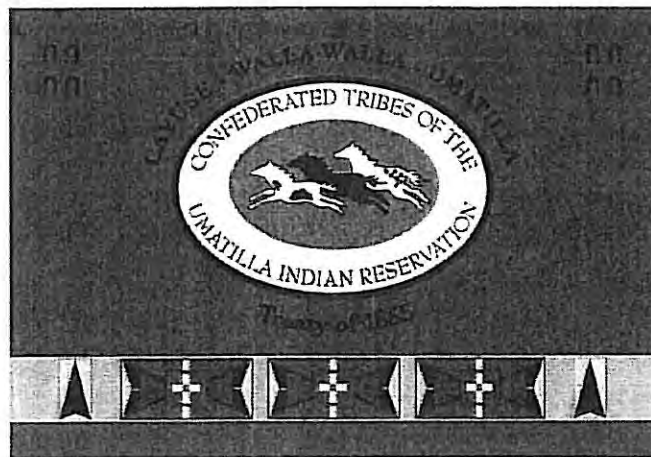


Exhibit A to Resolution \_\_\_\_\_

Confederated Tribes of the Umatilla Indian Reservation  
Umatilla Chemical Depot Policy



Prepared For:  
CTUIR Science and Technology Committee

March 2009

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# 1 PREAMBLE

The CTUIR have an ancient relationship with the lands and resources throughout the region including within the Umatilla Chemical Depot (UMCD) as documented by the extensive archaeological record, traditional stories, and oral histories. Usual and accustomed fishing sites, villages and camps, religious, funerary and other spiritual sites, plant gathering areas, grazing, and other sites are known to exist on or near in this area. For this reason, the resources on the UMCD must be protected and preserved in a manner that meets the United States (US) Trust responsibility to the CTUIR which was established in the Treaty of 1855. Consistent with the CTUIR Board of Trustees' principal of First Foods, the US government must protect the interests of the CTUIR by ensuring that lands, water, soil, air, biological, and cultural resources are clean and safe to use. The US government must also ensure to the CTUIR that, after clean-up, human health is not adversely affected from chemical and physical impacts that are related to operations or management of the UMCD site.

This policy is intended to provide a framework to guide future decision makers in the protection of Tribal resources on the UMCD lands. The policy supports, and expands on, activities which the CTUIR has conducted since establishing a Memorandum of Agreement (MOA) with the United States Department of Defense (DOD) and the Oregon Department of Environmental Quality (DEQ) to support government-to-government and technical consultation on matters related to the UMCD. These MOAs has been in place since 1996 and 2001, respectively. In this agreement the Department of Defense acknowledged their Federal Trust responsibilities and committed to a government-to-government relationship with the CTUIR.

