWRO, by email at sean.johnson@bia.gov, by phone at (971) 354-0647, or by mail at the address located on the letterhead. The BIA, NWRO is committed to providing you, our customer, with the highest quality of service possible.

Sincerely,



Digitally signed by
BRYAN MERCIER
Date: 2023.05.19
13:53:40 -07'00'

Bryan K. Mercier
Northwest Regional Director

Enclosure



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Northwest Regional Office

911 Northeast 11th Avenue

Portland, Oregon 97232

08/11/2023

In Reply Refer To:
FOIA Coordinator
FOIA Control Number BIA-2023-004184

SENT VIA EMAIL – READ RECEIPT REQUESTED

Mr. Marcus Shirzad
marcus@yakamanation-olc.org
Post Office Box 151
Toppenish, Washington 98948

Dear Mr. Shirzad:

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Final Determination:

Other Use Requester—43 C.F.R. §§ 2.38, .39

We have classified you as an “other-use” requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected.

Agreement to Pay Fees—43 C.F.R. § 2.6

You have agreed to pay up to \$200.00 for the processing of your request. If we find that this will not cover the cost of processing your request, we will stop processing your request at the point this amount has been reached and will let you know before we incur additional charges. You can then either agree to pay the additional amount needed or narrow the scope of your request.

Multitrack Processing—43 C.F.R. § 2.14, .15

As you know, we use Multitrack Processing to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis. Your request fell into the Extraordinary processing track. If you have any questions about this, please contact us.

Partial Release—43 C.F.R. § 2.22, .23, .24

We are writing to respond to your request. We have previously partially responded to this request on May 19, 2023. We have enclosed 27 documents consisting of approximately 522 pages which are being released to you in part. Portions of these materials are being withheld under the following FOIA Exemptions:

Exemption 4—43 C.F.R. § 2.23, .24

We are withholding approximately 183 pages full or in part under FOIA Exemption 4. 5 U.S.C. § 552(b)(4). Exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” The withheld information is commercial or financial information”. The entity that supplied this information (the submitter) is considered a person, because the term “person,” under the FOIA, includes a wide range of entities including Indian tribes or nations. Also, the submitter does not customarily release this information to the public, so the information is confidential for the purposes of Exemption 4.

Exemption 5—43 C.F.R. § 2.23, .24

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

We are withholding approximately 50 pages in full or in part under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privileges:

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fishbowl. A number of policy purposes have been attributed to the deliberative process privilege, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency's deliberative processes; expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients, related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts.

Additionally, the BIA employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the BIA, NWR has held this information confidential and has not waived the attorney-client privilege.

Exemption 6—43 C.F.R. § 2.23, .24

Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). We are withholding approximately nine pages in part under Exemption 6.

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, including names, tribal affiliations, TAAMS Identification Numbers, and individual interests held in trust, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency’s statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure. Mr. Sean N. Johnson, Management and Program Analyst/Alternate FOIA Coordinator, BIA, is responsible for this partial denial. Morgan Walton, Attorney-Advisor in the Office of the Solicitor was consulted.

General Principles Governing Fees—43 C.F.R. § 2.37(f)(1)

If the bureau does not comply with any time limit in the FOIA we cannot assess any search fees. This is to let you know there will be no fees charged for this request; therefore, there is no need to address your fee waiver request.

Appeal Rights—43 C.F.R. § 2.57, 2.58, 2.59

You may appeal this response to the Department’s FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of our final response. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the BIA's response is in error. You must also include with your appeal copies of all correspondence between you and the BIA concerning your FOIA request, including your original FOIA request and the BIA's response. Failure to include with your appeal all correspondence between you and the BIA will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal. Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Attn: FOIA/Privacy Act Appeals Office
Department of the Interior
Office of the Solicitor
Attn: FOIA/Privacy Act Appeals Office
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA and Privacy Act Appeals Officer. Additionally, contact information for the Department's FOIA Requester Center and FOIA Public Liaison is available at <http://www.doi.gov/foia/foiacenters>.

If you have any questions about our final determination, you may contact Mr. Sean N. Johnson, Management and Program Analyst/Alternate FOIA Coordinator, BIA, NWRO, by email at sean.johnson@bia.gov, by phone at (971) 354-0647, or by mail at the address located on the letterhead. The BIA, NWRO is committed to providing you, our customer, with the highest quality of service possible.

Sincerely,



Digitally signed by
BRYAN MERCIER
Date: 2023.08.11
08:24:20 -07'00'

Bryan K. Mercier
Northwest Regional Director

Enclosure

From: [Mercier, Bryan K](#)
To: [Hart, Paula](#); [Isom-Clause, Kathryn C](#); [Garriott, Wizipan](#)
Cc: [Peterson, Lynn](#); [Stevens, Bartholomew S](#); [Wallace, Wyeth](#); [Haug, Brian J](#); [Johns, Sherry](#)
Subject: FW: [EXTERNAL] Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application
Date: Monday, February 27, 2023 4:40:31 PM
Attachments: [Letter_Yakama Nation_Secretary Haaland_Government to Government Consultation Request_re Colville Fee to Trust and Gaming Application_final w- attachments_02.27.23.pdf](#)

FYI. This was caught in my spam filter, so we may have been caught in ASIA Newland's too.

Colville have not submitted their gaming application yet, but I believe are close to doing so. They update me on its status at my quarterly check-ins with CBC.

Regards,
bkm

<>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Marcus Shirzad <marcus@yakamanation-olc.org>
Sent: Monday, February 27, 2023 3:53 PM
To: debra.haaland@doi.gov
Cc: Bryan.Newland@ios.doi.gov; Mercier, Bryan K <Bryan.Mercier@bia.gov>; Wallace, Wyeth <Wyeth.Wallace@bia.gov>
Subject: [EXTERNAL] Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

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Dear Secretary Haaland,

On behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), attached is a letter under Tribal Council Chairman Gerald Lewis' signature. This letter (1) expresses concerns with, and opposition to, the Colville Tribe's September 30, 2021 fee-to-trust and two-part gaming determination application, and (2) requests government-to-government consultation with you to discuss these concerns and opposition, face-to-face, in Tribal Council Chambers. The letter includes supporting documentation. Hard copies have been mailed today. The Yakama Nation looks forward

to your timely response.

Regards,

Marcus Shirzad, Senior Attorney

Yakama Nation Office of Legal Counsel | P.O. Box 150, Toppenish, WA 98948

Tel: [509.865.7268](tel:509.865.7268), Ext. 6077 | Cel: [509.823.9288](tel:509.823.9288) | Fax: [509.865.4713](tel:509.865.4713) | marcus@yakamanation-olc.org

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From: [Mercier, Bryan K](#)
To: [Bristol, Philip A](#)
Cc: [Hart, Paula](#); [Sullivan, Ryan A](#); [Johns, Sherry](#)
Subject: RE: Yakama Nation Letters re: Colville's application
Date: Wednesday, April 5, 2023 7:44:00 AM

Tx, Phil.

They are traveling to Portland this Friday to hand deliver a complete application. I meet with them quarterly and this application has been a regular subject of my quarterly meetings. Additionally, my team has met with them a few times as well.

Sherry, can you please share how many times you've met with Colville re: the Pasco application?

Regards,
bkm

<>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Bristol, Philip A <Philip.Bristol@bia.gov>
Sent: Wednesday, April 5, 2023 7:24 AM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Cc: Hart, Paula <Paula.Hart@bia.gov>; Sullivan, Ryan A <ryan.sullivan@bia.gov>
Subject: Yakama Nation Letters re: Colville's application

Good Morning Director Mercier,

We are in the process of drafting a response letter to a letter from Yakama Nation to Secretary Haaland. Because their request effectively is a petition for inclusion as a nearby tribe under 292.2 and 292.19 we are redirecting them to your office for a determination once Colville resubmits their application.

