



29799 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax Administration  
(503) 682-7025 Fax Community Development

June 20, 2008

*Handwritten: COPY*

Scott L. Aikin, Acting Director  
US Department of the Interior  
Bureau of Indian Affairs  
Northwest Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, OR 97232-4169

Re: The Klamath Tribes of Oregon, Fee to Trust application for Langdon Farms,  
French Prairie property

Dear Mr. Aikin:

The City of Wilsonville is an affected jurisdiction entitled to comment on the Klamath Indian Tribe's request to place in trust for casino purposes a 153-acre parcel otherwise referred to as Langdon Farms, within the French Prairie Lands of Clackamas and Marion Counties. A southern boundary of the City is separated only by a road from the northern boundary of Langdon Farms.

Interstate 5 bisects Wilsonville and the interchange that services southern Wilsonville also services the Langdon Farms French Prairie area. The interstate is vital both to the state's economy and security to our national economy and security. In the next 30 years, the interstate will be over capacity with 20% growth and with the planned I-5/99W connector an additional 30% will be added to this area of I-5.

As you no doubt are aware, Oregon has long advocated sound land use practices to contain urban development within urban growth boundaries to avoid the overly burdensome costs of providing infrastructure for urban sprawl on the one hand and protecting our highly valuable farm land and agricultural industry on the other.

The location of proposed colossus casino and attending hotel and retail development (a copy of a proposal expanding the acreage for full development is enclosed as Exh. A) not only threatens the economic interests of those who have planned and developed in the neighboring urban areas, such as Wilsonville, it epitomizes urban sprawl. It violates the Metropolitan Urban Growth Boundary. It also threatens the operational integrity of the interstate highway without great mitigation expense by the taxpayer and it destroys some of the state's most valuable agricultural land. The Oregon Department of Agriculture has



designated the lands of French Prairie as foundation lands, its highest designation for preservation of productive agricultural land. Our understanding is the basis for the tribe's request to desecrate these lands is based on the 1988 Indian Gaming Regulatory Act (IGRA), § 2719(b)(1)(A), and the Klamath Indian Tribe Restoration Act of 1986. (Public Law 99-398, August 27, 1986)

Seminal issues under the Klamath Restoration Act are whether lands taken under this Act meet the exception under the IGRA for restored, reservation lands and whether the Restoration Act should be interpreted to allow land from "anywhere" in Oregon to be taken into trust as "restored land".

Other Indian Restoration Agreements provide Reservation Plans that limit the location of land eligible for trust lands. The Grand Ronde Restoration Act and the Siletz Restoration Act each provided for a Reservation Plan to be submitted subsequent to the passage of the Restoration Acts. In opinions promulgated by the Department of Interior and the National Indian Gaming Commission, "restored lands" were limited to the lands in the Reservation Plans. See, Letter to Ada Deer, Assistant Secretary, Department of Interior, to Confederated Tribes of Siletz, March 14, 1995; Memorandum of Solicitor to Assistant Secretary, "Coos Opinion" – Indian Affairs 2, October 19, 1999; Memorandum of Solicitor of Indian Affairs to Director re: United Auburn Indian Community Determination under 25 U.S.C. § 2719(b)(1)(B)(iii), January 18, 2000. Thus, the language goes from the general intent found in the Restoration Act to the implementation of specifics in the Reservation Plan.

Only lands pursuant to Restoration Plans were determined to be eligible to satisfy the exception provided in the IGRA and be permitted to host casinos e.g. lands specific to the Grand Ronde Reservation Plan and Siletz Reservation Plan.

The Klamath Indian Tribe Restoration Act does not call for a plan entitled Reservation Plan to set out lands to be restored. Rather, under Section 2(a), the Act restores rights and privileges to the prior reservation lands whose rights and privileges were terminated by the 1954 Act (25 U.S.C. 564 et seq). By incorporation by reference to the 1954 Act, restored lands are identified and all are in Klamath County.