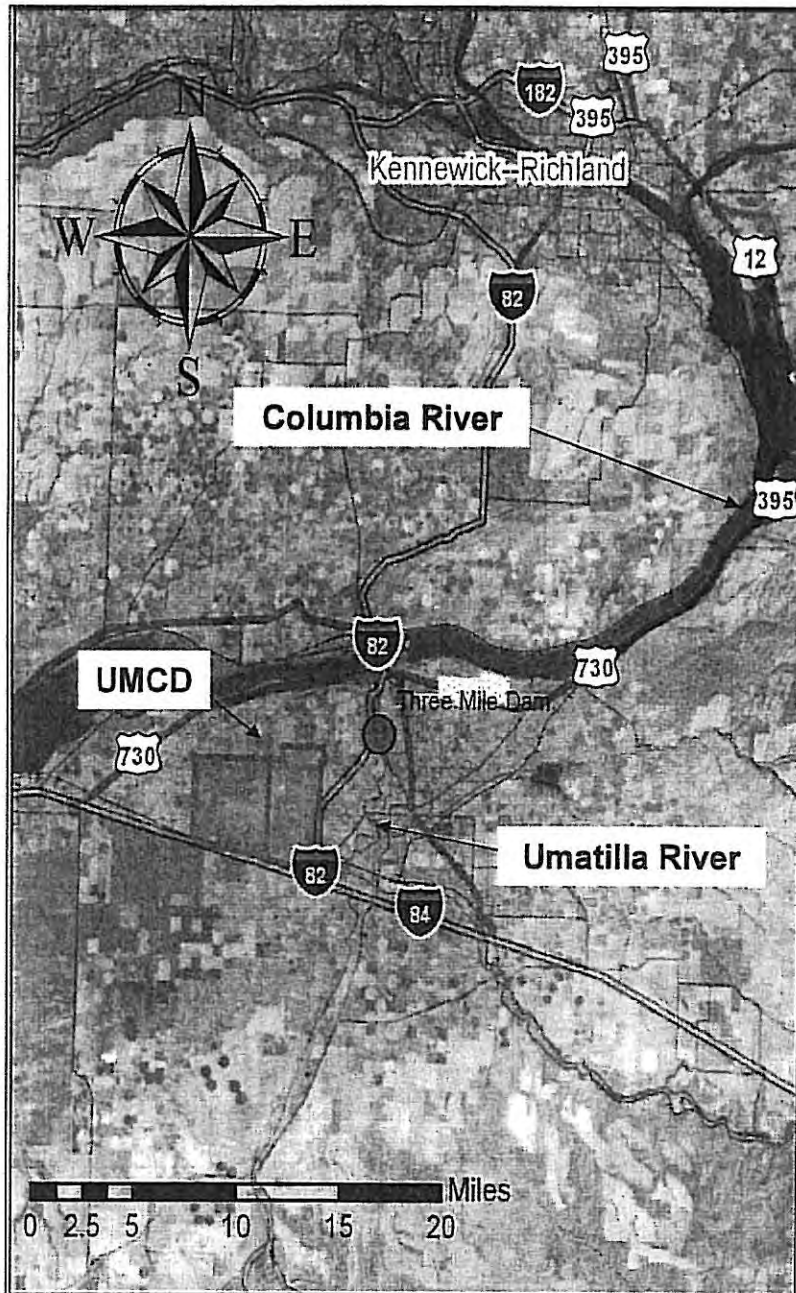


Figure 1: Satellite photograph of the UMCD and surrounding region

## 2 BACKGROUND

Indian life in the Columbia Plateau and along its waterways in contemporary times is based on the responsibility to manage modern daily affairs and while respecting ancient values. Teachings and unwritten laws of Native Americans are passed on through generations by oral tradition in order to protect those yet to arrive. The cultural identity, survival, and sovereignty of the CTUIR along the Columbia Plateau are maintained by adherence to and respect for, these ancient unwritten laws.

These ancient teachings have been passed down through time by oral traditions, and they identify that the people were created by the Creator, and placed specifically here on the Columbia Plateau. These oral histories pass forward a record of the people living along the Columbia River since time immemorial. Archaeologically, it has been demonstrated that Indian People have occupied the region for at least 12,000 years. The members of the CTUIR are an inherent and inextricable part of the landscape.

This ancient responsibility to respect these teachings is directly connected to the culture, the religion, and this landscape along the Columbia Plateau. This commitment between the Indian people and the Creator upholds the commitments made by other living creatures to ensure the peoples survival at the time of creation. Simply put this responsibility is to protect and preserve mother earth and her children. This includes the air, earth, water and all that grows and lives on it.

To meet its responsibility and to uphold the CTUIR Board of Trustees' principal of protecting the First Foods, the CTUIR needs cold, clean, uncontaminated water; clean, clear uncontaminated air; uncontaminated soil; clean, vibrant, and uncontaminated biological resources; clean, uncontaminated, and wholesome foods; and clean, uncontaminated, and healthful medicines. It was with these needs in mind that the Tribes of the Columbia Plateau negotiated their treaties with the United States government in the mid 1800's.

### 2.1 Treaty of 1855

At the Walla Walla Treaty Council on June 9, 1855, representatives of the Cayuse, Umatilla, and Walla Walla Tribes united and signed a Treaty [12 Stat. 945] with representatives of the United States of America. The Treaty was the beginning of long term government-to-government relationship. As part of the negotiations, the Confederated Tribes ceded the United States 6.4 million acres in exchange for a reservation. This cession included what is known as the Umatilla Chemical Depot identified in the Treaty of 1855

*"thence southerly along that boundary (being the waters of Powder River) to the source of Powder River, thence to the head- waters of Willow Creek, thence down Willow Creek to the Columbia River, thence up the channel of the Columbia River to the lower end of a large island below the mouth of Umatilla River, thence northerly to a point on the Yakama River, called Tomah-luke,"*

During the negotiations the Tribes, however, retained and reserved the perpetual rights to hunt, fish, gather, and pasture livestock throughout the region, including the area in and around the

UMCD. Through the Treaty of 1855 the CTUIR sought to protect homeland and food gathering rights within the traditional use areas necessary to (1) sustain CTUIR peoples, (2) preserve their cultural, subsistence, ceremonial practices, and commerce, and (3) ensure the survival of future generations. The Treaty is a legal contract binding CTUIR and the United States and bringing about Federal fiduciary responsibilities to protect these interests. During the negotiations, the Confederated Tribes also reserved a 512,000 acre Indian Reservation exclusively for a homeland. The reservation has since been diminished by federal actions and treaty resources have been depleted by federal and non-Indian land management after 1855.