Based on that letter and other correspondence from your office it appears the Nation has met with your office and has sent letters to you. Do you mind letting us know roughly how many times you have met with them on this issue so we can accurately reiterate the facts of the matter?

Thank you,

Philip [Phil] Bristol (he/him)

Deputy Director

Office of Indian Gaming

Office of the Assistant Secretary - Indian Affairs

1849 C St., NW

MS 3543 MIB

Washington, DC 20240

Cell Phone: (202) 256-6685

From: [Mercier, Bryan K](#)
To: [Cody Desautel](#)
Cc: [Johns, Sherry](#); [JARRED Erickson](#); [Shaw, Bodie](#); [Fredenberg, Kurt](#); [Cavazos, Theresa](#); [Forrest-Davis, Sarraye H](#)
Subject: RE: [EXTERNAL] Potential Meeting
Date: Tuesday, April 4, 2023 5:00:07 PM

Sounds good. I'll see you all at the 911 building security at 10am.

<> <> <> <> <> <> <> <>

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Cody Desautel <cody.desautel@colvilletribes.com>
Sent: Tuesday, April 4, 2023 4:59 PM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Cc: Johns, Sherry <Sherry.Johns@bia.gov>; JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>; Cavazos, Theresa <Theresa.Cavazos@bia.gov>; Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Subject: Re: [EXTERNAL] Potential Meeting

Thanks Brian,

We will shoot for 10:00. I think an hour should be plenty of time.

On Tue, Apr 4, 2023 at 2:54 PM Mercier, Bryan K <Bryan.Mercier@bia.gov> wrote:

Yes, Friday works.

<> <> <> <> <> <> <> <>

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Cody Desautel <cody.desautel@colvilletribes.com>
Sent: Tuesday, April 4, 2023 2:44 PM
To: Johns, Sherry <Sherry.Johns@bia.gov>
Cc: Mercier, Bryan K <Bryan.Mercier@bia.gov>; JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>; Cavazos, Theresa <Theresa.Cavazos@bia.gov>; Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Subject: Re: [EXTERNAL] Potential Meeting

Hey Bryan,

503-930-1903

From: Johns, Sherry <Sherry.Johns@bia.gov>
Sent: Tuesday, April 4, 2023 4:59 AM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>; JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>
Cc: Cody Desautel <cody.desautel@colvilletribes.com>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>; Cavasos, Theresa <Theresa.Cavasos@bia.gov>
Subject: Re: [EXTERNAL] Potential Meeting

I will not be available as I am off on Friday, April 7. Theresa Cavasos will be Acting for Real Estate Services.

Thank you,

Sherry A. Johns

Northwest Regional Realty Officer

United States Department of the Interior

Bureau of Indian Affairs

911 N.E. 11th Avenue

Portland, OR 97232

sherry.johns@bia.gov

(503) 872-2879 - Direct Line

(503) 260-3296 - Cell Phone

(503) 736-4474 – Fax

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7:00 am to 3:30 pm First Friday of Pay Period

AWS: 2nd Friday of the Pay Period

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From: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Sent: Monday, April 3, 2023 4:30 PM
To: JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>
Cc: Cody Desautel <cody.desautel@colvilletribes.com>; Johns, Sherry <Sherry.Johns@bia.gov>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>
Subject: RE: [EXTERNAL] Potential Meeting

Hi Jarred,

Yes, I have availability this Friday to connect. I'm currently open until 11am and then again after 1pm.

My understanding is you'd like to meet re: a FTT application, so I've included Sherry to see about her availability as well.

I also added my 2 Deputies as an FYI.

Regards,

bkm

<< << << << << << << << <<

Bryan K. Mercier
Northwest Regional Director

503-930-1903

From: JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>
Sent: Monday, April 3, 2023 3:33 PM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Cc: Cody Desautel <cody.desautel@colvilletribes.com>
Subject: [EXTERNAL] Potential Meeting

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Hey Bryan, I am contacting you to check on your availability for this Friday (April 7th) to have a meeting with Cody and I? I know it is somewhat short notice but we planned on being in Portland so it would be in person.

Thanks,

Jarred

From: [Mercier, Bryan K](#)
To: [Forrest-Davis, Sarraye H](#); [Haug, Brian J](#); [Johns, Sherry](#)
Cc: [Shaw, Bodie](#); [Bristol, Philip A](#); [Hart, Paula](#)
Subject: RE: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application
Date: Tuesday, April 18, 2023 7:04:00 AM

Good catch, Sarraye.

It was Friday, 4/7 that we met with the Tribe.

Philip, one minor edit re: the Yakama letter to go out today.

<>< <>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Sent: Tuesday, April 18, 2023 7:01 AM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>; Haug, Brian J <Brian.Haug@bia.gov>; Johns, Sherry <Sherry.Johns@bia.gov>
Cc: Shaw, Bodie <Bodie.Shaw@bia.gov>
Subject: Re: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

One tiny detail, the letter states "On April 6, 2023, the Colville Tribe submitted a revised application..."

I believe the date of application submission to the NWR BIA office was April 7, 2023 when Bodie met with the Tribe at the Office. I'm not sure if that minor detail will make a difference.

Thank you,

Sarraye Forrest-Davis

Realty Specialist-Conveyances
DOI, Bureau of Indian Affairs
Division of Real Estate Services
Northwest Regional Office
Phone: (503)736-4710

From: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Sent: Monday, April 17, 2023 4:53 PM

To: Haug, Brian J <Brian.Haug@bia.gov>; Johns, Sherry <Sherry.Johns@bia.gov>; Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>

Cc: Shaw, Bodie <Bodie.Shaw@bia.gov>

Subject: FW: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

Any concerns?

<>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier

Northwest Regional Director

503-930-1903

From: Bristol, Philip A <Philip.Bristol@bia.gov>

Sent: Monday, April 17, 2023 12:01 PM

To: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Cc: Johns, Sherry <Sherry.Johns@bia.gov>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Sullivan, Ryan A <ryan.sullivan@bia.gov>

Subject: Re: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

Good Afternoon Director Mercier,

The Office of Indian Gaming has prepared this draft response to the Yakama Nation's recent letters regarding the Colville Tribe's Pasco application for Director Hart's signature. We are directing the Nation back to your office. Please let me know if you have any questions or concerns with this draft response. We would like to get this sent out tomorrow morning at the latest. We will include a CC to your office once it is signed.

Thank you,

Philip [Phil] Bristol (he/him)

Deputy Director

Office of Indian Gaming

Office of the Assistant Secretary - Indian Affairs

1849 C St., NW

MS 3543 MIB

Washington, DC 20240

Cell Phone: (202) 256-6685

From: Bristol, Philip A <Philip.Bristol@bia.gov>

Sent: Tuesday, February 28, 2023 11:02 AM

To: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Cc: Johns, Sherry <Sherry.Johns@bia.gov>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Hart, Paula <Paula.Hart@bia.gov>

Subject: Fw: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

Good Morning Director Mercier,

Could you please verify if Yakama qualifies as a "Nearby Indian Tribe" under 25 C.F.R. part 292.4? In essence do they have any tribal Indian lands within 25 miles of the Colville Tribe's application site?