Under section 2(b), the area determined for eligibility for federal services and benefits for members of Klamath Indian Tribe residing in or near a reservation was residency in Klamath County. The Act is in keeping with a determination of restoration of lands that were historically used and in or near reservations.

The Act in Section 8 also provides for a plan entitled Environmental Self Sufficiency Plan (ESSP) to be submitted. The plan's submission is predicated on the requirement of consultation with "appropriate officials of the State and all appropriate local government officials." The purpose of the consultation is "[t]o assure that legitimate State and local interests are not prejudice by the proposed economic self-sufficiency plan."

In 2000, the Klamath Tribe submitted the ESSP. The proposed trust lands submitted were detailed on Map E and Map F (enclosed as Exh. B & Exh. C). All of the lands submitted for the plan were within Klamath County and generally within the prior reservation boundary of 1954. None of the lands submitted were 200 miles away in Clackamas or Marion Counties.

In 2001, consultation occurred. Since the lands were all within Klamath County, there was no consultation with the local government officials of Wilsonville, Clackamas or Marion Counties as none were affected.

Clearly, the intent of the Restoration Act and that of the Tribe was to restore the historic use and economic development of the reservation lands within Klamath County. This is consistent with the Department's general approach, which is guided by whether the Tribe had historical use of the land and how close it is to existing reservations. It is these restored lands within Klamath County that meet the intent and exception provisions for restored lands under the IGRA, not lands 200 miles away that have no historic use.

Under the Klamath Restoration Act, section 6 simply provides a general statement that the Tribes may acquire additional reservation lands through the Secretary in trust for the Tribe. Without an express provision to the contrary, any interpretation should be read in light of the longstanding approach to limiting trust lands to those historically used or close in proximity to the reservation lands. Thus, it is more likely than not lands under this provision were intended to be in Klamath County or in a directly adjacent county. Moreover, the right to acquire is provided, not that any lands so acquired are being restored. Rather such lands would be an addition. As such, lands to be so acquired in trust for casino purposes must (1) meet both the requirements of the IGRA for approval by the Secretary of the Interior under 25 U.S.C. § 151.11 and the governor of the State of Oregon, and (2) would clearly be for economic self-sufficiency interest calling forth the ESSP provision that the Secretary must be assured that legitimate State and local interests are not prejudiced thereby after appropriate consultation with appropriate State and local officials. Wilsonville officials are such appropriate local officials.

Therefore, it is respectfully submitted that "anywhere" approval for the Langdon Farms French Prairie lands is not supported by the Act or the longstanding approach by the Secretary of historical use and nearness to the reservation. At the very least, the "two-part determination" under the IGRA, which requires both the approval of Secretary of Department of the Interior and the Governor of the State for an application for land to be taken into trust for casino use, must be followed as well as meeting the specific assurance and consultation requirements of the ESSP.


The City of Wilsonville respectfully requests the Tribe's request to take in trust the Langdon Farms French Prairie lands be denied. If, procedurally, more review is required, then Wilsonville requests (1) consultation regarding the prejudice to local interest under

the Klamath Restoration Act, and (2) notice that the Secretary review the matter under the criteria set forth in 25 CFR § 151.11 and provide the City of Wilsonville sufficient notice and time to further comment. The City previously requested such notice by letter of March 1, 2007, to Dirk Kempthorne from Mayor Charlotte Lehan, a copy of which is enclosed (Exh. D).

If any determination is made in this matter, please advise of any time limitations and procedural avenues of appeals.

Thank you for your professional courtesies in advance.