The UMCD is important to the treaty rights and resources reserved by the CTUIR in 1855 since the facility represents one of the last contiguous desert shrub steppe habitats within the Columbia Plateau and so contains many unique plant species of cultural significance. In addition, two major water ways are located near the UMCD and the health of these rivers is a keystone to the protection of CTUIR fishing resources. The Columbia River runs three miles north of the UMCD and is the life blood of the region, providing an abundant water supply and a thriving aquatic ecosystem that supports rich diverse fisheries. The Umatilla River is located less than a mile from the southeast corner of the UMCD. This smaller tributary is of great economic and cultural importance to the CTUIR as it runs through the Umatilla Reservation and it has been the focus of two decades of work by the Tribe to restore Salmon and steelhead runs to our region. These runs had been extinguished for approximately 70 years by water-use practices until the CTUIR was able to work with stakeholders to reestablish favorable habitat and reintroduce these species to the Umatilla River. Ancestral CTUIR fisheries sites are known to be located all along both the Columbia and Umatilla Rivers.

## **2.2 History of the UMCD**

The lands of the UMCD were once utilized by Native Peoples. The Umatilla people occupied villages from Umatilla Rapids to Roosevelt Washington along the Columbia River. The Cayuse grazed horses through out the area including the grasslands around Umatilla and across the river at Horse Heaven hills. Umatilla Rapids was a location where horses could cross the river when the water was low.

Abundant Salmon was the primary food source. Lands adjacent to the river such as the winter lodgings at Umatilla Rapids and Plymouth were also sources of food and medicinal resources that supported life. Resources gathered in this region included plants for food and medicine; large game such as deer, elk, antelope; and smaller fauna such as rabbits, sage hens, and water fowl. First foods appear closest to the river at low elevations and Native people followed resources in a seasonal round. Lands adjacent to the villages were essential for survival in the winter time and villages were selected where resources were known to exist.

Archaeological investigations at the Old Town Umatilla site, a few miles northeast of the UMCD, suggest a pre-Mazama component (estimated between 7000 and 5500 B.C.) could be present. Intense occupation occurred in the late prehistoric times which continued until contact with Europeans in the early nineteenth century. Several locations on the Columbia and Umatilla rivers are ethnographically recorded as Umatilla fishing places, villages and camps (Galm, 1996).

Journal entries from Lewis and Clark in 1805 and 1806 indicate lodges, scaffold with drying fish, and banks of mussel shells along the Umatilla River.

During the nineteenth century the CTUIR entered into the Treaty of 1855 with the United States government and so ceded its aboriginal lands, while retaining both a reservation to live on and specific rights to use hunt, fish, and gather on unclaimed lands within the ceded boundary. These rights were regularly exercised on what is now the UMCD with Tribal members hunting deer and rabbits, gathering plants for food and medicines as well as grazing horses and livestock.<sup>1</sup>

In 1940 the Army selected the 16,000-acre plot in northeastern Oregon that became the Umatilla Ordinance Depot (now called the UMCD). Ten months (January to October 1941), 7000 workers, and thirty-five million dollars later the prairie site was transformed into a complex of warehouses, munitions magazines, shops and office buildings connected by a web of paved roads and railroad tracks. During its now 60-year history, The UMCD has grown to 19,729 acres and has supported multiple war efforts, including the Korean Conflict, Vietnam, Grenada, Panama, Operation Desert Shield, and Operation Desert Storm. Besides its conventional ammunition and general supply missions, the depot received a new mission in 1962 – receiving and storing chemical ammunition. Between 1962 and 1969, the depot received various types of ammunition with the chemical nerve agents VX and GB, and the mustard blister agent HD (called mustard gas).

In the mid-1980s, Congress directed the Army to dispose of the nation's aging chemical weapons stockpile. In 1988 the UMCD was placed on the Department of Defense Base Realignment and Closure list to review the future of the facility. It was decided that the base would be realigned and remain open until the chemical stockpile at the facility was destroyed. On April 25, 1997, the United States Senate ratified the Chemical Weapons Convention, an international treaty mandating stockpile destruction. In June 1997, construction started on the Umatilla Chemical Agent Disposal Facility (UMCDF) – the facility that would destroy the chemical ammunition stored at the UMCD. Construction was substantially complete in August 2001 and weapons destruction began in 2004. The mission to destroy the UMCD stockpile of chemical weapons is scheduled to be complete by late 2010. Subsequent decontamination, decommissioning, and closure will last till 2013. The Department of Defense Base Realignment and Closure law of 2005 has the UMCD scheduled to be closed after the incineration facility has completed its mission. The Local Reuse Authority (LRA) will be the entity who will oversee the dispersion of the assets for the betterment of the surrounding communities.

The LRA is a legally recognized organization comprised of representatives from the CTUIR, Morrow County, Umatilla County, and the ports of Morrow and Umatilla. The group has been involved with planning for the future use of the UMCD since the facility was first placed on the

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<sup>1</sup> It should be noted that some of these desired resources still are present on the UMCD. A recent survey of the UMCD and surrounding area by Native Americans identified several possible traditional medicines. Some plants used from this region are bitterroot (*Lewisia redivia*), biscuit root (*Lomatium cous*), camas, (*Canassua quamash*), chokecherry (*Prunus demissa*), currant (*Ribes* sp.), desert parsley (*Lomatium canbyi*), Gray's lomatium (*Lomatium grayi*), Indian carrot (*Perideridia gairdneri*), prickly pear cactus (*Opuntia* sp.), serviceberry (*Amelanchier* sp.), wheatgrass (*Agropyron spicatum*), and wild celery (*Lomatium nudicaule*).