Thank you,

Philip [Phil] Bristol (he/him)

Deputy Director

Office of Indian Gaming

Office of the Assistant Secretary - Indian Affairs

1849 C St., NW

MS 3543 MIB

Washington, DC 20240

Cell Phone: (202) 256-6685

From: Hart, Paula <Paula.Hart@bia.gov>

Sent: Monday, February 27, 2023 8:03 PM

To: Bristol, Philip A <Philip.Bristol@bia.gov>

Subject: Fwd: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

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From: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Sent: Monday, February 27, 2023 8:02:30 PM

To: Johns, Sherry <Sherry.Johns@bia.gov>; Peterson, Lynn <Lynn.Peterson@sol.doi.gov>; Haug, Brian J <Brian.Haug@bia.gov>

Cc: Hart, Paula <Paula.Hart@bia.gov>; Garriott, Wizipan <Wizi_Garriott@ios.doi.gov>; Newland, Bryan <bryan_newland@ios.doi.gov>; Stevens, Bartholomew S <Bartholomew.Stevens@bia.gov>; Wallace, Wyeth <Wyeth.Wallace@bia.gov>

Subject: FW: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

FYI

<>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier

Northwest Regional Director

503-930-1903

From: Marcus Shirzad <marcus@yakamanation-olc.org>

Sent: Monday, February 27, 2023 4:56 PM

To: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Cc: Ethan Jones <ethan@yakamanation-olc.org>; Wallace, Wyeth <Wyeth.Wallace@bia.gov>; Kenworthy, Mary A <MARYANNE.KENWORTHY@sol.doi.gov>

Subject: [EXTERNAL] Fwd: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

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Mr. Mercier,

The below email and attached letter were sent today. You were cc'd on both. I write to provide you with this additional courtesy copy. Consistent with the letter to Secretary Haaland, please consider this yet another request that the Yakama Nation be treated as an affected party whose inherent sovereign and Treaty-reserved interests are directly impacted by the Colville Tribe's September 30, 2021 fee-to-trust and two-part gaming determination application(s). The Yakama Nation requests that your office provide the Yakama Nation with written notice of all actions related to this matter, invite comment, and offer opportunity to engage in government-to-government consultation prior to issuance of any departmental decision(s) regarding the Colville Tribe's September 30, 2021 fee-to-trust and two-part gaming determination application(s).

The Yakama Nation asks for your written assurance that you will fulfill the requests stated herein. If you believe you are unable to comply with these requests, the Yakama Nation asks that you respond with written justification for your position.

Regards,

Marcus Shirzad, Senior Attorney

Yakama Nation Office of Legal Counsel | P.O. Box 150, Toppenish, WA 98948

Tel: [509.865.7268](tel:509.865.7268), Ext. 6077 | Cel: [509.823.9288](tel:509.823.9288) | Fax: [509.865.4713](tel:509.865.4713) | marcus@yakamanation-olc.org

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Begin forwarded message:

From: Marcus Shirzad <marcus@yakamanation-olc.org>

Subject: Yakama Nation_Letter_Government to Government Consultation Request_Opposition to the Colville Tribe's 09/30/21 Fee-to-Trust and Two-Part Gaming Determination Application

Date: February 27, 2023 at 3:52:33 PM PST

To: debra.haaland@doi.gov

Cc: Bryan.Newland@ios.doi.gov, "Mercier, Bryan K"

<Bryan.Mercier@bia.gov>, "Wallace, Wyeth" <wyeth.wallace@bia.gov>

Dear Secretary Haaland,

On behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), attached is a letter under Tribal Council Chairman Gerald Lewis' signature.

This letter (1) expresses concerns with, and opposition to, the Colville Tribe's September 30, 2021 fee-to-trust and two-part gaming determination application, and (2) requests government-to-government consultation with you to discuss these

concerns and opposition, face-to-face, in Tribal Council Chambers. The letter includes supporting documentation. Hard copies have been mailed today. The Yakama Nation looks forward to your timely response.

Regards,

Marcus Shirzad, Senior Attorney

Yakama Nation Office of Legal Counsel | P.O. Box 150, Toppenish, WA 98948

Tel: [509.865.7268](tel:509.865.7268), Ext. 6077 |

Cel: [509.823.9288](tel:509.823.9288) | Fax: [509.865.4713](tel:509.865.4713) | marcus@yakamanation-olc.org

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From: Mercier, Bryan K
To: Johns, Sherry
Cc: Cavasos, Theresa; Shaw, Bodie; Forrest-Davis, Sarraye H; Fredenberg, Kurt
Subject: RE: [EXTERNAL] Potential Meeting
Date: Tuesday, April 4, 2023 7:47:00 AM

Removing the Tribe

Ok.

Bodie, I'll need you to attend this Friday since neither Sherry or Sarraye are available. I should know the time shortly that we'll meet them at the Portland office.

They are coming to hand deliver the gaming application for the Pasco property.

I've (b) (5)(b) (5)(b) (5)(b) (5)

Regards,
bkm

<>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Johns, Sherry <Sherry.Johns@bia.gov>
Sent: Tuesday, April 4, 2023 7:42 AM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>; JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>
Cc: Cody Desautel <cody.desautel@colvilletribes.com>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>; Cavasos, Theresa <Theresa.Cavasos@bia.gov>; Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Subject: Re: [EXTERNAL] Potential Meeting

She will not be available. Sarraye is off on Friday, April 7—it is her AWS Day off.

Thank you,

Sherry A. Johns
Northwest Regional Realty Officer
United States Department of the Interior
Bureau of Indian Affairs

911 N.E. 11th Avenue

Portland, OR 97232

sherry.johns@bia.gov

(503) 872-2879 - Direct Line

(503) 260-3296 - Cell Phone

(503) 736-4474 – Fax

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7:00 am to 3:30 pm First Friday of Pay Period

AWS: 2nd Friday of the Pay Period

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From: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Sent: Tuesday, April 4, 2023 7:39 AM

To: Johns, Sherry <Sherry.Johns@bia.gov>; JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>

Cc: Cody Desautel <cody.desautel@colvilletribes.com>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>; Cavasos, Theresa <Theresa.Cavasos@bia.gov>; Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>

Subject: RE: [EXTERNAL] Potential Meeting

Thx, Sherry. Would Sarraye be available this Friday?

<> <> <> <> <> <> <> <> <>

Bryan K. Mercier

Northwest Regional Director

503-930-1903

From: Johns, Sherry <Sherry.Johns@bia.gov>

Sent: Tuesday, April 4, 2023 4:59 AM

To: Mercier, Bryan K <Bryan.Mercier@bia.gov>; JARRED Erickson

<jarred.erickson.cbc@colvilletribes.com>

Cc: Cody Desautel <cody.desautel@colvilletribes.com>; Shaw, Bodie <Bodie.Shaw@bia.gov>;
Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>; Cavasos, Theresa <Theresa.Cavasos@bia.gov>

Subject: Re: [EXTERNAL] Potential Meeting

I will not be available as I am off on Friday, April 7. Theresa Cavasos will be Acting for Real Estate Services.

Thank you,

Sherry A. Johns

Northwest Regional Realty Officer

United States Department of the Interior

Bureau of Indian Affairs

911 N.E. 11th Avenue

Portland, OR 97232

sherry.johns@bia.gov

(503) 872-2879 - Direct Line

(503) 260-3296 - Cell Phone

(503) 736-4474 – Fax

Work Hours: 6:15 am to 3:45 pm Monday through Thursday

7:00 am to 3:30 pm First Friday of Pay Period

AWS: 2nd Friday of the Pay Period

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From: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Sent: Monday, April 3, 2023 4:30 PM

To: JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>

Cc: Cody Desautel <cody.desautel@colvilletribes.com>; Johns, Sherry <Sherry.Johns@bia.gov>; Shaw, Bodie <Bodie.Shaw@bia.gov>; Fredenberg, Kurt <Kurt.Fredenberg@bia.gov>

Subject: RE: [EXTERNAL] Potential Meeting

Hi Jarred,

Yes, I have availability this Friday to connect. I'm currently open until 11am and then again after 1pm.

My understanding is you'd like to meet re: a FTT application, so I've included Sherry to see about her availability as well.

I also added my 2 Deputies as an FYI.