Very truly yours,

  
Michael E. Kohlhoff  
City Attorney

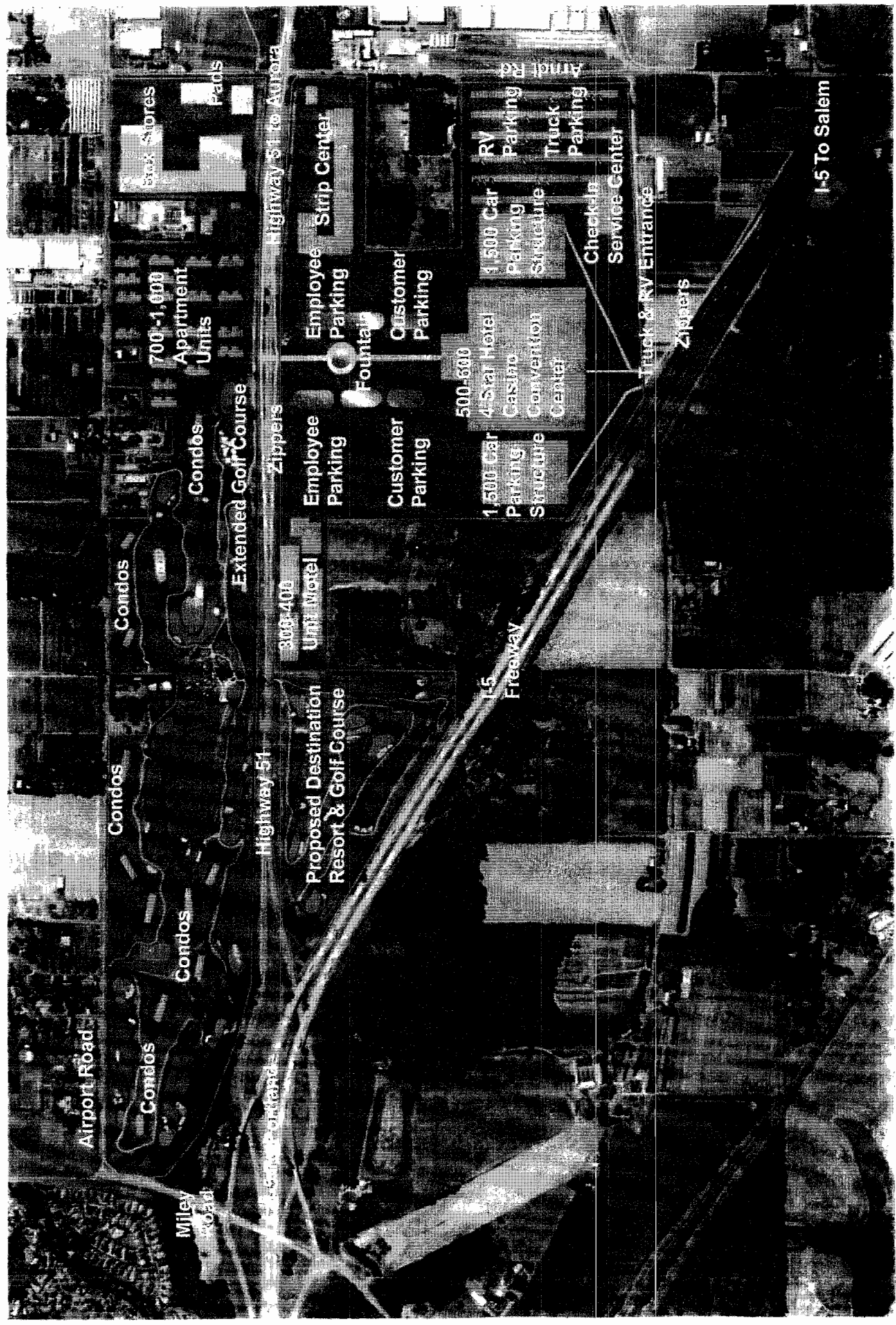
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cc: Mayor Charlotte Lehan  
Arlene Loble, City Manager  
✓ Greg Leo  
The Honorable Joseph Kirk  
Chairman, Klamath Tribes of Oregon

Enclosures:

Exhibit A, Proposal for expansion  
Exhibit B, Map E  
Exhibit C, Map F  
Exhibit D, March 1, 2007 ltr from Mayor Lehan