1988 BRAC study list. The operation and purpose of the group is described in its supporting Intergovernmental agreement which was last renewed by the Board of Trustees in October 2002 for a period of 5 years (Resolution No 02-081). The official document describing the LRA's vision for the future use of the UMCD was produced in 1993 and describes regions slated for various types of economic development and resource preservation activities (Benkendorf Associates Corp., 1993). Figure 2 presents the land use vision contained in this document.

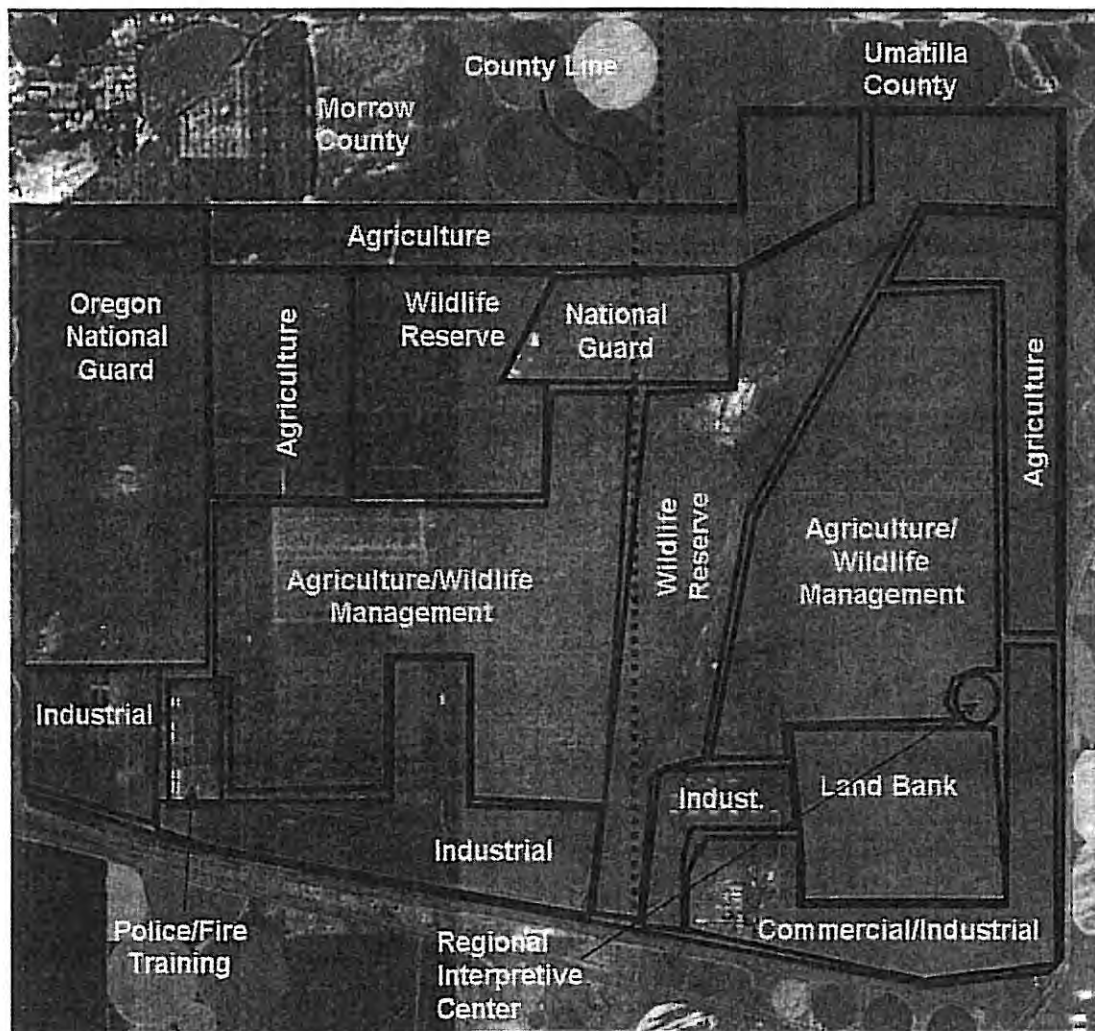


Figure 2: Proposed reuse of the UMCD from the 1993 LRA plan.