Regards,

bkm

<>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier

Northwest Regional Director

503-930-1903

From: JARRED Erickson <jarred.erickson.cbc@colvilletribes.com>

Sent: Monday, April 3, 2023 3:33 PM

To: Mercier, Bryan K <Bryan.Mercier@bia.gov>

Cc: Cody Desautel <cody.desautel@colvilletribes.com>

Subject: [EXTERNAL] Potential Meeting

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Hey Bryan, I am contacting you to check on your availability for this Friday (April 7th) to have a meeting with Cody and I? I know it is somewhat short notice but we planned on being in Portland so it would be in person.

Thanks,

Jarred

From: [Mercier, Bryan K](#)
To: [Bristol, Philip A](#)
Cc: [Hart, Paula](#); [Sullivan, Ryan A](#); [Johns, Sherry](#)
Subject: RE: Yakama Nation Letters re: Colville's application
Date: Wednesday, April 5, 2023 7:44:00 AM

Tx, Phil.

They are traveling to Portland this Friday to hand deliver a complete application. I meet with them quarterly and this application has been a regular subject of my quarterly meetings. Additionally, my team has met with them a few times as well.

Sherry, can you please share how many times you've met with Colville re: the Pasco application?

Regards,
bkm

<>< >< >< >< >< >< >< ><

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Bristol, Philip A <Philip.Bristol@bia.gov>
Sent: Wednesday, April 5, 2023 7:24 AM
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Cc: Hart, Paula <Paula.Hart@bia.gov>; Sullivan, Ryan A <ryan.sullivan@bia.gov>
Subject: Yakama Nation Letters re: Colville's application

Good Morning Director Mercier,

We are in the process of drafting a response letter to a letter from Yakama Nation to Secretary Haaland. Because their request effectively is a petition for inclusion as a nearby tribe under 292.2 and 292.19 we are redirecting them to your office for a determination once Colville resubmits their application.

Based on that letter and other correspondence from your office it appears the Nation has met with your office and has sent letters to you. Do you mind letting us know roughly how many times you have met with them on this issue so we can accurately reiterate the facts of the matter?

Thank you,

Philip [Phil] Bristol (he/him)

Deputy Director

Office of Indian Gaming

Office of the Assistant Secretary - Indian Affairs

1849 C St., NW

MS 3543 MIB

Washington, DC 20240

Cell Phone: (202) 256-6685

From: [Cody Desautel](#)
To: [Forrest-Davis, Sarraye H](#)
Cc: [Karen Erickson](#)
Subject: [EXTERNAL] Re: PTO initial Review
Date: Friday, May 12, 2023 1:58:17 PM

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Thanks Sarraye. We will work on this first thing Monday morning.

On Fri, May 12, 2023 at 1:28 PM Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov> wrote:

Good afternoon Karen and Cody,

The solicitor working on this case has contacted me regarding two things that need to be addressed prior to an opinion being generated. Please read the following comments from them:

- First, the Tribe's application says Special Exceptions 6 (General Taxes), 7 (South Columbia Basin Irrigation District) and 8 (Notice of Additional Water and Sewer Charge) will be eliminated. However, those numbers don't match the special exceptions on the title commitment—this needs to be consistent.
- Second, special exception 14 (PUD Terms and Conditions) needs to be eliminated.

The solicitor stated the first can be addressed by a letter to address this correction. For the second, the title company needs to be contacted to see if this special exception can be taken off the title commitment and be reissued. If the title company says they will not then we will go from there.

Thank you,

Sarraye Forrest-Davis

Realty Specialist-Conveyances
DOI, Bureau of Indian Affairs
Division of Real Estate Services
Northwest Regional Office
Phone: (503)736-4710

From: [Karen Erickson](#)
To: [Forrest-Davis, Sarraye H](#)
Cc: marty.raap.ora@colvilletribes.com
Subject: [EXTERNAL] Re: PTO comments and discussion with Solicitor's Office
Date: Tuesday, May 16, 2023 7:17:16 PM

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Great, thanks for the update.

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From: Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Sent: Tuesday, May 16, 2023 11:28:22 AM
To: Karen Erickson <klerickson1955@live.com>
Cc: marty.raap.ora@colvilletribes.com <marty.raap.ora@colvilletribes.com>
Subject: PTO comments and discussion with Solicitor's Office

Good morning Karen,

Per a discussion with Marty over the phone, I have contacted the solicitor working on this case again and stated our approval for you to discuss this case with the assigned solicitor. I hope to hear back from them soon.

Thank you,

Sarraye Forrest-Davis

Realty Specialist-Conveyances
DOI, Bureau of Indian Affairs
Division of Real Estate Services
Northwest Regional Office
Phone: (503)736-4710

From: [Ryan Sawyer](#)
To: [Haug, Brian J](#)
Subject: Re: [EXTERNAL] FW: Fwd: Colville Pasco FTT 3-party agreement
Date: Tuesday, November 16, 2021 5:43:21 PM

Great, thank you Brian! We will circulate for signatures and will circle back with you soon.

--

Ryan Sawyer, AICP
Principal
T: 916-447-3479 x15826 | M: 805-252-6578
rsawyer@montrose-env.com
Please note my new email address

Montrose Environmental Solutions, formerly AES
1801 7th Street, Suite 100, Sacramento, CA 95811



On Tue, Nov 16, 2021 at 4:37 PM Haug, Brian J <Brian.Haug@bia.gov> wrote:

Hi again Ryan,

Thanks again for taking the time to chat this morning. Our lawyers have reviewed the draft three-party agreement and did not indicate any concerns. Please proceed with the signed copy for our concurrence.

Best Regards,

Brian J. Haug, R.G. [he/him]

Regional Environmental Scientist

Bureau of Indian Affairs | [NW Regional Office](#)

Environmental & Cultural Resource Mgmt.

m | 503.347.0631 | *Wic' éey wáaq'is & Shuenhalni (Stay well – Take care)*

><(((°> ,.°~°. ,><(((°> ,.°~°. ,><(((°> ,.°~°. ,><(((°>

From: Kohler, Courtney N <courtney.kohler@sol.doi.gov>
Sent: Tuesday, November 16, 2021 13:33
To: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Cc: Haug, Brian J <Brian.Haug@bia.gov>; Holford, Joseph <Joseph.Holford@bia.gov>;
Kenworthy, Mary A <MaryAnne.Kenworthy@sol.doi.gov>
Subject: RE: Fwd: Colville Pasco FTT

Hello Bryan,

(b) (5)(b) (5)(b) (5)

Please let me know if you have any questions.

Thank you,

Courtney Kohler
Attorney Advisor
U.S. Department of the Interior
Office of the Regional Solicitor
601 SW Second Ave., Suite 1950
Portland, OR 97204-3172
tel. (503) 231-2141 | fax (503) 231-2166

I am in telework status for the foreseeable future.

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From: Mercier, Bryan K <Bryan.Mercier@bia.gov>
Sent: Friday, November 12, 2021 8:50 AM
To: Kenworthy, Mary A <MaryAnne.Kenworthy@sol.doi.gov>; Kohler, Courtney N <courtney.kohler@sol.doi.gov>
Cc: Haug, Brian J <Brian.Haug@bia.gov>; Holford, Joseph <Joseph.Holford@bia.gov>
Subject: FW: Fwd: Colville Pasco FTT

MAK, (b) (5)(b) (5)(b) (5)(b) (5)(b) (5)(b) (5)

<< << << << << << << <<

Bryan K. Mercier
Northwest Regional Director

503-930-1903

From: Haug, Brian J <Brian.Haug@bia.gov>
Sent: Wednesday, November 10, 2021 4:20 PM
To: Ryan Sawyer <rsawyer@montrose-env.com>
Cc: Bibiana Alvarez <balvarez@analyticalcorp.com>; Mercier, Bryan K <Bryan.Mercier@bia.gov>
Subject: RE: Fwd: Colville Pasco FTT

Hi Ryan – I do not have any experience with EIS three-party agreements. I am forwarding your email on to Bryan Mercier, our Regional Director. I presume we would need to consult with OIG and our Solicitor’s Office attorneys to review.