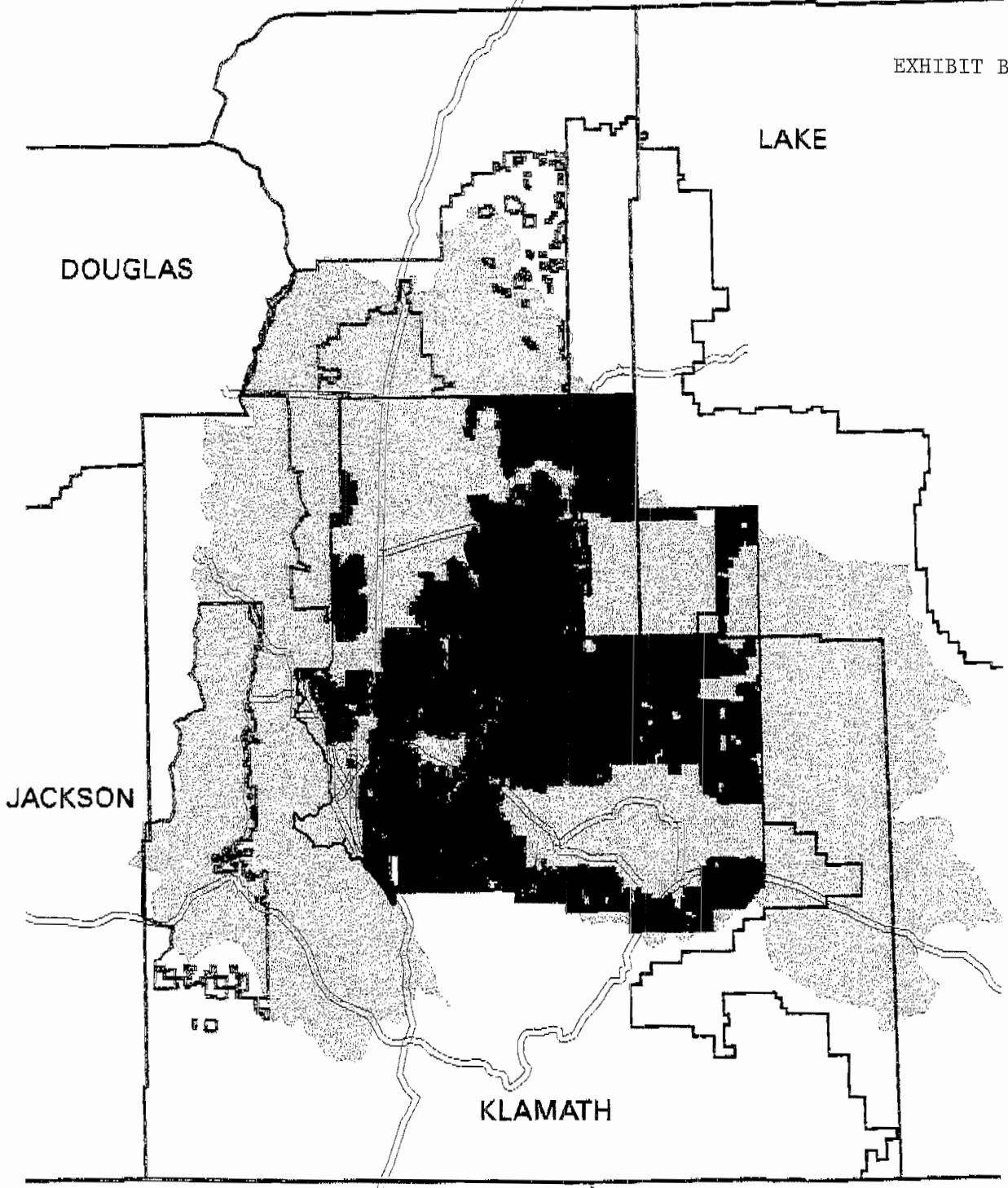
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