### 2.3 Current Zoning and Ownership

The UMCD has not been zoned by either Morrow or Umatilla Counties since it is federally owned and not part of the public domain. Current ownership is retained by the United States Army. As seen in Figure 3, the surrounding land-use of both counties, however, is overwhelmingly agricultural. Within Umatilla County, land to the north, northeast, and south of the depot is predominately zoned Exclusive Farm Use (EFU) with a minimum parcel size of 160



acres. There is also a 14 acre parcel on the southeast corner of the depot between I-82, I-84, and Westlund Road that falls within the Industrial Plan Designation (light industrial).

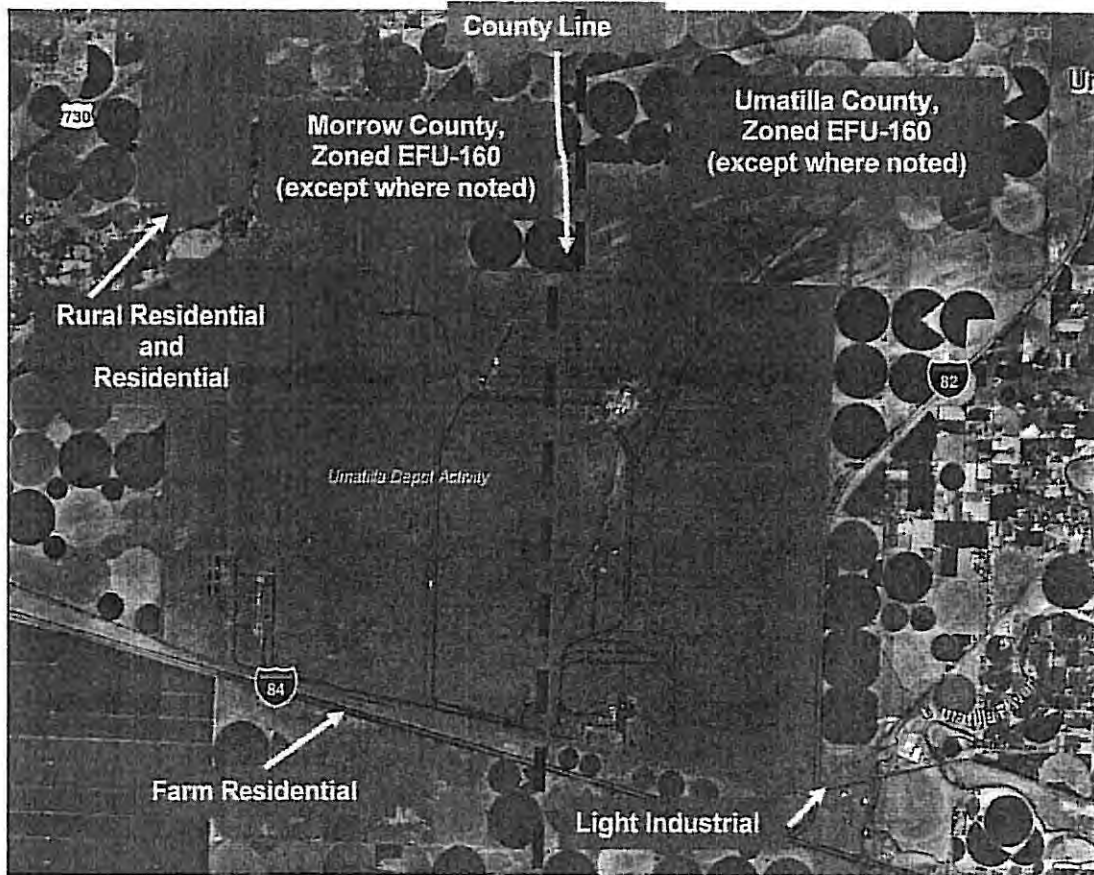


Figure 3: Zoning around the UMCDF.

Land adjacent to the depot in Morrow County is almost exclusively zoned as EFU with a minimum parcel size of 160 acres. One exception is a small area zoned Rural Residential that allows single family dwellings with a one acre minimum. The only other exception lies along the south of boundary of the UMCD and north of I-84. This area is zoned Farm Residential and is similar to Rural Residential, but with a minimum acreage designation of 2 acres.

It is important to note that while the UMCD is surrounded by irrigated farms, the potential for developing new groundwater sources is limited. Almost all of the lands in the vicinity of the Depot lie within the boundaries of critical groundwater areas (Benkendorf Associates Corp., 1993). When an area is so designated, new wells cannot be developed and existing wells cannot be expanded. Hence, development of depot lands will depend on existing water rights and wells on the facility.

#### **2.4 Current Environmental State of the UMCD**

The current activities at the UMCD are governed by two sets of environmental laws. The active missions of the site, storage and disposal of the chemical weapons, are Resource Conservation and Recovery Act (RCRA) actions. Remediation of soils and groundwater that were contaminated by past base activities are Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) activities. The RCRA activities are governed by State of Oregon permits and, as stated above, the both missions are scheduled to be completed by 2013. The RCRA permits for both storage and disposal require clean closure of the facilities. The exact actions that will be taken by the Army to meet this requirement will be detailed in future closure planning documents.