Best Regards,

Brian J. Haug, R.G. [he/him]

Regional Environmental Scientist

Bureau of Indian Affairs | [NW Regional Office](#)

Environmental & Cultural Resource Mgmt.

m | 503.347.0631 | *Wic' éey wáaq'is & Shuenhalni (Stay well – Take care)*

><(((°> ,.°~°. ,><(((°> ,.°~°. ,><(((°> ,.°~°. ,><(((°>

From: Ryan Sawyer <rsawyer@montrose-env.com>
Sent: Wednesday, November 10, 2021 14:43

To: Haug, Brian J <Brian.Haug@bia.gov>
Cc: Bibiana Alvarez <balvarez@analyticalcorp.com>
Subject: [EXTERNAL] Fwd: Colville Pasco FTT

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Hi Brian,

I just wanted to follow up on the email below to see what the next steps are to advance the three-party agreement. If the agreement template is acceptable to the BIA, we can provide a signed copy to the BIA for execution.

Thank you in advance for your help!

Best,

Ryan

--

Ryan Sawyer, AICP
Principal
T: 916-447-3479 x15826 | M: 805-252-6578
rsawyer@montrose-env.com
Please note my new email address

Montrose Environmental Solutions, formerly AES
1801 7th Street, Suite 100, Sacramento, CA 95811

----- Forwarded message -----

From: **Ryan Sawyer** <rsawyer@analyticalcorp.com>
Date: Thu, Oct 28, 2021 at 4:32 PM
Subject: Colville Pasco FTT
To: Haug, Brian J <Brian.Haug@bia.gov>
Cc: Bibiana Alvarez <balvarez@analyticalcorp.com>

Hello Brian,

It was a pleasure speaking with you earlier this week. Please find attached the initial application letter submitted by the Colville Tribe for an approximately 160-acre site in Pasco, WA. As noted in the letter, the Tribe intends to submit complete applications to acquire the property into trust and for the issuance of a two-part determination to allow the development of a casino.

The Tribe has contracted with AES to prepare NEPA compliance documentation for the project and to that end would like to enter into a three-party agreement with the BIA related to preparation of an EIS for the proposed project. I have attached the latest template for an EIS three-party agreement that was reviewed and approved by OIG and NRW office staff in 2019. Please let me know if you have any questions or if you would like to set up a call to discuss further.

Thank you,

Ryan

--

Ryan Sawyer, AICP
Vice President
Analytical Environmental Services,
an affiliate of Montrose Environmental Group
1801 7th Street Suite 100, Sacramento, CA 95811
Office: 916.447.3479 x15826 | Mobile: 805.252.6578

[REDACTED]

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--

Ryan Sawyer, AICP

Vice President

Analytical Environmental Services,

an affiliate of Montrose Environmental Group

1801 7th Street Suite 100, Sacramento, CA 95811

Office: 916.447.3479 x15826 | Mobile: 805.252.6578

[REDACTED]

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From: [Karen Erickson](#)
To: [Forrest-Davis, Sarraye H](#)
Cc: [Cody Desautel](#)
Subject: [EXTERNAL] Re: Pasco Property- Case Documents
Date: Friday, May 12, 2023 10:30:02 AM

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Thank you!!!

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From: Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Sent: Friday, May 12, 2023 8:05:09 AM
To: Karen Erickson <klerickson1955@live.com>
Cc: Cody Desautel <cody.desautel@colvilletribes.com>
Subject: Pasco Property- Case Documents

Good morning Karen,

Per our phone call, attached are the documents you have requested.

Thank you for checking in!

Sarraye Forrest-Davis

Realty Specialist-Conveyances
DOI, Bureau of Indian Affairs
Division of Real Estate Services
Northwest Regional Office
Phone: (503)736-4710

From: [Mercier, Bryan K](#)
To: [Johns, Sherry](#)
Subject: FW: Colville FTT premature letter dated 9.30.21
Date: Friday, October 15, 2021 8:37:00 AM
Attachments: [Colivlle certified mail envelope for Pasco Property.pdf](#)
[Colville Pasco Property letter dated 09.30.21.pdf](#)
[Outlook-hpbwkwtd.png](#)

What do you think? Do we need to respond to the initial package or can we wait for a full application?

<>< <>< <>< <>< <>< <>< <>< <><

Bryan K. Mercier
Northwest Regional Director
503-930-1903

From: Cavasos, Theresa <Theresa.Cavasos@bia.gov>
Sent: Thursday, October 14, 2021 11:03 AM
To: Karen Erickson <klerickson1955@live.com>
Cc: Cody Desautel (L&P ADM) <Cody.Desautel@colvilletribes.com>; Ferguson, Richard R <Richard.Ferguson@bia.gov>; Mercier, Bryan K <Bryan.Mercier@bia.gov>; Shaw, Bodie <Bodie.Shaw@bia.gov>
Subject: Colville FTT premature letter dated 9.30.21

Our office received a certified mail letter from Colville Business Council signed by Andrew Joseph Jr. requesting off reservation property put in trust for property near Pasco, Washington received on 10/12/2021.

Sherry Johns assigned to the FTT case to be encoded into TAAMS and provide a incomplete application letter.

After talking to Karen Erickson-Colville Agency there are many items need to be addressed prior to submitting a complete application for Pasco Property.

If everyone agrees, I will wait until Karen Erickson provides a full application to the NW Region to be reviewed and encoded into TAAMS System.

Thank you

Theresa Cavasos-Realty Specialist
Work 503-231-2237
Cell 360-228-0480



From: [Theresa Cavasos](#)
To: [Forrest-Davis, Sarraye H](#)
Subject: [EXTERNAL] FYI Colville Tribe Casino announcement
Date: Monday, May 1, 2023 3:31:56 PM

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3:29   

   72% 



Jarred-Michael Erickson

Apr 20 · 

I'm happy to announce that we are one step closer on our fee-to-trust application for our gaming facility in Pasco! A big thank you to all of the administration/staff that worked on this as well as past and present council. I'm excited for the direction we are headed and the additional resources for services this will bring to our membership! Although we still have a ways to go this is a big step in the right direction.





PRESS RELEASE

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

For Immediate Release
April 20, 2023

Contact: Neeka Somday
509-634-2213

Colville Tribes Submits Fee-to-Trust Application for Tribal Land in Pasco, WA

Nespelem, WA—The Confederated Tribes of the Colville Reservation has formally submitted its application for the fee-to-trust transfer of tribal property in Pasco, WA, an initial step in the Tribes' plan to open a casino on its land there.

The application was submitted to Bryan Mercier, Regional Director of the Bureau of Indian Affairs in Portland, OR. The application and supporting information were developed over the past year by the Tribes' attorneys and staff, who have been working on this project since late 2019. Submission of the application begins a 16-step federal process for the transfer of off-reservation tribal fee property to trust status. Because the land is intended for a gaming facility, additional processes are also required by the BIA and the Department of the Interior.

"We're pleased to announce this important milestone in our efforts to enhance economic development for the Colville Tribes," Colville Business Council Chairman Jarred-Michael Erickson said today. "We're confident that a new, state-of-the-art gaming enterprise on Colville land in Pasco will provide additional resources to our tribal government to provide much-needed services to our tribal membership. The project will also bring new jobs to the Pasco area and increase tourism to the region. This will be a win-win for the Tribes and the Tri-Cities area."

"The process of gaining approval for the fee-to-trust process will require significant time, effort, and coordination with Department staff", Erickson said, "but we are confident of a positive outcome."