# Proposed Trust Lands

MAPE

EXHIBIT B



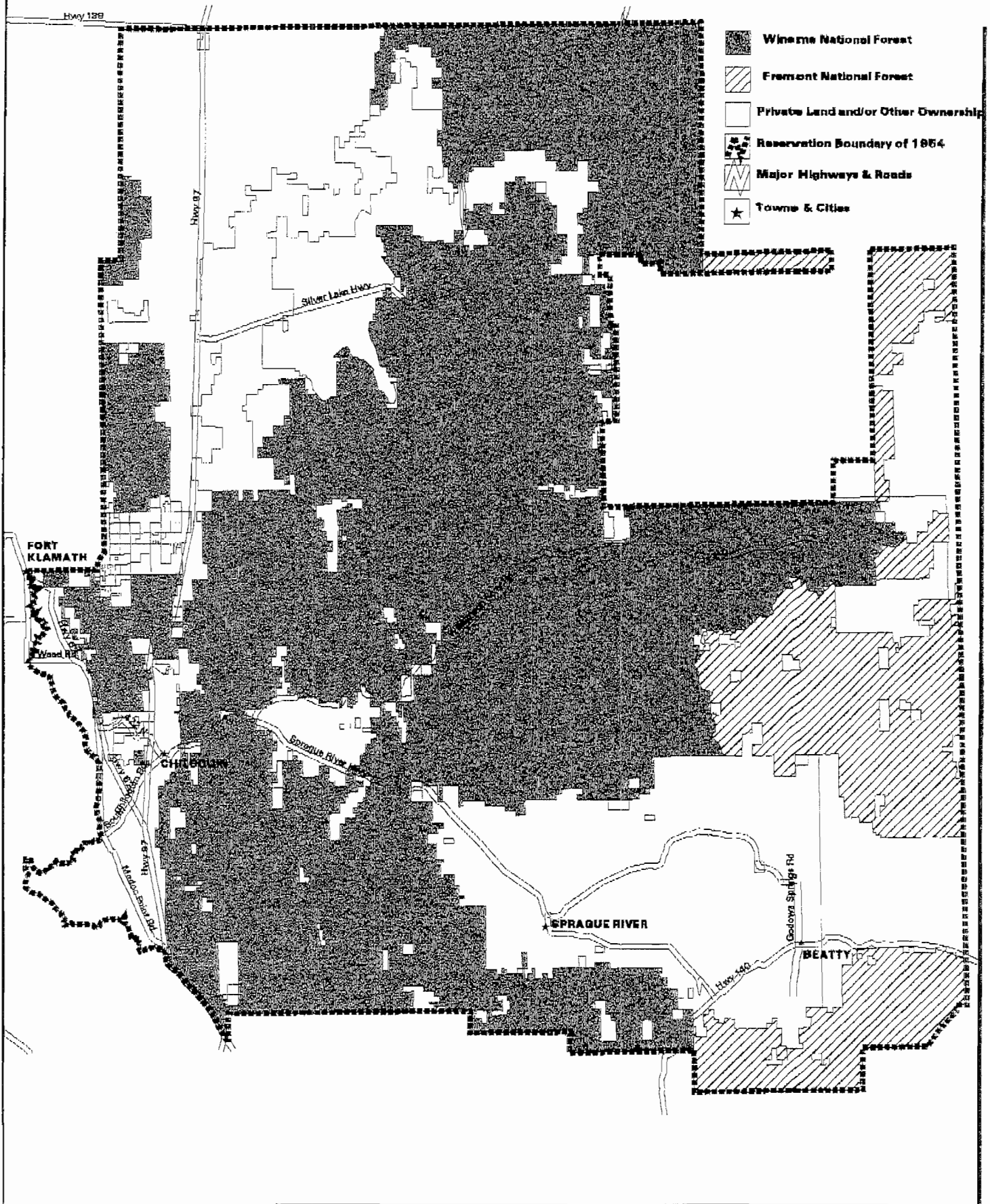
-  Winema National Forest
-  Highways
-  Proposed Trust Lands
-  Fremont National Forest
-  Klamath Basin Boundary
-  County Lines
-  Reservation Boundary of 1954 (880 +/- Thousand Acres)