Remediation planning and assessment for CERCLA were initiated in the late 1970s through 1988. Response actions begin after the completion of the Remedial Investigation and Feasibility Study (RI/FS) reports were finalized. Eight operable units (OU) were identified for remedial action. These OUs are:

- Explosive Washout Lagoons Soils OU
- Deactivation Furnace OU
- Active Landfill OU
- Inactive Landfills OU
- Explosives Washout Lagoons Groundwater OU
- Explosives Washout Plant OU
- Ammunition Demolition Activity (ADA) OU
- Miscellaneous Sites OU

In the 2004 Five Year Review Report for the UMCD it is noted that four OUs have been successfully remediated and no longer pose a threat to the environment (Army, 2004). These four OUs are Explosive Washout Lagoons Soils, Explosive Washout Plant, Deactivation Furnace Soils, and Inactive Landfills. The remaining four OUs (Active Landfill, Explosives Washout Lagoons Groundwater, ADA, and Miscellaneous Site 39) require further monitoring and/or remedial actions. The following table summarizes the actions that are need, or are on-going, at each of these four OUs. Figure 4 shows the geographic locations of the four OUs.

<b>OPERABLE UNIT</b>	<b>ACTION REQUIRED OR BEING TAKEN</b>	<b>EXPECTED END DATE</b>
Active Landfill	Monitoring of (now) closed landfill, potential for future remediation of selenium.	Ongoing monitoring till 2027, restricted GW use.
Explosives Washout Lagoons Groundwater	On-going pump-and-treat activities.	Models show clean-up levels will be achieved by 2022.
Ammunition Demolition Activity	Explosives removal and soil remediation needed once a future land use criteria had been established.	No schedule has been developed.
Miscellaneous Site 39	Subsurface clearing to a depth of 2 feet for 176 acres.	Scheduled to be completed by 2010.