-END-

About the Colville Tribes:

Today, more than 9,283 descendants of 12 aboriginal tribes of Indians are enrolled in the Confederated Tribes of the Colville. The twelve tribes which compose the Confederated Tribes of the Colville Reservation include: *s̓c̓l̓ám̓x̓x̓* (deep water) or Chelan; *w̓al̓w̓áma* (Wallowa people) or Chief Joseph Band of Nez Perce; *s̓x̓'y̓ñ̓p̓* (sharp pointed trees) or Colville; *š̓ñ̓y̓átk̓'áx̓* (grass in the water) or Emiat.



Theresa.cavazos@bia.gov

[Sent from Yahoo Mail on Android](#)

From: Cody Desautel
To: Forrest-Davis, Sarraye H
Cc: Karen Erickson; Johns, Sherry
Subject: Re: [EXTERNAL] FW: (b) (4) SE4 8-9-30, Pasco, WA 99301: Confederated Tribes of the Colville Reservation: (b) (4)
Date: Wednesday, May 10, 2023 3:54:11 PM

Thank you Sarraye. As we get close to step 7 in the process please let me know when we need to discuss the third party agreement. We have a contractor ready to perform this work.

On Wed, May 10, 2023 at 2:23 PM Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov> wrote:

Good afternoon Cody,

At this moment, we are good to go. I have submitted for a Preliminary Title Opinion so we are waiting for the solicitor's office and the Notice of Applications have gone out. Thank you for following up, I appreciate the collaboration!

Sarraye Forrest-Davis

Realty Specialist-Conveyances
DOI, Bureau of Indian Affairs
Division of Real Estate Services
Northwest Regional Office
Phone: (503)736-4710

From: Cody Desautel <cody.desautel@colvilletribes.com>
Sent: Wednesday, May 10, 2023 2:18 PM
To: Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>
Cc: Karen Erickson <klerickson1955@live.com>; Johns, Sherry <Sherry.Johns@bia.gov>
Subject: Re: [EXTERNAL] FW: (b) (4) SE4 8-9-30, Pasco, WA 99301: Confederated Tribes of the Colville Reservation: (b) (4)

Hey Sarraye,

I just wanted to confirm that you have all the information you need for our fee-to-trust application. If we are missing something please let me know. Thanks

Sent from my iPhone

On Apr 26, 2023, at 10:18 AM, Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov> wrote:

Thank you Karen.

Sarraye Forrest-Davis

Realty Specialist-Conveyances
DOI, Bureau of Indian Affairs
Division of Real Estate Services
Northwest Regional Office
Phone: (503)736-4710

From: Karen Erickson <klerickson1955@live.com>

Sent: Wednesday, April 26, 2023 10:16 AM

To: Johns, Sherry <Sherry.Johns@bia.gov>; Forrest-Davis, Sarraye H <sarraye.forrest-davis@bia.gov>; Cody Desautel <cody.desautel@colvilletribes.com>

Subject: [EXTERNAL] FW: (b) (4) SE4 8-9-30, Pasco, WA 99301: Confederated Tribes of the Colville Reservation: (b) (4)

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As per request, please find attached an Updated Title Commitment under Order No. (b) (4) for the Pasco Property. Should you have any further questions, please do not hesitate to contact me at this email or the Karen.Erickson.RTY@colvilletribes.com

Thank you!!!

Sent from Mail for Windows

From: Brian Pacsuta

Sent: Wednesday, April 26, 2023 9:14 AM

To: Karen Erickson

Subject: (b) (4) SE4 8-9-30, Pasco, WA 99301: Confederated Tribes of the Colville Reservation: (b) (4)

Updated Commitment

Brian Pacsuta
brian.pacsuta@stewart.com
Title Officer
Stewart Title Company

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I. INTRODUCTION

The Confederated Tribes of the Colville Reservation requested, by Resolution No. 2023-78 dated January 26, 2023, (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) The resolution is attached hereto as **Exhibit 1.**

The resolution (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

The Pasco Property is described as follows:

Description of Proposed Tract

Land Description

Parcel No. 113-130-068

The Southeast quarter of Section 8, Township 9 North, Range 30 East, W.M., records of Franklin County, Washington;

TOGETHER WITH an easement for ingress and egress and road right of way over the West 30 feet of the Northeast quarter of Section 8;

EXCEPT that portion conveyed to the State of Washington for road purposes as disclosed by Deed recorded March 26, 2002, under Auditor’s File No. 1603490, records of Franklin County, Washington.

Situated in the County of Franklin, State of Washington.

Containing 164.63 acres, more or less.

II. BRIEF HISTORY OF COLVILLE TRIBES AND COLVILLE RESERVATION

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands: Chelan, Chief Joseph’s Band of Nez Perce, Colville, Entiat, Lakes, Methow, Moses-Columbia, Nespelem, Okanogan, Palus, San Poil, and Wenatchi. The CCT has more than 9,300 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. Approximately half of the CCT’s members live on or near the Colville Reservation.

The 12 constituent tribes historically occupied a geographic area ranging from the Wallowa Valley in northeast Oregon, west to the crest of the Cascade Mountains in central Washington State, and north to the headwaters of the Okanogan and Columbia Rivers in south-central and southeast British Columbia. Before contact, the traditional territories of the constituent tribes covered approximately 39 million acres.

Prompted by the Indian Removal Act in 1830, the federal government removed these constituent tribes from their aboriginal lands and eventually relocated them to the current Colville Reservation. Initially, the constituent tribes of the Colville confederacy occupied reservations created by Executive Order in north-central Washington (Moses-Columbia) and northeastern Oregon (Wallowa). These Reservations were returned to public domain by a subsequent Executive Order.

At approximately 1.4 million acres, the present-day Colville Reservation is the largest in Washington state and overlaps southeastern Okanogan County and southern Ferry County. Due to the Reservation’s size, providing services to the tribal membership is difficult.

The Palus Tribe’s traditional territory included areas along the Snake and Palouse Rivers. (b) (4) (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) In an 1854 report to the Commission of Indian Affairs, Isaac Stevens, Washington Governor and superintendent of Indian Affairs for the Territory of Washington, described the areas occupied by specific tribes, (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

Some Palus participated in the Treaty of 1855 that established the confederacy of what is known today as the Confederated Tribes and Bands of the Yakama Nation. (b) (4)(b) (4)(b) (4)(b) (4) (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) Today, the Palus comprise one of the 12 bands of the Colville Confederacy.

(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

III. REGULATORY CRITERIA

The various requirements applicable to trust acquisitions under 25 C.F.R. Part 151 are restated below, together with the CCT’s responses.

§151.3 LAND ACQUISITION POLICY

The Secretary’s land acquisition policy provides that the Secretary may place land into trust for federally recognized tribes. The CCT is a federally recognized Indian tribe eligible to receive services from the Bureau of Indian Affairs. See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 87 Fed. Reg. 4636, 4637 (Jan. 28, 2022) (listing Confederated Tribes of the Colville Reservation as an eligible and federally recognized tribe). Section 151.3(a) further provides that land may be placed into trust for a tribe:

- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

25 C.F.R. § 151.3(a)(3). The CCT satisfies section 151.3(a)(3) because the Tribes intends to use the Pasco Property for self-determination and economic development purposes, including

gaming. This acquisition will facilitate tribal self-determination by furthering the CCT’s efforts to reestablish a trust land base in the traditional territories of the CCT’s constituent tribes, including, among others, the Palus.

§151.9 REQUESTS FOR APPROVAL OF ACQUISITIONS

a. Identification of the Parties

As noted above, the CCT is a federally recognized Indian tribe and is eligible for the special programs and services offered by the federal government to Indian tribes. This is a formal request by resolution of the Colville Business Council, which is the governing body of the CCT under Article II, Section 1, of the Tribes’ Constitution. A copy of the Constitution and Bylaws are attached hereto as **Exhibit 2**.

b. Description of the Land to be Acquired

The CCT acquired the Pasco Property through Quit Claim Deed dated May 31, 2019, from Cleason, Moore, Dokken and Geidl, PLLS, an Idaho limited liability company, which deed was recorded under Auditor’s File No. 1895969, dated June 14, 2019. A copy of the Quit Claim Deed is attached hereto as **Exhibit 3**.