# Study Area Map (Proposed Trust Lands)

Map F

EXHIBIT C





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March 1, 2007

EXHIBIT D

Secretary Dirk Kempthorne  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

RE: Objection to Off-Reservation Land Taken into Trust for Gaming in Northern Willamette Valley Area, Oregon

Dear Secretary Kempthorne;

We have received unconfirmed reports that the Klamath Tribes have purchased an option to buy land south of the Willamette River near the City of Wilsonville's southern boundary in the vicinity of the historic Langdon Farm parcels, for the purpose of having the land taken into trust to operate gaming or other economic developments.

The land at issue is primarily zoned farm land and consists of some of the world's best agricultural soils. Both the Oregon Department of Agriculture and the City of Wilsonville have taken strong stands that this land should not be included into the Portland Metropolitan urban growth boundary for commercial/industrial/housing development. In addition it will be extremely expensive to develop and the City of Wilsonville is not interested in extending services, especially given other lands available to urbanize. The Department's and City position was upheld by the Metropolitan regional government and by the Oregon Land Use and Development Commission. To allow developers to use the Klamath Tribe, whose lands are now and historically have been over 200 miles away, to desecrate this prime agricultural resource with a proposed Commercial Casino and Shopping Center runs counter to the public interests recognized by local, regional and state governmental bodies. In turn, it would not seem to be in the best interests of the Klamath Tribe and the Bureau of Indian Affairs to be associated with such an affair.

We have also been informed that the Klamath Tribes have submitted a preliminary application to the Department of Interior in the spring of 2006 to have this Langdon Farms land taken into trust for gaming purposes. We have heard that this application was brief, since it was intended as a "placeholder" in case the McCain Senate Bill S. 2078 passed.

However brief the application, as a neighboring local community, we have not received notice of such an application. If it was submitted, we believe we are entitled to review in order to comment on its impact.



On June 9, and June 16, 2006, the City requested by letter to the BIA FOIA contact, a copy of any previously submitted applications, requests, approvals, denials or inquiries submitted to the Department of Interior or Bureau of Indian Affairs by the Klamath Indian Tribe in Oregon to have off-reservation land taken into trust. We did not receive a response.


The City of Wilsonville would again like to request notice of past applications, approvals, denials, or inquiries by the Klamath Tribes to the Department of the Interior or Bureau of Indian Affairs, to have off-reservation taken into trust in Clackamas, Marion, or Yamhill Counties, Oregon. We would also like to be put on record as a local community required to receive notice of any future off-reservation applications submitted to the Department of Interior for land in Clackamas, Marion, or Yamhill Counties, Oregon.

To this end, please provide us notice of all applications submitted to the Department of Interior for land to be taken in trust in Clackamas, Marion, or Yamhill Counties in the past two years. Please provide notice for all such future applications also.

Aside from the avenue of receiving Secretary and Governor approval for off-reservation land to be taken into trust for gaming, we are aware of the three exceptions to IGRA §2719. We do not believe that the Klamath Tribes acquisition of land taken into trust in the Northern Willamette Valley satisfies any of the three exceptions: settlement of a land claim, initial reservation, or restoration of lands. We understand that this determination requires a process that has not yet been undertaken. However, if you are aware that the application is or will be reviewed under one of these exceptions, we would like to know so we can better understand the nature of the acquisition.

We respectfully submit these objections and requests for notices. Thank you for your time and efforts to work with our City and community to provide a successful solution for all.

Sincerely,

  
Charlotte Lehan  
Mayor, City of Wilsonville

Cc: Mr. Stan Speakes  
Regional Administrator  
Bureau of Indian Affairs  
The Federal Building  
911 NE 11<sup>th</sup> Avenue  
Portland, OR 97232  
Phone: 503-231-6702  
Fax: 503-231-2201