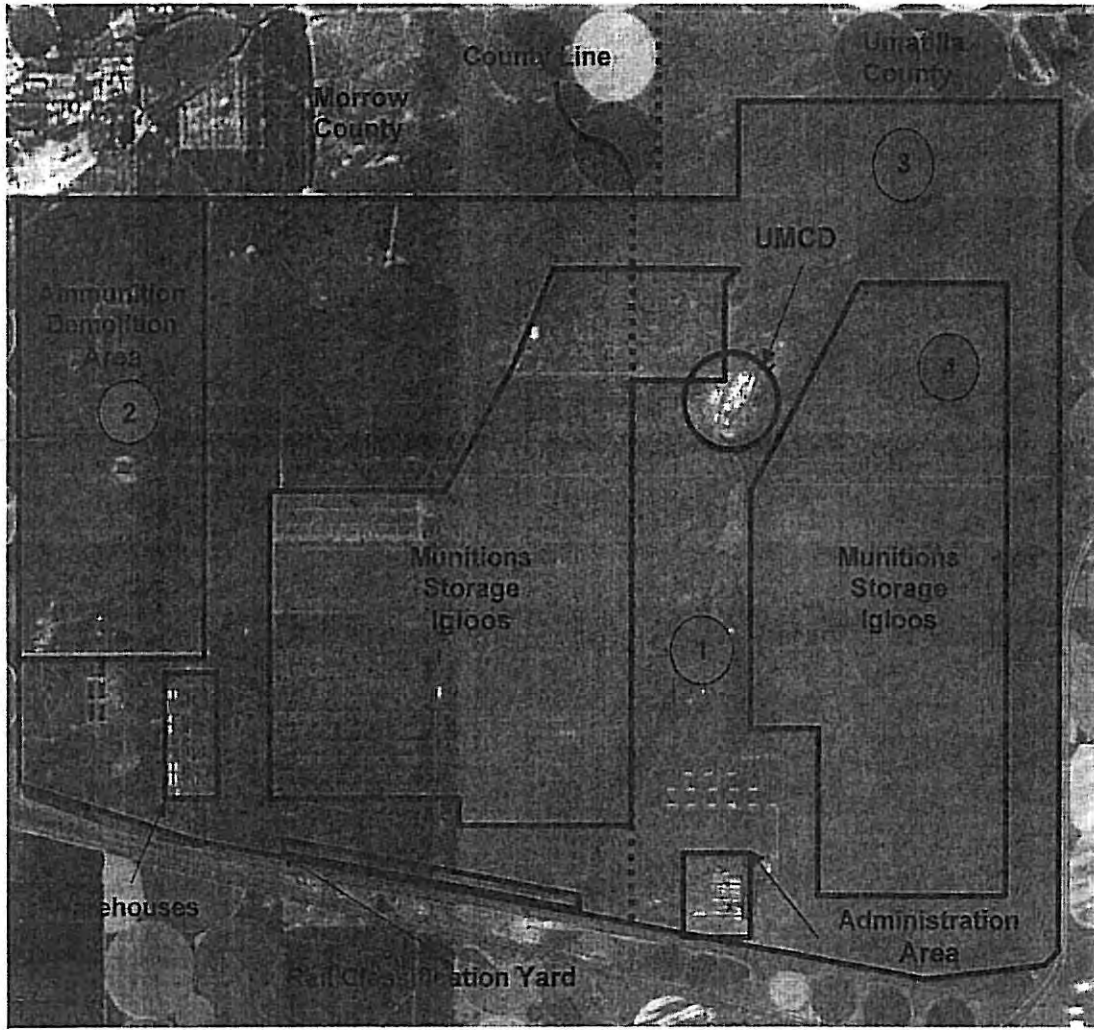


Figure 4: Aerial view of the UMCD showing major land use areas and the locations of active CERCLA OUs; Explosives Washout Lagoons Groundwater (1), Ammunition Demolition Activity (2), Miscellaneous Site 39 (3), Active Landfill (4),

### **3 PURPOSE and SCOPE of this POLICY**

#### **3.1 Purpose of this Policy:**

- To ensure the resources on the UMCD are protected and preserved in a manner that meets the United States Trust responsibility to the CTUIR which was established in the Treaty of 1855.
- To promote the traditional use of the UMCD lands including hunting and gathering by CTUIR members and their descendents.
- To protect the health of CTUIR Tribal members when on UMCD or UMCD-affected lands, or when using the natural or cultural resources that may be affected by UMCD activities.
- To define, and promote, clean closure of the UMCD facility in a manner that is protective of Tribal rights and resources on and near UMCD and UMCD-affected lands.
- To evaluate the effectiveness of clean-up and restoration actions at the UMCD and pursue further clean-up where Tribal health, rights, and resources are not fully protected or restored.
- To seek to regain management of, and possibly ownership, of portions of the UMCD. This action will be coordinated with the Federal Government and the Local Reuse Authority.
- To inform federal, state, and local agencies; other affected Tribes; and citizens of the CTUIR about CTUIR priorities and positions relative to the UMCD and UMCD-affected lands and resources.
- To encourage partnerships, collaboration, and communication between the CTUIR and state and federal agencies and other affected Tribes in meeting these goals.

#### **3.2 Geographic Scope and Time Frame of this Policy:**

UMCD-affected lands are defined as the 19,729 acres of land that comprise the UMCD (17,055 acres of depot lands and 2,674 acres of land on the north and east where there is a restricted easement) and anywhere that UMCD contaminants have come (or will come) to be located within the areas of interest and influence of the CTUIR.

This policy extends from the time the UMCD was established, and for as long as UMCD-related contaminants remain intrinsically hazardous and/or UMCD related lands are managed in the public domain.

### **3.3 Relation of This Policy to Other CTUIR Policies**

This policy is consistent with past and existing CTUIR position statements, and incorporates principles developed in the Treaty of 1855, prior Resolutions, Policies, charters, and mission and vision statements. Past CTUIR policies which were consulted when developing this policy include the CTUIR Columbia Basin Salmon Policy (March 8, 1995), and the CRITFC Wy·Kan·Ush·Mi Wa·Kish·Wit.<sup>2</sup> The CTUIR Hanford Policy (January, 2007), and all Board of Trustee Resolutions dealing with the UMCD. These resolutions are listed in the following table

<b>RESOLUTION NUMBER</b>	<b>PURPOSE</b>
96-05	To authorize the development of cooperative agreement with the Army to support CTUIR involvement in UMCDF activities.
96-06	Call for a one year moratorium on incineration to study alternative methods to dispose of the chemical weapons.
01-106	Supports stringent standards for weapons storage and to affirm the need to dispose of the weapons by incineration.
02-034	States opposition to the use of aqueous neutralization for mustard agent and the off-site shipment of liquid wastes.
04-031	States support for the start of agent shakedown operations at the UMCDF.
05-031	States opposition to off-site shipment of chemical weapons.

## **4 POLICY STATEMENTS**

### **4.1 Cultural Resource Management**

The CTUIR have an ancient relationship with the lands and resources throughout the region including within the UMCD as documented by the extensive archaeological record, traditional stories, and oral histories. Usual and accustomed fishing sites, villages and camps, religious, funerary and other spiritual sites, plant gathering areas, grazing, and other sites are known to exist on or near in this area. To fulfill its fiduciary responsibility to the CTUIR, the US government must protect the interests of the CTUIR by ensuring that lands, water, soil, air, biological, and cultural resources are clean and safe to use. The US government must also ensure to the CTUIR that, after clean-up, human health is not adversely affected from chemical and physical impacts that are related to operations or management of the UMCD site.

It is the policy of the CTUIR that:

- The quality of the UMCD resources should be restored to their pre-UMCD environmental conditions, or equivalent to those that existed at the time of the Treaty of 1855.