(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4) prepared and submitted survey documentation of Pasco Property to the Bureau of Land Management (“BLM”). Ms. Mary J. M. Hartel, Chief Cadastral Surveyor for the BLM’s Branch of Geographic Sciences in Portland, Oregon, approved a Land Description Review and the Chain of Survey Certificates. The signed and approved Certificates, along with a copy of the survey, are attached hereto as **Exhibit 4**.

The legal description, survey, parcel map and proximity map is attached hereto as **Exhibit 5**.

§151.10(A) STATUTORY AUTHORITY FOR THE ACQUISITION

The Secretary has authority to acquire land in trust for the benefit of an Indian tribe—and the benefit of the CCT—pursuant to Section 5 of the Indian Reorganization Act (“IRA”) of June 18, 1934, 25 U.S.C. § 465 (48 Stat. 984), codified at 25 U.S.C. § 5108.

In 2009, the Supreme Court issued its decision in *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009), where the Court held that in order for the Secretary to acquire land for an Indian tribe under Section 5 of the IRA, the Indian tribe must have been “under federal jurisdiction” in 1934.

The Department’s current interpretation of the phrase “under federal jurisdiction” is set forth in a March 12, 2014, M-Opinion, titled, “*The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act.*”¹ That opinion stated if an Indian tribe voted to approve or

¹ Op. Sol. M-37029 (Mar. 12, 2014) (hereafter “M-37029”), available at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37029.pdf> (retrieved Oct. 27, 2022)

reject the IRA in the years following the IRA's enactment, such evidence "unambiguously and conclusively establishes that the United States understood that the particular tribe was under federal jurisdiction in 1934."²

The CCT voted to reject the IRA by a 562-421 margin on April 6, 1935. The vote count is set forth on page 19 of the 1947 report by Theodore Haas, titled, "*Ten Years of Tribal Government Under IRA*" (hereinafter the "Haas Report").³ Per the Department's current analysis, the documented fact that the Colville Tribes voted on the IRA in 1936 conclusively establishes that it was under federal jurisdiction in 1934 and that the Department has the statutory authority under Section 5 of the IRA to acquire the Pasco Property into trust.

§151.10(B) THE NEED OF THE TRIBE FOR ADDITIONAL LAND AND THE PURPOSES FOR WHICH THE LAND WILL BE USED

The United States has long recognized that federally protected tribal lands are critical to tribal self-determination and self-governance. The IRA and the land into trust section was enacted specifically to promote tribal self-determination and to remedy the devastating impact that the allotment era in federal Indian policy had on tribal governments. Indeed, the Department itself concludes that placing land into trust is essential to tribal self-determination, stating:

The current federal policy of Tribal self-determination is built upon the principles Congress set forth in the Indian Reorganization Act and reaffirmed in the Indian Self-Determination and Education Assistance Act. Through the protection and restoration of Tribal homelands, the BIA has sought to live up to the standards Congress established eight decades ago and indeed to reinvigorate the policies underlying the Indian Reorganization Act.

<https://www.bia.gov/bia/ots/fee-to-trust>. Thus, federal law and policy has long recognized that trust land is a critical component of tribal self-determination.

The Colville Reservation was established by the April 19, 1872, Executive Order of President Grant, setting aside the Colville Reservation west of the Columbia River. The boundaries of the Reservation were modified by the Executive Order of July 2, 1872. The western boundary was then the Okanogan River, the eastern and southern boundaries were the Columbia River, and the northern boundary was the Canadian border. This area approximated 2,885,000 acres.

The Presidential Proclamation of May 3, 1916, opened the unallotted, unreserved, non-timber and minerals lands to white settlement. Pursuant to U.S. Department of the Interior Order dated September 19, 1934, undisposed lands (about 818,000 acres) within the Reservation were temporarily withdrawn from further disposition or sale. The Act of July 24, 1956, restored ownership of the undisposed lands to the Tribes.

² *Id.* at 19-20.

³ The Haas Report is available at <https://www.doi.gov/sites/doi.gov/files/migrated/library/internet/subject/upload/Haas-TenYears.pdf>

According to the December 1, 1958, Congressional Report titled, "Indian Land Transactions, Memorandum of the Chairman to the Committee on Insular Affairs, United States Senate, An Analysis of the Problems and Effects of Our Diminishing Land Base, 1948-57," the status of lands on the Colville Reservation at the time was reported as follows:

Alienated Lands:	227,660 acres
Tribal Trust Lands:	887,832 acres
Individual Trust Lands:	267,000 acres
Administrative sites:	2,504 acres
 Total:	 1,385,086 acres

The 887,832 acres of CCT tribal trust land represents approximately 30 percent of the original 2,885,000 acres of the Colville Reservation established by the July 2, 1872, Executive Order. This means that the Colville Tribes have lost approximately 70 percent of its original land base over a period of 76 years. The 267,000 acreage of individual Indian trust lands above indicates a loss of 20,000 acres of allotted lands on the Colville Reservation over a period of about 50 years.

The total enrollment of the Colville Tribes at the time of the 1958 Congressional Report was 3,221 enrolled members, with 2,246 tribal members living on the reservation. (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) and its tribal membership is (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

The loss of the majority of its tribal land base has had an adverse impact on the Coville Tribes, its ability to generate revenue, and the standard of living of Colville Reservation residents. The (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) compared to the Washington state average income of \$74,073. Ferry County, one of the counties overlapping the boundaries of the Reservation, is one of only two counties in the state with a per capita income lower than \$36,000, which is almost half the state average.

Census figures from 2018 estimate that approximately 21.3% of the Colville Reservation population is below the poverty line, which is double the estimated population living below the poverty line for the state (10.3%). Additionally, an (b) (4)(b) (4)(b) (4)(b) (4)(b) (4) population has used food stamp/SNAP benefits within the last 12 months, compared to only 13.3% of the Washington state population.



(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)(b) (4)

The CCT’s need for this acquisition is to facilitate self-determination and economic development, which will provide employment opportunities for tribal employees as well as members of the local community who provide needed services. (b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) Acquisition of title to the Pasco Property in trust will promote tribal self-determination and economic development, which is the applicable standard for Part 151.

§151.10(C): THE PURPOSE FOR WHICH THE LAND WILL BE USED

As noted in the response to Section 151.3, above, the Colville Tribes intends to use the Pasco Property for self-determination and economic development purposes, including gaming.

The acquisition will promote tribal self-determination by furthering the CCT’s efforts to reestablish a trust land base in the traditional territories of the CCT’s constituent tribes, which include, among others, the Palus.

The CCT also intends to use the Pasco Property for economic development to generate new sources of tribal revenues and to deliver tribal services, such as (b) (4) and (b) (4)
(b) (4)

§151.10(E) THE IMPACT ON THE STATE AND ITS POLITICAL SUBDIVISIONS RESULTING FROM THE REMOVAL OF THE LAND FROM THE TAX ROLLS

Should the Secretary acquire the Pasco Property in trust, the CCT does not anticipate any significant impact on the state of Washington and its political subdivisions resulting from its removal from the tax rolls because the property is already exempt under state law from state and local real property taxes.

The Pasco Property is currently exempt from state and local real property taxes under Wash. Rev. Code § 84.36.010, which excludes from real property taxes fee land owned by Indian tribes for “essential government services.” That state law section defines essential government services to include economic development activities. The CCT applies for the exemption annually.

The Pasco Property is subject to special tax assessments. The CCT will address the following Special Exceptions within the Commitment for Title Insurance issued by (b) (4)(b) (4) (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) described in Schedule B attached hereto as **Exhibit 6**.

(b) (4)(b) (4)(b) (4)

The CCT does not anticipate that at the time the Title Policy is issued that any of the exceptions, including any remaining (b) (4) and (b) (4) or recorded documents, will have any material adverse effect on the proposed use or the marketability of the title and should be administratively acceptable.

Given the foregoing, the CCT does not believe that there will be any significant impact to the State of Washington or local governments should the BIA acquire title to the Pasco Property and the Property is permanently removed from the tax rolls.

§151.10(F) JURISDICTIONAL PROBLEMS AND POTENTIAL CONFLICTS OF LAND USE

The Pasco Property is zoned within the city of Pasco, Washington, as Agricultural. If the Secretary acquires the land into trust status, however, the county's zoning laws would not apply. See 25 C.F.R. §1.4(a).

Placing the subject property into trust is not anticipated to make management significantly more difficult, because the CCT is prepared to assume regulatory jurisdiction over the land. The CCT will also have civil and criminal jurisdiction to the full extent of federal law. The CCT currently carries out law enforcement through a 638 contract with the BIA.

The Colville Tribes has already entered into several agreements with local governmental entities to address any future jurisdictional issues. These agreements include the following, with the month and year of their execution in parenthesis:

- (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) (attached hereto as **Exhibit 7**).
- (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) (b) (4)(b) (4)(b) (4) (attached hereto as **Exhibit 8**).
- (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) (b) (4)(b) (4)(b) (4)(b) (4) (attached hereto as **Exhibit 9**).
- (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) (b) (4)(b) (4)(b) (4)(b) (4) (attached hereto as **Exhibit 10**).

- (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) attached hereto as Exhibit 11).

The CCT will supplement this application to provide any additional agreements with local government entities that are relevant to this application.

§151.10(g) WHETHER THE BIA IS EQUIPPED TO DISCHARGE THE ADDITIONAL RESPONSIBILITIES RESULTING FROM THE ACQUISITION OF THE LAND IN TRUST STATUS

The CCT submitted its fee-to-trust application request for the purpose of exerting sovereign authority over its acquired lands and, consequently, acquiring the subject lands in trust will result in increased tribal self-determination and self-sufficiency. (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

The Colville Tribes has contracted realty and other natural resources management functions of the BIA under Title I of P.L. 93-638. Therefore, the CCT performs all the realty functions for consideration and approval by the Superintendent of the Colville Indian Agency. (b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

The addition of the 164.63-acre tract located outside of the exterior boundaries of the Colville Reservation would not substantially increase the workload on the BIA. The Pasco Property site is agricultural land with no noteworthy or otherwise unusual features that would necessitate additional management resources. As noted above, the Colville Tribes have contracted nearly all BIA functions, including natural resources management and law enforcement, so the CCT would carry out any substantive management activities through tribal employees or through its (b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

Since any additional BIA responsibilities would be minimal, the BIA is able to administer any additional responsibilities that may result from acquisition of the Pasco Property in trust.

§151.10(h) THE EXTENT TO WHICH THE APPLICANT HAS PROVIDED INFORMATION THAT ALLOWS THE SECRETARY TO COMPLY WITH 516 DM 6, APPENDIX 4, NATIONAL ENVIRONMENTAL POLICY ACT REVISED IMPLEMENTING PROCEDURES, AND 602 DM 2, LAND ACQUISITIONS: HAZARDOUS SUBSTANCES DETERMINATIONS

An Environmental Site Assessment was performed on the subject property in conformance with the scope and limitations of American Society of Testing and Materials Standard Practice E1527-13. The initial Phase I Environmental Site Assessment (“ESA”) was performed by (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) and is attached hereto as Exhibit 12. The (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

- (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)

Based on the (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)

The ESA has not been reviewed or approved by the Regional Physical Scientist. An update or a new Phase I ESA will be performed before the BIA’s acceptance of the instrument of conveyance.

§151.11 OFF-RESERVATION ACQUISITIONS

§151.11(B) THE LOCATION OF THE LAND RELATIVE TO STATE BOUNDARIES

The Pasco Property is located approximately (b) (4) linear miles from the exterior boundaries of the Colville Reservation and (b) (4) linear miles from the Colville Tribal Headquarters. The Pasco Property lies within the aboriginal lands of constituent tribes of the Confederated Tribes of the Colville Reservation, including the Palus Tribe. (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4) Title Status Reports are included in Exhibit 13, attached hereto.

Areas within the city of Pasco, especially along the Columbia and Snake River, were historically and continue to be used by the CCT for meetings, gatherings, and traditional ceremonies.

§151.11(C) PLAN SETTING FORTH ANTICIPATED ECONOMIC BENEFITS ASSOCIATED WITH USE

The CCT intends the Pasco Property for a planned hotel and gaming facility. The Colville Tribes anticipates significant economic benefits with the proposed use of the Pasco Property for both the Tribes and the surrounding community. The planned gaming facility and hotel will undoubtedly provide significant employment opportunities for tribal members as well as profoundly improve the health and welfare of the Colville Tribes for generations.

A business plan that describes the anticipated economic benefits from the Pasco Project is attached hereto as **Exhibit 14**.

§151.11(D) CONTACT WITH STATE AND LOCAL GOVERNMENTS

For this application, the CCT requests that the Department send the appropriate consultation letters to the following:

Governor Jay Inslee
Office of the Governor
State of Washington
P.O. Box 40002
Olympia, WA 98504-0002

Craig A. Bill, Executive Director
Governor's Office of Indian Affairs
State of Washington
P.O. Box 40909
Olympia, WA 98504-0909

Mr. Clint Didier
Pasco County Commissioner
Room A102/A103
1016 N. 4th Avenue
Pasco, WA 99301

Mayor Blanche Barajas
Pasco City Hall
525 North 3rd Avenue
Pasco, WA 99301

Attached hereto as **Exhibit 15** are proposed drafts of the Notice of Application Letters.

Conveyance Document

A draft Statutory Warranty Deed conveying the United States of America in trust for the Confederated Tribes of the Colville Reservation is attached hereto as **Exhibit 16**.

Conclusion

CONFIDENTIAL—DO NOT DISCLOSE

Based on the justification provided above, the Colville Tribes respectfully requests that the United States of America, through the BIA, acquire the Pasco Property into trust for the benefit of the Confederated Tribes of the Colville Reservation.

Please let us know if you require any additional information for purposes of making your decision.

Sincerely,

Jarred-Michael Erickson, Chairman
Colville Business Council

ATTACHMENTS (EXHIBITS 1-17)

EXHIBITS

In accordance with 25 C.F.R. Part 151 and applicable BIA directives, the following Exhibits are attached for review and incorporated by reference into this letter:

- Exhibit 1:** Colville Business Council Resolution No. 2023-78
- Exhibit 2:** Constitution and Bylaws of the Confederated Tribes of the Colville Reservation
- Exhibit 3:** Quit Claim Deed
- Exhibit 4:** LDR and COS Certificates
- Exhibit 5:** Location Maps and Survey
- Exhibit 6:** Preliminary Commitment for Title Insurance
- Exhibit 7:** (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
- Exhibit 8:** (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)
- Exhibit 9:** (b) (4)(b) (4)(b) (4)(b) (4)
- Exhibit 10:** (b) (4)(b) (4)(b) (4)(b) (4)
- Exhibit 11:** (b) (4)(b) (4)(b) (4)(b) (4)
- Exhibit 12:** Phase I Environmental Site Assessment
- Exhibit 13:** Title Status Report Nos. (b) (4) and (b) (4)
- Exhibit 14:** (b) (4)(b) (4)
- Exhibit 15:** Draft Notice of Application Letters
- Exhibit 16:** Draft Statutory Warranty Deed
- Exhibit 17:** County Tax Information