<sup>2</sup> "Wy·Kan·Ush·Mi Wa·Kish·Wit, Spirit of the Salmon: The Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm Springs, and Yakama Tribes." <http://www.critfc.org/text/trp.html>

- The Columbia and Umatilla Rivers should be protected from pollution associated with the historic operations of the UMCD, and wherever and for as long as, those pollutants may pose a threat to the CTUIR.
- The DOD should meet or exceed all federal, Tribal, and state laws and standards governing health and safety, transportation safety, disposal, restoration, protection of biological species, and protection of cultural resources.
- The DOD should protect ancestral human remains and cultural artifacts, if any are found during operations and site closure. Policies and procedures to protect human remains should be consistent with the CTUIR policies and procedures for the protection of ancestral human remains.

#### **4.2 Weapons Storage**

It is the policy of the CTUIR that:

- The UMCD comply with the stringent storage standards outlined in OAR 340-101-0030, 340-104-1201 and 340-108-0010 for the chemical weapons and bulk containers stored at the UMCDF.

#### **4.3 Weapons Destruction**

It is the policy of the CTUIR that:

- Timely destruction of all chemical weapons and bulk items stored at the UMCD be pursued provided that said destruction is carried out in a manner that is consistent with the Resources Conservation and Recovery Act Permit for the incinerator facility, as well as any other applicable environmental standards, and is protective of Tribal rights and resources. Any proposed modifications to permits must be reviewed by CTUIR staff to ensure that said modifications do not have the potential to put Tribal rights and resources at risk.
- Under no circumstances shall there be on-site storage of waste, generated either from chemical munition and bulk item processing or from decommissioning and dismantling the incinerator facility, beyond the time period that can be reasonably expected for its treatment and/or preparation for transportation off-site once the last munition campaign has been completed.
- Off-site shipment of liquid waste derived from chemical agent processing be prohibited, particularly if said shipments will travel through the Umatilla Indian Reservation.
- Off-site shipment of wastes contaminated with chemical agents, or agent like compounds, be prohibited.

- Movement of chemical weapons or chemical agent on to, or off of, the UMCD be prohibited.

#### **4.4 Closure and Reuse**

It is the policy of the CTUIR that:

- Once all weapons and bulk items are destroyed, the Board of Trustees supports the immediate treatment and off-site disposal of any remaining secondary waste and the subsequent restoration of the land to its original condition (as defined in Section 4.1 of this policy) by decontaminating and dismantling, and disposing of the UMCD incineration facility. On-site disposal of any demolition materials is prohibited.
- Unexploded ordinances in the ADA are removed to a depth that renders the site safe for traditional Native American uses such as hunting and gathering.
- The Army shall retain post-closure responsibility to remediate and restore those portions of the UMCD which still are still contaminated with hazardous chemicals or buried munitions.
- The Army, in conjunction with the CTUIR and other LRA members, must complete an environmental and economic impact study to detail the impacts of leaving, or removing, the storage igloos and bunkers. The results of the study will serve as a guide for the CTUIR and other LRA members to decide the fate of these structures. If the structures are left in place, the CTUIR must provide approval for any future use of these structures and said use must not entail activities that would destroy the current flora habitat or otherwise render the plant materials unusable for traditional Native American uses.
- The UMCD rail yard be left intact and that future uses for this facility, that will not negatively impact the surrounding natural resources, be pursued by the Local Reuse Authority.
- The 1993 reuse plan is updated with participation by the CTUIR to reflect more current community needs and plans. This update should include a structure-by-structure evaluation of the UMCD to determine what facilities and infrastructure should remain and what must be removed. The Army should be responsible for removing said facilities and infrastructure. Facilities and infrastructure are defined as any man-made structure including, but not limited to roads, buildings, bunkers, power lines, and water and sewer lines.
- The CTUIR coordinates reuse plans and activities with the UMCD Local Reuse Authority (LRA).
- The CTUIR develop a resource management plan for the UMCD prior to closure of the incineration facility to ensure that culturally relevant resources are identified and protected during closure.

#### **4.5 Capacity Development**

It is the policy of the CTUIR to:

- Build long-term scientific capacity and institutional memory to ensure the best science available is used to protect CTUIR interests and to be scientifically proactive to assist in the closure, clean-up, restoration and reuse of the UMCD.
- Build the capacity to monitor and restore environmental resources and educate future generations about the challenge of environmental clean-up. The CTUIR will verify modeling and sampling results wherever possible, in partnership with other federal agencies, Oregon State, and universities. External independent peer review of selected topics will be sought whenever possible.
- Maintain and enhance science and policy staff that can be proactively engaged in the management and protection of natural and cultural resources at, or affected by, the UMCD.
- Support proactive involvement with the UMCD by providing original research to identify innovative technology that will assist in clean-up, support cost-effective solutions, and protect Treaty-reserved rights.

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